

Strengthening our financial promotion rules for high-risk investments and firms approving financial promotions

Policy Statement

PS22/10

August 2022

This relates to

Consultation Paper 22/2
which is available on our website at
www.fca.org.uk/publications

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1 Summary

- 1.1** In January 2022, we consulted on strengthening our financial promotion rules for high-risk investments, including cryptoassets (CP22/2). High-risk investments have a place in a well-functioning consumer investment market for those who understand the risks involved, and can absorb potential losses. However, our consumer research (BritainThinks, Opinium and IPSOS MORI) shows that too many consumers are investing in high-risk products which are not aligned with their risk tolerance and are unlikely to meet their needs. This can lead to unexpected and significant losses for consumers and undermine confidence in investing more widely, making it harder for all firms to raise capital.
- 1.2** This work has become more important since we published CP22/2. Higher inflation rates have resulted in negative real returns across many mainstream investments. This may push consumers into high-risk investments in a search for higher returns. At the same time, the rising cost of living means consumers are less able to absorb potential losses.
- 1.3** This Policy Statement (PS) summarises the feedback we received to CP22/2. It sets out our final policy position and Handbook rules, which are designed to strengthen the regime for how high-risk investments (HRIs) can be promoted. At this stage, the final rules apply to those HRIs which are already subject to marketing restrictions. The PS also contains our final strengthened rules for firms when communicating or approving financial promotions. These rules are a key part of delivering our Consumer Investments Strategy. The strategy sets out our plan to deliver a consumer investment market that works well for people who want to invest with confidence, save for planned and unexpected life events and for the businesses in the real economy for which it provides essential funding.
- 1.4** Having considered the feedback, we are making several targeted changes to our proposals. These are designed to avoid negative unintended consequences identified by respondents and to give firms sufficient time to ensure an orderly implementation of the rules.
- 1.5** The made rules are in Appendix 1. Rules related to risk warnings for financial promotions of high-risk investments will have effect from 1 December 2022. All other rules will have effect from 1 February 2023.
- 1.6** Cryptoasset promotions currently sit outside the FCA's remit. In January 2022, the Treasury confirmed its intention to legislate to bring certain cryptoassets into the scope of the financial promotion regime. CP22/2 set out our proposed rules for cryptoasset promotions. We will make final rules for cryptoasset promotions once the relevant legislation has been made by the Treasury. We still consider cryptoassets, when used as a speculative investment, to be high-risk. Recent events, including sharp falls in the price of cryptoassets, further highlights the riskiness of these products. As we have previously said, consumers should only invest in cryptoassets if they understand the risks involved and are prepared to lose all of their money. We will publish our final rules for cryptoasset promotions once the relevant legislation has been made. Subject to any changes in circumstances, we expect to take a consistent approach to cryptoassets to that taken for other high-risk investments.

Who this affects

1.7 This consultation will be directly relevant to:

- consumers investing, or who are considering investing, in high-risk investments
- authorised firms which approve financial promotions for unauthorised persons (section 21 approvers), whether for high-risk investments or otherwise
- issuers of non-mainstream pooled investments, speculative illiquid securities and non-readily realisable securities
- investment-based crowdfunding (IBCF) platforms and other intermediaries distributing high-risk investments to consumers
- loan based Peer-to-Peer (P2P) platforms
- trade bodies for the IBCF and P2P sectors

1.8 The final rules in this document will also be of interest to:

- firms operating in the cryptoasset sector and trade bodies for these firms
- any authorised firm in the consumer investments sector
- investment companies, and trade bodies for this sector
- issuers of other types of investments
- financial advisers
- firms managing a Long-Term Asset Fund

The wider context of this policy statement

Our consultation

1.9 Addressing the harm from high-risk investments is a key part of our Consumer Investments Strategy. Long-term social and economic changes have made the consumer investment market more important than ever. Consumers are increasingly responsible for making complex decisions about how they invest their long-term savings for life events and to support themselves in later life. There is more choice of products and services than ever before. It is increasingly easy to target consumers with adverts for high-risk investments online.

