Contents

7 CONDUCT OF BUSINESS (COBS) – GENERAL

This chapter covers general COBS issues that apply to the Firm and its ARs.

7.1 Acting Honestly, Fairly and Professionally

COBS 2.1.1 R requires that all members of staff, within the Firm and its ARs, act 'honestly, fairly and professionally in accordance with the best interests of its clients'. This is known as the client's best interests rule.

7.2 Information Disclosure Before Providing Services

COBS 2.2A.2 R requires that the Firm and its ARs must provide certain information to a client before it conducts investment business for that client. This includes: information about the Firm itself and the services it is authorised to provide, investment strategy, risk warnings, execution venues (where applicable), and the charges the Firm makes for providing these services.

7.3 Inducements

COBS 2.3A applies to MiFID, equivalent third-country and Article 3 firm business, whilst COBS 2.3 applies to all other business. The rules in both sections require the Firm and its ARs not to receive or pay fees or commissions (monetary or in kind) unless these are disclosed and clear to the client and do not in any way impair the Firm's/AR's compliance with the client's best interests rule. Any such inducements should ultimately be to enhance the services that the Firm/AR can give its clients. The fees and/or commissions received must be reasonable in terms of the value of the service being provided. Records of inducements must be kept for at least 5 years.

7.3.1 Personal Gifts and Benefits

The Firm/ARs must take reasonable steps to prevent it, or any person acting on its behalf, from:

- Accepting or offering any inducements or
- Directing or referring any actual or potential business to another person on its own initiative,

if it is likely to conflict with any responsibility the Firm has toward its clients. In this regard, staff members are specifically reminded of the FCA's Principle 6 – customers' interests, which requires the Firm to pay due regard to the interests of its clients and treat them fairly.

The Firm/ARs must also adhere to the Firm's anti-bribery and corruption policy (Appendix L).

7.4 Agent as Client

COBS 2.4.1 R allows the Firm and its ARs to take instructions from agents acting on behalf of their own client. If the Firm or an AR is aware that a person with or for whom it is conducting permitted designated investment business is acting as agent for another person in relation to that business, then the agent is the client of the Firm/AR in respect of that business, if:

- The agent is another regulated Firm or an overseas financial institution, or

- The agent is any other person, provided that avoidance of the duties which the Firm would otherwise owe to the client is not the main purpose of the arrangements between the parties, UNLESS
- The Firm has agreed with the agent in writing to treat the agent's client as the Firm's client.

Please note that the Firm and its ARs are still required to treat the agent's client as their client for the purposes of AML Regulations.

7.5 Reliance on Others

COBS 2.4.4 R allows the Firm/ARs to rely on information provided to the Firm/ARs by another firm that is a MiFID investment firm, a third-country investment firm or a firm that has equivalent relevant requirements. The Firm/AR may also rely on information provided by others if it is satisfied the information can be relied on. However, the Firm/AR will retain ultimate responsible for satisfying any relevant requirements.

7.6 Client Categorisation

COBS 3.1.1 R requires the Firm to take reasonable steps to establish whether a new client is a Retail Client, Professional Client or an Eligible Counterparty. COBS 3.3.1 R requires the Firm to confirm, in writing, to the client before providing any services the client categorisation it has selected, detailing any limitations to the level of client protection that such a categorisation would entail compared with alternative categorisations. The Firm must also advise a client of their right to opt for a client category affording them a higher level of protection (COBS 3.3.1A UK, COBS 3.7.1 R). Opting for categorisation taking into account a client's knowledge and experience is considered below.

The Firm is authorised by the FCA to undertake regulated activities with or for Professional Clients and Eligible Counterparties only. It is therefore important that before the Firm or an AR acts for a client the client's correct categorisation is established. The Firm and ARs must maintain client categorisation records for a period of at least 5 years (COBS 3.8.2 R) from last activity.

The Firm's clients consist of its ARs, the funds the Firm manages and those funds' investors.

7.6.1 Retail Client

COBS 3.4.1 R states that a Retail Client is a client who is not a Professional Client or an Eligible Counterparty. **Neither the Firm nor ARs are permitted to deal with or for Retail Clients**.

7.6.2 Professional Client

COBS 3.5.1 R states that a Professional Client is a client who is a Per Se Professional Client or an Elective Professional Client.

7.6.2.1 Per Se Professional Client

COBS 3.5.2 R states that a Per Se Professional Client is a Professional Client that is not an Eligible Counterparty and is one of the following:

- Credit institution.
- Investment firm.
- Other authorised or regulated financial institution.
- Insurance company.
- Collective investment scheme or the management company of such a scheme.
- Pension fund or the management company of a pension fund.

