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 or AR itself and the services it is authorised to provide, investment strategy, risk warnings, execution venues (where applicable), and the charges the Firm or AR makes for providing these services.

7.3 Inducements

COBS 2.3A applies to MiFID, equivalent third-country and Article 3 MiFID exempt 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, subject to evidence of appropriate authority. 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 and AR 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/AR 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/AR 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.

For the purposes of categorization, the Firm's clients consist of 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**.

As Midmar and its ARs are not permitted to deal with retail clients, ARs must ensure that all recipients of financial promotions can meet the FCA's definition of a Professional Client (Per Se or Elective) from the outset, otherwise retail financial promotion rules will apply. Further details below.

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 ARs (the entity) are not the underlying clients or investor, they are not required to be Professional Clients. 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, categorise a client as an Eligible Counterparty for either investment advice or investment management. Typically therefore the Firm does not normally categorise its clients as Eligible Counterparties.

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 dispatch 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 permission, i.e. a directly authorised firm) or
- An Authorised Person approves the content of the financial promotion.
- If the financial promotion approval is on behalf of a third party, the firm also has specific FCA permission to do this unless a valid exemption (i.e. if this is on behalf of its ARs) exists.

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. For a restricted or high-risk product, includes the following FCA risk warning and link to the appropriate risk summary from COBS 4 Annex 1, in accordance with the Firm's risk summary instructions (Appendix S):

   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. Take two minutes to learn more.

3. That quotes a yield figure, gives a balanced impression of the short and long term prospects for the investment.
4. 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.
5. 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.
6. 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. Considers the FCA's guidance on prominence which states that design features must not reduce the visibility or prominence of a risk warning or risk summary, such as by:
   a. using a font size that is smaller than the standard size used in the financial promotion,
   b. using a background colour that does not sufficiently contrast the text or makes it difficult for the client to read the text,
   c. fading the text of the risk warning or risk summary,
   d. 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 firms contact details),
   e. requiring additional links to be clicked to see the full text of the risk warning or risk summary,
   f. using a font or background for risk warnings and risk summary in the same colour as the firm's brand, or in the same colour as the rest of the financial promotion, or in the same colour as other forms of disclosure and standard information - the risk warning or risk summary should be distinct from other forms of information.

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.

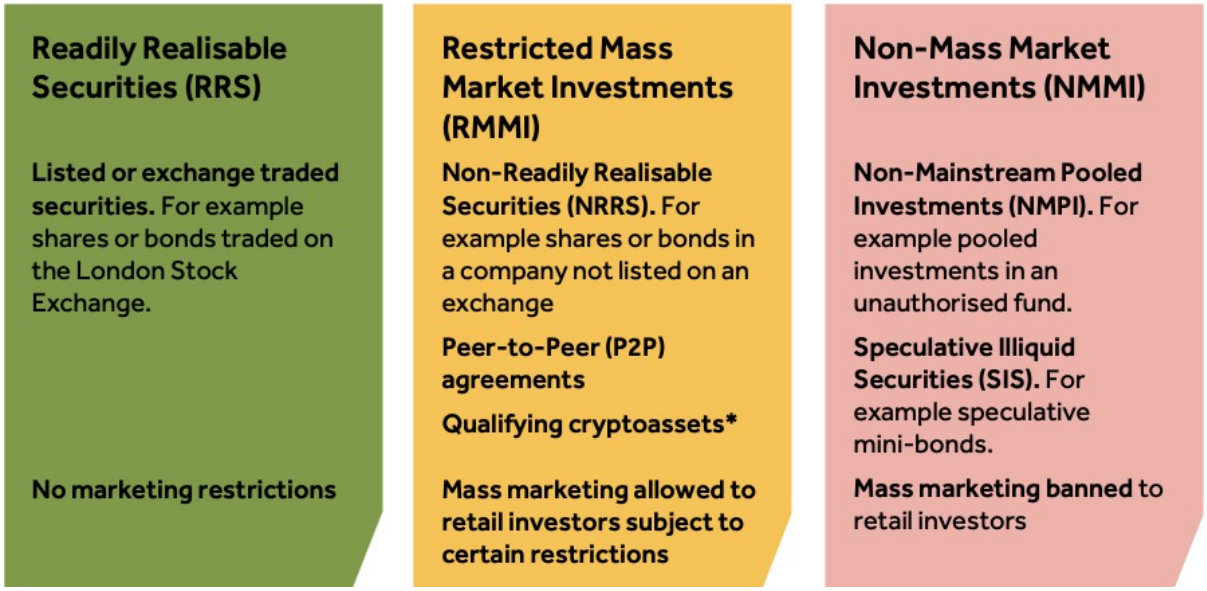
7.7.5 Promotions of Unregulated Collective Investment Schemes