1.10 The Covid-19 pandemic has accelerated many of these trends. Our Financial Lives Survey data suggests that 6% of adults with investments increased their holdings of high-risk investments between February and October 2020. Data from IPSOS MORI suggests there has been further growth in the ownership of high-risk investments since then. For example, the proportion of consumers owning certain high-risk investments increased by 65% between March 2020 and June 2021.

1.11 Alongside this rapid increase in ownership, there is growing evidence that consumers do not fully understand the risks involved. Research we commissioned from BritainThinks found that 45% of new self-directed (ie non-advised) investors said they did not view 'losing some money' as a potential risk of investing.

1.12 The research also points to an emerging group of self-directed investors who appear to be driven by social and emotional factors. For example, three-quarters (76%) of those surveyed by Opinium on our behalf felt a sense of competitiveness when placing their money in an investment, with over two-thirds (68%) likening it to gambling.

- 1.13** One of the main ways consumers build their understanding of the risks and regulatory protection for investments is through the information they get in financial promotions. For high-risk investments, even a good financial promotion may not be enough to adequately protect consumers. It may meet our requirements to be clear, fair and not misleading, but a consumer may still not understand when the underlying investment does not meet their needs. In these cases, we can use our financial promotion rules to give consumers further protections.
- 1.14** We issued CP22/2 to ensure our financial promotions regime is robust and remains fit for purpose in a changing investment environment, with promotions distributed to a mass audience at increasing speed via online platforms and through social media. This is a key part of delivering on our Business Plan outcome of enabling consumers to make informed financial decisions. The proposals built on the feedback to our Discussion Paper (DP21/1) and evidence from our behavioural science research.
- 1.15** Our Consumer Duty rules and guidance have recently been published. These rules set a higher standard for what consumers can expect from regulated firms, and require firms to focus on achieving good outcomes for consumers. Improving outcomes for consumers of high-risk investments is a critical element of our strategy. The measures covered in this policy statement support the Consumer Duty to achieve this. Our strengthened financial promotion rules set a minimum baseline for firms that promote high-risk investments and give clear guidance on what is expected, with the aim of bringing up the overall standard of high-risk investment promotions. But they also support the approach of the Consumer Duty, by encouraging firms to consider for themselves whether they should go beyond this minimum standard, considering the needs of their customers, to deliver good outcomes. Our changes to the consultation proposals give firms further opportunities to do this.
- 1.16** We have published a consultation on broadening retail access to the Long Term Asst Fund (LTAF) (CP22/14). This consultation proposes to classify the LTAF as a Restricted Mass Market Investment, based on the rules set out in this Policy Statement.

How it links to our objectives

- 1.17** Our rules aim to advance our consumer protection objective by seeking to reduce and prevent the harm to consumers from investing in high-risk investments that do not match their risk appetite. Our extensive consumer research (discussed in paragraphs 4.6 – 4.10 of CP22/2) shows that without further changes this harm will continue.
- 1.18** Our rules are also relevant to our integrity objective. Failures and unexpected losses for retail investors undermine confidence in UK financial markets. This may impact the soundness, stability and resilience of the UK financial system. Facilitating consumer understanding and good investment decisions increases trust in the system, and ultimately encourages further use.
- 1.19** We do not consider it to be in consumers' interests for firms or businesses to compete to sell them products that do not meet their needs and are inappropriate for them. We recognise that some of our rules could lead to some investments no longer being offered to retail investors or to a reduced take-up from retail investors. However, that would be the inevitable consequence of what we are trying to achieve, namely reducing the risks associated with retail investors making inappropriate investments. In making

these rules we have had regard to our duty to promote effective competition in the interests of consumers.