- Commodity or commodity derivatives dealer.
- Local authority.
- Other institutional investor.

Or in relation to MiFID Business or Equivalent Third-Country Business, a large undertaking meeting 2 of the following 3 size requirements on a company basis:

- Balance sheet total of Euro 20m.
- Net turnover of Euro 40m.
- Own funds of Euro 2m.

7.6.2.2 Elective Professional Client

COBS 3.5.3 R states that the definition of an Elective Professional Client is a Professional Client that the Firm/AR has chosen to treat as an Elective Professional Client, and who has agreed to be classified as such and who complies with the COBS 3.5.3 R (1), (2) and (3), or in the event of undertaking non-MiFID business for that client COBS 3.5.3 R (1) and (3).

Essentially, where the Firm/AR wishes (and the client agrees) to categorise a client as an Elective Professional Client, e.g. a Retail Client, the Firm/AR is obliged to satisfy itself to a reasonable extent that the client concerned:

- Has the expertise, knowledge and experience with regard to the financial instruments and/or service proposed and that the client is, therefore, capable of understanding the impact of their decisions and of the inherent risks involved (**the qualitative test**).
- Has stated, in writing, that they wish to be classified as a Professional Client in respect to the services and/or financial instruments contemplated.
- Has received a clear written warning from the Firm/AR regarding the protections and investor compensation rights they should expect to lose that would otherwise be afforded to them as a Retail Client, and they have separately in writing acknowledged and accepted this.
- Is able to meet, in the event of undertaking MiFID Business, 2 of the 3 following **quantitative tests**:
    - The client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous 4 quarters.
    - The size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds EUR 500,000.
    - The client works or has worked in the financial sector for at least one year in a professional position which requires knowledge of the transactions or services envisaged.

Under COBS 3.5.4R, if the client is an entity, the **qualitative** test should be performed in relation to the person authorised to carry out transactions on its behalf.

As clients of the Firm, ARs are not required to be Professional Clients. However, they would typically qualify. Funds will normally qualify as Per Se Professional Clients. A fund's investors will need to confirm via the Professional Client notice whether it is a Per Se or Elective Professional Client.

7.6.3 Eligible Counterparty

COBS 3.6.1 R. An Eligible Counterparty Client is either a Per Se Eligible Counterparty or an Elective Eligible Counterparty. The Firm may only undertake Eligible Counterparty business (dealing on own account, execution of orders on behalf of clients, reception and transmission of orders or ancillary services as per MiFID Annex 1 B) for an Eligible Counterparty and may not, therefore, undertake investment advice or investment management.

7.6.3.1 Per se Eligible Counterparty

COBS 3.6.2 R. A Per Se Eligible Counterparty is an Eligible Counterparty that the Firm has chosen to categorise as such and does not provide investment advice or investment management and is an entity as defined in COBS 3.6.2 R (1) to (10).

7.6.3.2 Elective Eligible Counterparty

COBS 3.6.4 R. An Elective Eligible Counterparty is an Eligible Counterparty the Firm has chosen to categorise as an Elective Eligible Counterparty and is an entity that is listed at COBS 3.6.4 R (1) and (2).

7.6.4 Providing Clients with a Higher Level of Protection

COBS 3.7.1 R provides a client the right to be treated in such a way that higher levels of protection are afforded. A client that the Firm categorises as a Professional Client or Eligible Counterparty could request to be classified as a Retail Client, or in the case of an Eligible Counterparty as a Professional Client. However, as the Firm cannot act for Retail Clients, if such protection was requested, the Firm would need to decline to act.

7.6.5 Policies, Procedures and Records

COBS 3.8.1 R requires the Firm to have appropriate written internal policies and procedures to categorise its clients.

COBS 3.8.2 R requires the Firm to keep records of the client's category, evidence of despatch of notice of categorisation sent to the client and a copy of the agreement entered into by the client. These records must be kept by the Firm for a minimum of 5 years after the client ceases to be a client of the Firm (COBS 3.8.2 R (3)(c)). As noted earlier, the Compliance Officer will keep all client records for a minimum of 5 years.

The above rules also apply to ARs.

7.7 Communicating With Clients Including Financial Promotions

7.7.1 Introduction

Section 21 of FSMA imposes a restriction on the communication of financial promotions by unauthorised persons. A person must not, in the course of business, communicate an invitation or inducement to engage in investment activity (a financial promotion) unless:

- They are an Authorised Person (a firm with a Part 4A, i.e. a directly authorised firm) or
- An Authorised Person approves the content of the financial promotion.

The Compliance Officer is ultimately responsible for authorising the Firm's financial promotions. However, the review and approval, where appropriate, of financial promotions has been generally delegated to competent individuals within the Firm with experience of COBS 4 rules.