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 FCA has changed the way it categorises high-risk investments to ensure products with broadly similar characteristics are treated in the same way under its financial promotion rules. This does not change the level of marketing restrictions that apply to investments. The aim is to rationalise and simplify the various marketing restrictions that have been implemented over several years. For example, private equity funds/alternative investment funds are still regarded as NMPI and are, therefore, classified as NMMI.

Figure 2: Financial promotion marketing restrictions product categories



ARs are not permitted to deal with retail clients and anyone in receipt of a financial promotion must satisfy the FCA's definition of a Professional Client regardless of them meeting previous exemptions such as being self-certified HNWIs or sophisticated investors.

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.

Where use of an exemption (under the Financial Promotions Order) is to be relied on, the appropriate exemption(s) and compliance with any conditions of the exemption, must be confirmed by the Compliance officer, or by a competent individual within the authorised firm before the financial promotion is issued. IN addition, the Firm/AR must have made a reasonable assessment in advance, and be able to evidence such an assessment, that the financial promotion is only to be issued in accordance with an appropriate exemption.

7.7.6 Sustainable Disclosure Requirements and Investment Labels Regime

The Sustainable Disclosure Requirements (SDR) regulation introduces comprehensive measures to enhance trust and transparency in sustainable investment products and to minimise greenwashing. It comprises five main components:

1. **Anti-greenwashing rule** that applies to all firms to ensure that references to the sustainability characteristics of products or services in client communications and financial promotions are: (i) consistent with the sustainability characteristics of the product or service; and (ii) fair, clear and not misleading.
2. **Four new sustainable investing product labels** *(Source of infographic:* Morningstar Research Report*)*:

3. **Naming and Marketing rules**: Restrictions on the use of sustainability-related terms in the name and marketing materials of relevant products.
4. **Disclosures:** The introduction of four types of sustainability-related disclosures: (i) consumer-facing disclosures; (ii) pre-contractual product-level disclosures; (iii) periodic product-level disclosures; and (iv) entity-level disclosures.
5. **Requirements for distributors** to communicate labels (where used) and provide consumer-facing disclosures to retail investors. Distributors must also include a notice on overseas products to state that those products are not subject to the SDR.

7.7.6.1 Anti-greenwashing Rule

The term “greenwashing” can be defined as sustainable financial products marketed in a misleading way. Greenwashing typically involves companies that fabricate unsubstantiated claims that are aimed at deceiving consumers into believing the company’s products are environmentally friendly or have a greater positive environmental impact than reality. Companies may “greenwash” their products by the use of

environmental imagery, misleading labels or by hiding trade-offs.

The FCA is concerned that continued greenwashing could lead to consumer harm and erode trust in the market for sustainable investment products. Therefore, the FCA introduced a new rule anti-greenwashing rule (ESG 4.3.1R) that applies to a firm's communications and marketing material including financial promotions and websites.

The anti-greenwashing rule states that a firm must ensure that any reference to the sustainability characteristics of a product or a service is:

a) Consistent with the sustainability characteristics of the product or services, and

b) Fair, clear and not misleading.

The anti-greenwashing rule extends to the name of the product or service. Firms should consider the product name as a whole and how it could be interpreted by a prospective investor.

Firms should ensure that all literature relating to product or service is consistent and does not contain any conflicting statements or messages.

The FCA has published guidance (FG24/3) to help firms understand and implement the anti-greenwashing rule.

7.7.6.2 Naming and Marketing Rules for labelled and unlabeled sustainability products and services

Whilst the scope of the FCA's naming and marketing rules under the SDR and investment labels regime appears to be limited to products (or services) that are made available (including indirectly) to retail investors, it's not absolutely clear if non-retail products/services are intended to be in scope. In addition, in order to comply with the anti-greenwashing rule, the application of some rules (see below) is considered prudent.