What we are changing

1.20 In CP22/2 we proposed changes in the following areas:

- **Our classification of high-risk investments** (Chapter 3). Firms have told us that our existing marketing restrictions are difficult to navigate and that it is sometimes challenging to understand what restrictions apply. We proposed to rationalise our rules in COBS 4 under the terms 'Restricted Mass Market Investments' and 'Non-Mass Market Investments.'
- **The consumer journey into high-risk investments** (Chapter 4). We are concerned that too many consumers are just 'clicking through' and accessing high-risk investments without understanding the risks involved. Our existing marketing restrictions are intended to ensure consumers only access high-risk investments knowingly. However, our consumer research shows this approach isn't working as well as it should. We proposed a package of measures to strengthen the consumer journey by making changes to the following areas: strengthening risk warnings, banning inducements to invest, introducing positive frictions, improving client categorisation and stronger appropriateness tests.
- **Strengthen the role of firms approving (s21 approvers) and communicating financial promotions** (Chapter 5). We want to strengthen the role of s21 approvers, as they play an important role in enabling unauthorised issuers of high-risk investments to reach consumers. We want to develop a robust regime to complement the proposed s21 gateway which, when implemented, will ensure s21 approvers meet high standards. This will ensure approving firms have the relevant expertise in the promotions they approve and the overall quality of financial promotions in the market is high.

Outcome we are seeking

- 1.21** Our final rules are designed to ensure that firms communicating and approving financial promotions do so to a high standard, ensuring consumers receive high-quality financial promotions that enable them to make effective, well-informed investment decisions.
- 1.22** We are making these changes to ensure that consumers only receive promotions of high-risk investments where they understand the risks involved. Our consumer research shows there is a growing mismatch between consumers' investment decisions and their stated risk tolerance. This has the potential to cause significant harm to consumers, including unexpected financial loss that cannot easily be absorbed. A significant unexpected loss from an investment can have knock on effects of further financial difficulty and poorer wellbeing, especially in the current economic climate. The harm is likely to be more acute among individuals with characteristics of vulnerability.
- 1.23** Our rules will help alert consumers to the risks from high-risk investments by further differentiating the journey a consumer takes when looking to invest in a high-risk investment, compared to the journey undertaken when investing in a mainstream investment.