There is no restriction on the media of communication to which the FCA requirements on financial promotions apply, and they therefore include printed materials, personal visits or telephone calls, and internet or other electronic media communications such as posts on blogs and Twitter.

The rules in the Handbook on communicating with clients and financial promotions are contained in COBS 4.

7.7.2 Fair, Clear and Not Misleading

COBS 4.2.1 R requires the Firm to ensure any communications with existing and potential clients must be 'fair, clear and not misleading'. Financial promotions addressed to clients must also be identifiable as such, except for a third-party prospectus where this relates to the Firm's MiFID business.

The 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 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. Names the FCA as its regulator and, if it refers to matters not regulated by the FCA, makes clear that those matters are not regulated by the FCA.
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.

7.7.3 Investment and Non-Independent Research

The Firm does not produce, arrange for the production of, publish or distribute its own investment research to clients or any other third party.

ARs may issue investment research or non-independent research and should refer to COBS 12 which includes requirements on disclosures and conflicts of interest. The Firm should review and approve any research prior to publication or dissemination.

COBS 12.2.22 R allows the Firm and its ARs to disseminate investment research produced, published and disseminated by other authorised firms not associated with the Firm or an AR unless the publisher of that investment research has expressly prohibited its further dissemination.

7.7.4 Direct Offer Financial Promotions

COBS 4.7.1R deals with direct offer financial promotions, which are promotions from firms, or on behalf of firms, that either propose to or invite from a respondent, an offer to enter into a controlled agreement with the firms. In relation to MiFID business a controlled agreement includes an agreement to carry on an ancillary service.

The Firm's policy is to prohibit the issue of direct offer financial promotions.

7.7.5 Promotions of Unregulated Collective Investment Schemes

Under section 238(1) of FSMA, a Firm must not communicate an invitation or inducement to participate in an unregulated collective investment scheme. Certain exceptions from this restriction are set out in FSMA (Promotion of Collective Investment Schemes) (Exemptions) Order 2001.

COBS 4.12.3R states that a firm may communicate financial promotions of unregulated collective investment schemes (defined as non-mainstream pooled investments (NMPI)) without breaching the provisions of section 238(1) of FSMA so long as the Firm only makes these financial promotions where it has made reasonable efforts to ensure these are only being made to permitted clients as detailed in Table COBS 4.12.4(4)R.

The marketing targets relevant to the Firm and its ARs are, typically:

- Category 2: Certified high net worth individuals.
- Category 4: The Firm's staff members and partners or its former staff members and partners or their immediate family.
- Category 7: Professional Clients or Eligible Counterparties.
- Category 8: Certified sophisticated investors.
- Category 9: Self certified sophisticated investors.

Before issuing such a financial promotion, the Firm/AR must have made a reasonable assessment, and be able to evidence such an assessment that this financial promotion is only to be issued to individuals where they have evidence, or it is reasonable to assume, that a particular exemption will apply. The assessment should also include the reasons for the outcome that subsequently results. (COBS 4.12.5).

Any financial promotions to such persons who are not clients of the Firm or its AR should be approved by the Firm's Compliance Officer or otherwise delegated to individuals who have experience of approving such items.

Where a financial promotion is exempt under categories 2, 8 or 9, this exemption can only be satisfied where there is an appropriate declaration obtained from the client in accordance with the requirements at COBS 4.12.6 – 4.12.11.

The Firm/AR must, when categorising persons with a view to a financial promotion of the unregulated collective investment scheme being communicated, at the time, make a record that demonstrates the basis that the Firm/AR has made reasonable attempts to ensure that the financial promotion is only being communicated to those persons eligible to receive such promotions.

7.7.6 Social Media Communications

If duties require individuals to speak on behalf of the Firm/AR in a social media environment, they must undergo training before doing so, seek prior approval for each communication and abide by the principles and guidelines set out below.

Likewise, if Firm/AR staff are contacted for comments about its organisation for publication anywhere, they should not respond without written approval.

7.7.6.1 Social Media Principles

- Take time to get to know the environment and the target audience/network.
- Be respectful, thoughtful and polite at all times.
- Be clear on who will be able to view the posts before they are being made.
- Err on the side of caution, if unsure, do not post it and/or discuss with line manager before doing so.
- Look out for security threats.
- Do not make promises or guarantees.
- Use alternative channels to handle complex/confidential queries and provide bespoke guidance/advice.
- Do not respond impulsively, take time and hold back if in any doubt.

7.7.6.2 Guidelines for Safe and Responsible Use of Social Media

- Individuals should be aware that they are personally responsible for all communications, which will be published on the internet for anyone to see.