In addition, the Firm in any case requires the target audience (professional investors as defined by COBS 3.5) of a communication, marketing item including a financial promotion, or its website to be clearly and prominently stated.

Only products and services that are predominantly (and verifiably) sustainable should use sustainability terminology in their marketing and general communications, and any use of such terminology must be capable of being substantiated.

Product or services that have no or limited/minimal sustainability features should refrain from using sustainability terms, such as those listed in ESG 4.3.2R(1), in their marketing or general communications to avoid breaching the anti-greenwashing rule. This is unless the firm is making short, factual statements which are not financial promotions or to make statements in a context not intended to refer to or describe the sustainability characteristic of a sustainable product.

Firms must not use the terms of the FCA's 4 sustainability labels in the name of a product unless that product has been permitted in advance by the Firm and the FCA to use the relevant label.

Products that are permitted to use a sustainability label other than the impact label must not use the word 'impact' in the product's name.

Sustainability products that don't use a label and are referenced in communications and marketing including webpages and financial promotions should include the following clear and prominent statement: **This product does not have a UK sustainable investment label.** On a best-practice basis, this statement should also be followed by a description as to why the product doesn't use a sustainability label.

When in doubt, seek guidance in advance from your Primary Contact or err on the side of caution.

7.7.6.3 General marketing requirements for labelled funds

The Firm and/or an ARs must not use, or imply that it uses or meets the criteria to use, one of the FCA's 4 sustainability labels unless Midmar has submitted an application to the FCA for use of the label and the application has completed with release by the FCA of the prescribed label graphic.

Narrative on proposed future use of a label may only be included in communications and marketing material where Midmar has approved the narrative in advance. This approved narrative must be submitted to Midmar for advance re-approval if relevant circumstances change and the previous wording must no longer be used.

Where use of a sustainability label for a product has been permitted by Midmar and the FCA, the relevant graphic prescribed by the FCA must be used:

1) when displaying that label in relation to a sustainability product on relevant digital medium (e.g. a website); and

2) when disclosing the use of that label in pre-contractual disclosures (including pitch-decks and/or PPMs, and LPAs) and product sustainability reports. (See chapter 8 for disclosure and reporting requirements under the SDR and investment labels regime).

Firms using labels must not:

1) use a sustainability label in a way that is misleading;

2) claim in a public statement or to a client, either expressly or by implication, that:

   (a) the FCA has conferred or approved the use of a sustainability label in relation to a particular sustainability product, or

   (b) use of a sustainability label indicates that a sustainability product has been approved or endorsed by the FCA; or

3) publish information in relation to the use of, or descriptors pertaining to, a sustainability label which contradicts the information that has been published by the FCA.

Where a sustainability label is used in relation to a sustainability product and information about that product is made publicly available, a firm must publish clearly on relevant digital medium (e.g. a website):

1) the label that is being used;

2) a statement that the product is only available to professional investors (as defined in COBS 3.5); and

3) details of how the pre-contractual disclosure for that product can be accessed.

If a product, or the manager and/or adviser, is not able to meet the general and/or specific criteria or firm requirements for using a sustainability label, it must notify Midmar promptly so that an advance notification (where practicable) can be submitted to the FCA, and, as soon as is practicable:

1) prepare a written notice to prospective and existing investors setting out that the sustainability label has been revised or ceased and the reasons why,

2) publish the revised sustainability label, or the fact that use of the label has ceased, and the reasons why, in a prominent place on relevant digital medium; and

3) ensure disclosures and reports are updated.

Please see Chapter 8 of this Manual (and the relevant Teachable modules) for more information on the general and specific label criteria and other regulatory requirements under the SDR and investment labels regime.

7.7.6.4 Rules for distributors

The FCA's SDR Regime extends beyond FCA-authorised firms and applies to any 'distributor' or firm which offers, sells, recommends, arranges, deals, proposes or provides a sustainability product (labelled and unlabelled) or a recognised scheme. Therefore, rules for distributors also apply to ARs when fundraising and advising.