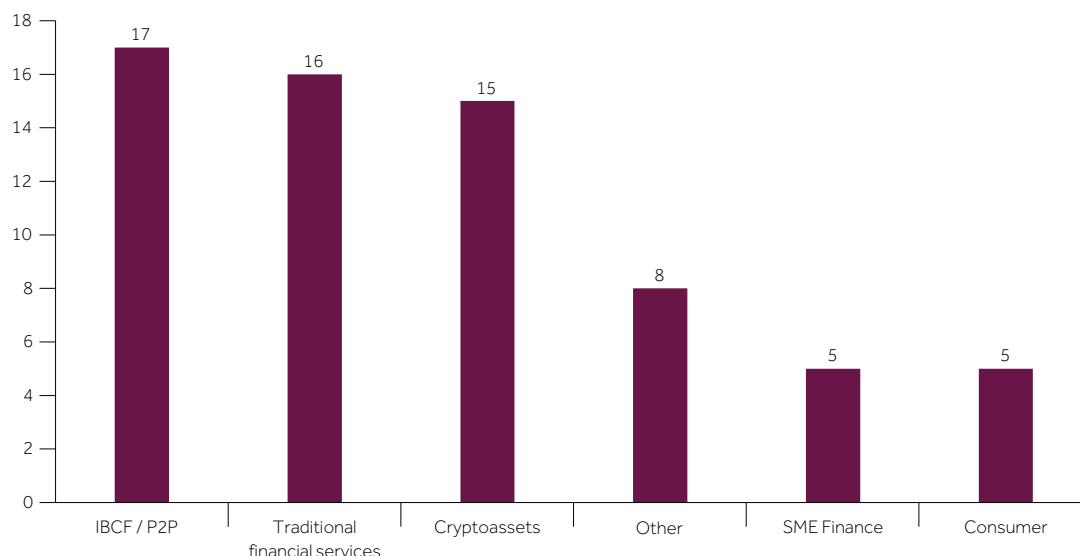
Measuring success

- 1.24** These rules are a key part of our Consumer Investment Strategy. The key success measure is whether these proposals help achieve our target of a 50% reduction by 2025 in the number of consumers investing in high-risk investments who indicate a low risk tolerance or demonstrate the characteristics of vulnerability. We will use consumer research, such as our Financial Lives Survey, to monitor progress against this target.
- 1.25** These rules will also help us deliver on our Business Plan outcome of enabling consumers to help themselves. Therefore a success measure is helping to achieve our target metrics for this outcome, in particular: i) Increasing the number of interventions on non-compliant financial promotions by authorised firms; ii) Increasing the number of warnings on our website related to unauthorised entities, which often involve breaches of the financial promotions regime.

Summary of feedback and our response

- 1.26** We received 66 responses to CP22/2 from a diverse range of respondents including authorised firms, trade bodies, consultancies, law firms and individual consumers. Respondents were predominantly from:
- firms in the Investment Based Crowdfunding (IBCF) or Peer-to-peer (P2P) sector and trade bodies representing this sector
 - firms in the traditional financial services sector, such as banks, asset managers and financial advisers, and trade bodies representing these sectors
 - firms in the cryptoasset sector and lawyers/consultants representing firms in this sector
- 1.27** We also received a small number of responses from organisations that focus on providing capital to small and medium sized businesses (SMEs), and from individual consumers or consumer organisations (see Figure 1 below).

Figure 1: CP22/2 respondents by sector



1.28 Respondents generally agreed with most of our proposals. In particular, they welcomed the behavioural testing we conducted for the consumer journey proposals. There was strong support for all the proposed changes to strengthen the role of authorised firms communicating and approving financial promotions.

1.29 Respondents, particularly from the IBCF/P2P and SME financing sector, raised concerns that our proposals could have negative unintended consequences and deter consumers from investing. For example, requiring firms to display misleading information in their risk warning or risk summary, such as requiring a firm to display information about bonds when they only offer equity investments. Some respondents asked us to further refine our categorisation of high-risk investments. Based on this feedback we are making several targeted changes to our final rules to avoid negative unintended consequences identified by respondents. Table 1 summaries these changes.

Table 1: Summary of key changes from CP 22/2 proposals

Topic	Change
Investments issued by local authorities	We will clarify that our marketing restrictions do not generally apply to investments issued by local authorities. Where necessary, we will amend our rules to expressly exempt investments issued by local authorities from our marketing restrictions. This will not affect units in unregulated collective investment schemes.

Topic	Change
Risk warnings and associated risk summaries.	We will shorten our main risk warning for high-risk investments and allow alternative risk warnings in the following cases: i. P2P agreements and portfolios; and - ii where the activity of the product issuer or provider could be covered by the Financial Services Compensation Scheme. For the risk summary, our rules will allow firms to vary from their prescribed summary if they have a good reason. For example, if the wording would be misleading or irrelevant. Equally firms can include any key investment risks that are not covered by the template. Firms must make an adequate record of any divergence from the template and the rationale behind any change. Firms must ensure their risk summary is accurate and stays up to date with market developments and business model changes. We will also exempt investment companies listed under Chapter 15 of our Listing Rules that are caught by our marketing restrictions from the risk warning, risk summary and personalised risk warning requirements.
Incentives to invest	We will exempt 'shareholder benefits'. For example, discounted products or services produced or provided by the firm receiving the proceeds of the investment, from our ban on incentives to invest.
Direct Offer Financial Promotion (DOFP) rules	We will clarify that the DOFP rules relate to promotions which include a manner of response or includes a form by which any response may be made (ie a mechanism by which consumers can respond in order to invest their money). They should not limit the information firms can otherwise provide about the investment. We will provide greater clarity on how firms can comply with the DOFP and consumer journey rules.
Cooling off period	We will clarify that the 24-hour cooling off period starts from when the consumer requests to view the direct offer financial promotion (for Restricted Mass Market Investments) or financial promotion (for Non-Mass Market Investments). Firms will not be able to show consumers the relevant financial promotion until at least 24 hours have elapsed. However, firms can proceed with other parts of the consumer journey while the cooling off period "applies" such as KYC/AML checks, client categorisation and the appropriateness assessment. If these other processes take more than 24 hours to complete, firms will not need to introduce an additional pause in the consumer journey. However the consumer will still need to give their active consent that they wish to proceed with the investment.
Client categorisation	We will clarify that where consumers must provide their income/ net assets to show they are high net worth they can provide these to the nearest £10,000/£100,000 respectively. We will clarify what level of checks we expect firms to conduct on the information provided by the consumer in the investor declaration.