- If affiliation with the Firm/AR is disclosed on personal social media profiles or in any social media postings, individuals must state that their views do not represent those of the Firm (unless they are authorised to speak on their behalf).
- Individuals should ensure that personal profiles and any content posted are consistent with the professional image presented to clients and colleagues.
- Individuals should consider the FCA's social media guidance, which includes examples of compliant and non-compliant practices, prior to making any posting (see key-point summary below and FG15/4).
- Communication with direct competitors should be approved in advance and kept to a minimum.
- When sharing content published on another website, use sharing buttons or functions provided by the website.
- If social media content that disparages or reflects poorly on the Firm or an AR is seen, the Compliance Officer should be contacted without delay.

7.7.6.3 FCA's Social Media Guidance (FG15/4) – Key Points

- Certain tweets are seen as non-real-time promotions – see Article 7 of the Financial Promotion Order 2005.
- Communications could amount to financial promotions if they include an invitation or inducement to engage in financial activity.
- All communications should be clear, fair and not misleading.
- Twitter communications can reach a large audience very quickly so this should be considered before tweeting and tweets should be appropriately and specifically targeted.
- If the tweet meets the definition of a financial promotion the standard financial promotion rules and principles apply – see relevant sections of this Manual and relevant training presentation – including approval by a competent individual within the authorised firm.
- Consider whether any risk warnings/disclaimers are required perhaps via an image to minimise impact on word-count and to ensure important messages are sufficiently clear.
- The firm from where a posting originates remains ultimately responsible for the communication therefore this should be considered when creating it.
- Staff should have regard to other applicable rules relating to promotions and marketing, such as those concerning unsolicited promotions, e.g. Privacy and Electronic Communications Regulations 2003.
- Consider what the most appropriate format for the communication is.

7.7.7 Approving Financial Promotions

COBS 4.10.2 R requires the Firm/AR to ensure that financial promotions are approved by the Firm, as an Authorised Person, before use. The Firm's policy is that it will aim to review each financial promotion within 5 working days from receipt. Please note that timescales for data rooms may be longer depending on volume. The Firm's Compliance Officer is ultimately responsible for approving all financial promotions. However, the review and approval, where appropriate, of financial promotions has been generally delegated to competent individuals within the Firm with experience of COBS 4 rules.

The Firm maintains a file of all final versions of all financial promotions together with relevant paperwork (e.g. completed checklists, where appropriate, emails, file notes etc) to evidence the review and subsequent decision.

7.7.8 Record-Keeping of Financial Promotions

The Firm will keep records of financial promotions it makes and/or approves for at least 5 years.

With reference to unregulated collective investment schemes, financial promotions records must include evidence that proves reasonable care has been taken to ensure the financial promotion has only been made to those entitled to receive it. The Firm and ARs must maintains records relating to potential investors/classes of potential investors targeted, together with supporting evidence relevant to their eligibility under the exemptions.

7.8 Client Agreements

The Firm and ARs are obliged to provide its clients with certain details about the Firm/AR (COBS 2.2A.1 R) and is required to put in place a written agreement between the client and the Firm/AR (COBS 8A.1.4 UK (a) and (c)) before services are provided, or before a client is bound by any proposed agreement. This agreement may be in the form of an engagement letter.

The Firm's policy is to keep a record of the agreement for at least 5 years following the end of the relationship with the client.

Written agreements are expected to include, as a minimum:

- As set out in COBS 6.1ZA, information about:
  - The Firm.
  - Its services, including, where relevant, the nature and extent of investment advice being provided.
  - Information on communications, conflicts of interest and regulatory status including relevant restrictions (e.g. client types).
- The types of financial instruments and nature of financial transactions that might be contemplated.
- Where relevant, details of safeguarding of client financial instruments or client funds.
- A clear description of costs and associated charges.

7.9 Disclosure of Side Letters with Material Terms

The Firm will not normally operate side letters, but if this occurred on an exception and justifiable basis, the Firm will disclose the existence of any side letters which contain any 'material terms' that it is aware of. The Firm defines a material term using the Alternative Investment Management Association's definition as follows:

'Any term the effect of which might reasonably be expected to be to provide an investor with more favourable treatment than other holders of the same class of share or interest which enhances that investor's ability either (i) to redeem shares or interests of that class or (ii) to make a determination as to whether to redeem shares or interests of that class, and which in either case might, therefore, reasonably be expected to put other holders of shares or interests of that class who are in the same position at a material disadvantage in connection with the exercise of their redemption rights.'

The disclosure of any side letters in existence will be made on a periodic basis in an appropriate medium including any formal external reports and in line with the industry guidance. Additionally, disclosure will be made to any potential new investors prior to their investing.