As the Firm and it's ARs do not deal with retail clients, the requirements for distributors are limited to the following:

- communicating the labels and stating that the product is only suitable for and open to professional clients that meet the criteria in COBS 3.5, either on a relevant digital medium for the product or using the channel they would ordinarily use to communicate information.
- keeping the labels and any associated information up to date with any relevant changes that are made
- including a notice on overseas products to clarify that the products are not subject to the UK sustainable investment labelling and disclosure requirements. This notice must be in a prominent place on the relevant digital medium, along with a link to the FCA webpage setting out more information for consumers, or (ii) communicated via the channel the distributor would ordinarily use.

Distributors must have sufficient knowledge of the product and relevant skills in order to deliver permitted information in a way that is clear, fair and not misleading, and in compliance with the ani-greenwashing rule.

7.7.7 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.

7.7.7.1 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.

7.7.7.2 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 FG24/1).
- If firms are considering communicating promotions to a restricted audience on social media, they should carefully consider whether they're able to comply with applicable requirements.
- 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.

7.7.7.3 FCA's Social Media Guidance (FG24/1) – Key Points

- Whether a financial promotion is real or non-real time impacts the rules that apply. A promotion is likely to be non-real time if it is made or directed at more than one recipient in identical terms, creates a record which is available to the recipient at a later date, and is made by way of a system which doesn't enable or require the recipient to respond immediately.
- 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.
- Financial promotions must be standalone compliant.
- 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.
- All promotions including those on social media must provide a balanced view of the benefits and risks and clearly communicate information. Therefore, consider whether social media channels are the most appropriate method to communicate promotions.
- Consider the information needs of the target audience and information requirements of the promotion - excessive information may obscure significant information or confuse consumers.
- Firms should ensure that where possible, information that is required to be prominent is displayed without needing click-through or without being obscured by a social media design feature (such as 'see more...').
- 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.
- Prescribed risk warnings should be clear on the face of the promotion and for some products, additional rules apply.
- The entire risk warning must be clear and must not require click-through to access (such as 'see more...').
- Where shortened risk warnings are explicitly allowed by the FCA rules, firms should ensure the entire shortened warning is clearly visible and the full warning is included after click-through.

- The firm from where a posting originates remains ultimately responsible for the communication therefore this should be considered when creating it.
- Firms are responsible for compliance if it shares a post, even though the firm did not generate the original content.
- 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.
- Non-UK based persons promoting financial products must ensure that the content of their financial promotions is approved by an appropriate authorised person or that their promotions are exempt under the FPO.
- Consider what the most appropriate format for the communication is to ensure prominence of key information and risk warnings - for example, channel, headings, layout, display, and font of text.

ARs should exercise caution when posting on public social media sites and ensure that any social media posts are exempt (i.e. image advertising) or fall outside of the FCA's financial promotion rules altogether. ARs should seek advance approval from Midmar for any social media posts that could constitute a financial promotion, as social media posts are more likely to be seen by retail clients, particularly if something is re-posted.

7.7.8 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.

The Firm requires that all financial promotion are only approved for 3 months at a time. To remain approved after three months, confirmation that there have been no material changes must be received. If this confirmation is not received, the financial promotion will automatically revert to unapproved. Where any change has been made, including of an insignificant nature, the details of the changes made should be communicated to the firm along with the updated financial promotion. Where material changes have been made, these will need to be reviewed and approved by Midmar before the financial promotion can be used again.

All financial promotions must be reviewed in full 12 months after approval even where there have been no changes. If a financial promotion is not submitted for re-review, the approval will expire.

The FCA requires authorised firms to have specific permission to approve financial promotions for unauthorised parties. Although an AR is an unauthorised party, AR promotions are exempt from this regime and come under Principal/AR regime requirements. Otherwise the Firm will not approve any financial promotions for 'third party' unauthorised firms.

7.7.9 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 maintain records relating to potential investors/classes of potential investors targeted, together with supporting evidence relevant to their eligibility under the exemptions.

The Firm/ARs are required to record the following metrics:

1. The number of potential investors who were unable to meet the FCA's definition of a professional client and as such could not receive a financial promotion.
2. Any breaches where a financial promotion has been sent to someone who was later unable to satisfy the professional client criteria.
3. The number of potential investors that do not wish to proceed with an investment after receiving a financial promotion.

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.