Topic	Change
Appropriateness assessment	We will modify our rules so that consumers must wait at least 24 hours before undertaking the appropriateness test again from their second assessment onwards.
Record keeping requirements	We will only introduce requirements to record the metrics proposed in CP22/2 that relate to client categorisation and the appropriateness assessment. We suggest that regulated firms consider the other metrics that we proposed in CP22/2 when considering their monitoring obligations as high-risk investment distributors under the <u>Consumer Duty rules and guidance</u> , including the consumer understanding outcome.
Implementation period	We will extend the implementation period to six months, with the exception of the main risk warning rules (risk warning and risk summary, but not the personalised risk warning), which must be implemented within four months.
Date and time stamp	We will allow an alternative format for the date and time stamp for approved promotions where it is not possible to include these due to the space available in the financial promotion being limited by a third-party provider. In these circumstances firms must display the Firm Reference Number (FRN) of the approver, instead of the full name and date of approval. This text must link to a web page where the firm's full name, and the date of the approval, must be displayed.
Competence and expertise requirements	We will provide greater clarity that firms should have competence and expertise in the investment to which the financial promotion relates. A firm does not necessarily require competence and expertise in the day-to-day commercial activities of the company issuing the investment.

Equality and diversity considerations

- 1.30** We have considered the equality and diversity issues that may arise from these rules. Overall, we do not consider that the rules materially negatively impact any of the groups with protected characteristics under the Equality Act 2010. Recent research suggests that consumers newly investing in high-risk investments (those investing for less than 3 years) are more likely to be female, younger, more ethnically diverse and to be in a lower socioeconomic group compared with traditional investors. These groups will benefit from the protections we are proposing. Respondents to CP22/2 did not identify any equality or diversity issues with our proposals.

Next steps

- 1.31** The made rules are in Appendix 1. The final non-handbook guidance on approving financial promotions is in Annex 2. Rules related to risk warnings for financial promotions of high-risk investments will have effect from 1 December 2022. All other rules will have effect from 1 February 2023. The non-handbook guidance will be published on our [website](#) on 1 February 2023 when it takes effect. Firms will need to comply with these rules from the applicable dates. We will closely monitor implementation of these rules and will act where we see firms breach them.
- 1.32** We will publish our final rules for cryptoasset promotions once the relevant legislation to bring qualifying cryptoassets within the financial promotion regime has been made.
- 1.33** We will review the categorisation of high-risk investments under these rules in the second phase of our work intended for next year.

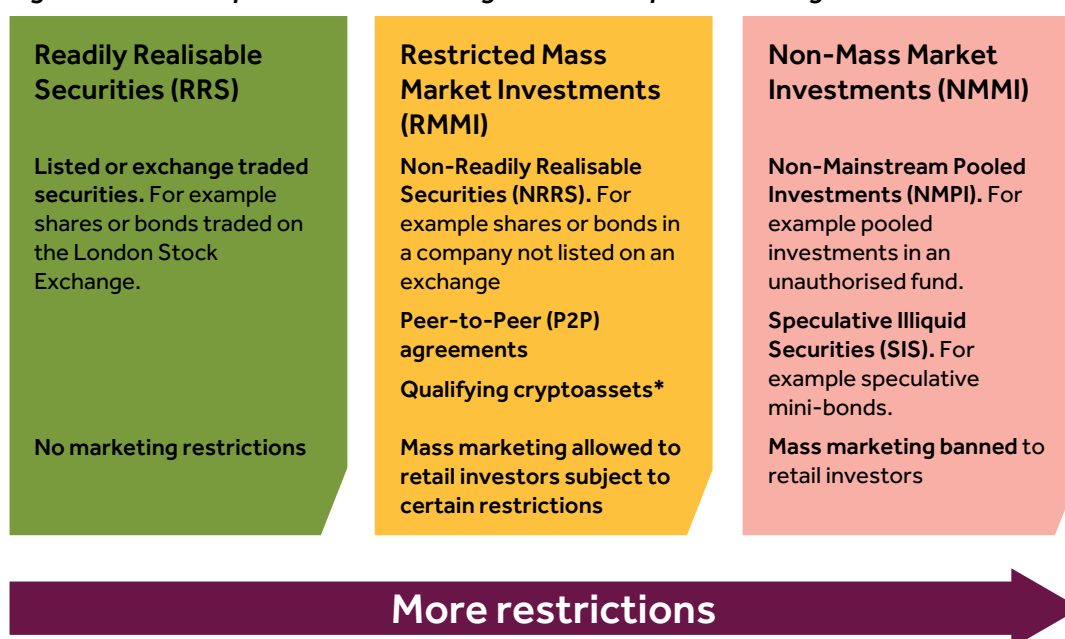
2 Our classification of high-risk investments

2.1 This chapter summarises the feedback on our proposal to rationalise our categorisation of high-risk investments (Chapter 3 of CP22/2).

Consultation proposal

2.2 In CP22/2 we proposed to rationalise the way we categorise high-risk investments to ensure products with broadly similar characteristics are treated in the same way under our financial promotion rules. This proposal did not seek to change the level of marketing restrictions that apply to investments. It sought to rationalise and simplify the various marketing restrictions that had been implemented over a number of years. This is in response to firms who found our existing rules difficult to navigate. Figure 2 summarises this categorisation.

Figure 2: Financial promotion marketing restrictions product categories



* Categorisation of qualifying cryptoassets as proposed in CP22/2. Final categorisation is subject to parliamentary approval of the relevant statutory instrument and to our final rules for cryptoassets.

2.3 Our current rules allow Non-Readily Realisable Securities (NRRS) and Peer-to-Peer (P2P) agreements to be mass marketed to retail consumers, subject to certain restrictions. NRRS are, very broadly, unlisted securities, such as shares or bonds, that are not admitted to trading on a regulated market or trading venue. They can be sold either directly by the issuer or through an intermediary such as a crowdfunding platform. P2P agreements are entered into via a P2P platform. Given both NRRS and P2P agreements are subject to the same marketing restrictions, we proposed to rationalise our financial promotion rules for these investments under the banner of 'Restricted Mass Market Investments'.

2.4 Our current rules ban Non-Mainstream Pooled Investments (NMPI) and Speculative Illiquid Securities (SIS) from being mass marketed to retail investors. An NMPI includes the following investments:

- a unit in an unregulated collective investment scheme (UCIS)
- a unit in a qualified investor scheme (QIS)
- a unit in a long-term asset fund (LTAF)
- certain securities issued by special purpose vehicles
- a traded life policy investment

2.5 A SIS is a debenture or preference share where the proceeds are used for on-lending, buying or acquiring investments, buying real property or funding the construction of property. While listed securities are generally not SISs, a listed debenture that meets the definition of a SIS and is not regularly traded is also caught by the SIS rules.

2.6 As both NMPIs and SISs are banned from being mass marketed to retail investors, we proposed to rationalise our financial promotion rules for these investments under the category of 'Non-Mass Market Investments'.

Feedback received

2.7 We received 52 responses to this question. Respondents generally supported our proposal (48% agreed, 27% were neutral, 25% disagreed). Of those who agreed, the main argument was that the proposals would help consumers and firms to understand what marketing restrictions apply (13 respondents). These respondents thought the rationalisation would reduce room for confusion and would make the rules easier for firms and consumers to understand.

2.8 Many respondents welcomed a clear distinction between the RMMI and NMMI categories. Respondents generally agreed that the latter group was only suitable for high net worth and sophisticated investors.

2.9 Of those who disagreed, 10 respondents argued that the RMMI category is too broad. These respondents thought this category contained a diverse range of risks and investments which should not be grouped together. In particular, respondents from the crowdfunding and P2P sectors thought that they should not be grouped with investments that are provided by unauthorised firms, such as cryptoassets.

2.10 Four respondents from the P2P sector thought the categorisation should further differentiate between different types of P2P lending. These respondents argued that different P2P loans represented different levels of risk, and this should be reflected in the categorisation. For example, P2P loans secured against property and with a secondary market were argued to present less risk than unsecured P2P loans to firms and consumers that did not have a secondary market.

2.11 Three respondents asked us to clarify how Enterprise Investments Schemes (EIS) and Venture Capital Trusts (VCTs) would be categorised under our proposed framework.

2.12 Some respondents thought that the categorisation was too focused on the liquidity of the product and not on other risks that may be present.

- 2.13** Two respondents asked us to reconsider the categorisation of Unregulated Collective Investment Schemes. They argued that these should be allowed to be marketed to ordinary retail investors.
- 2.14** Industry engagement also raised concerns with the treatment of investments issued by local authorities that are intermediated by authorised firms, such as peer-to-peer platforms. Concerns were raised that our proposed marketing restrictions were not appropriate for these investments.

Our response

This proposal in CP22/2 only sought to rationalise the existing categorisation of financial promotion marketing restrictions. It did not seek to change the level of marketing restrictions that apply to different investments. Our financial promotion rules seek to establish a minimum set of standards to provide a baseline of protection for consumers and to help consumers make informed investment decisions. These rules will be appropriate for a broad range of investments with different risks. Therefore we are proceeding with the rationalisation of our rules under the RMMI and NMMI categories.

Our categorisation of investments is not just focused on liquidity risk. The categorisation reflects our judgement of the riskiness of the investment taking into account a variety of factors including, but not limited to: credit risk, market risk, concentration risk, liquidity risk, complexity of the investment, degree of information imbalance between market participants, ability for consumers to reasonably understand the investment and whether the investment is subject to other protections which may mitigate harm to consumers.

We agree that not all investments subject to the RMMI rules have the same risk profile. For example, some have greater levels of liquidity risk while others have greater levels of complexity or information asymmetry. The common feature of investments subject to our RMMI rules is that they are only likely to be appropriate for consumers as a small part of a diversified portfolio and they have characteristics which represent a higher risk to retail investors, meaning they should only be accessed when consumers understand the risks involved. Inevitably this will apply to a broad range of investments. However, we believe the specific restrictions placed on these investments, in particular that ordinary retail investors confirm that they will limit their exposure to such investments to no more than 10% of their net assets and the investment must be considered appropriate for them, remain relevant for the variety of risk profiles in this group.

While our categorisation sets an overall framework for RMMI, we have introduced appropriate differentiation in some of the specific requirements. For example, different risk warnings for certain products and different guidance on what we expect from the appropriateness assessments.

We understand concerns that not all P2P lending models present the same risks to retail investors. To fully consider the issues raised by responses to CP22/2 and to Chapter 3 of [DP21/1](#), we intend to conduct a further review of our categorisation of high-risk investments. This review will aim to identify any inconsistencies in our treatment of investments with similar characteristics and to prevent opportunities for arbitrage.

The rationalisation of our categorisation framework within the financial promotion rules does not change the marketing restrictions that apply to EIS/SEISs and VCTs. Which level of marketing restrictions apply to these depends on the details of the particular investment, as they can take a variety of forms. For example, the investment may be a listed or unlisted share, or a unit in a variety of different fund structures. Our categorisation is based on features that affect the risk of the investment to consumers, rather than its tax wrapper. We expect firms to be applying the appropriate marketing restrictions to their investments already, by assessing their particular offering against the criteria for each category.

Units in UCIS are subject to a statutory restriction on promotion in section 238 of the Financial Services and Markets Act 2000. UCIS are very high-risk investments. They often invest in assets which are not traded in established markets which makes them difficult to value and are highly illiquid. The risks involved in these schemes are generally opaque and performance information may be unavailable or unreliable. Governance controls may be weak, heightening the potential for a product to fail. So they are unlikely to be suitable for most retail investors and it is right that their promotion is restricted to high net worth and sophisticated retail investors.

Local authorities are generally exempted from the financial promotion restriction when communicating financial promotions relating to those investments which they issue ([Article 34](#) of the Financial Promotion Order). This would also exempt them from FCA marketing restrictions. However, industry has expressed uncertainty as to whether this exemption would apply if the local authority investment is intermediated by an authorised firm, for example a P2P platform intermediating loans to a local authority.

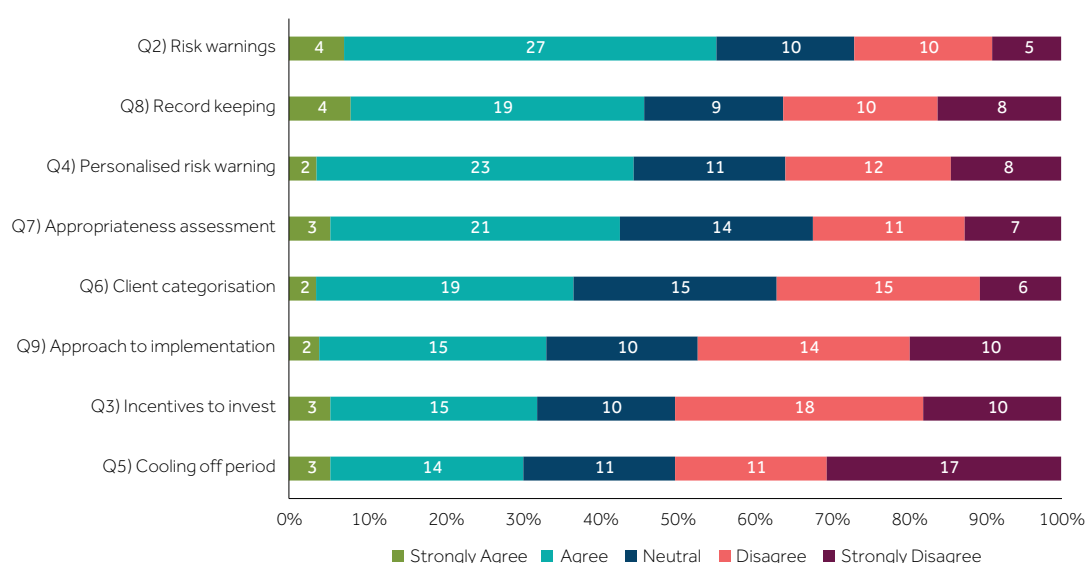
We would like to remind firms of the Article 34 exemption in the FPO for local authorities. In view of the intention behind the exemption in the FPO, we consider that our marketing restrictions should not apply to the promotion of investments issued by local authorities. We will clarify in the final rules that our marketing restrictions generally do not apply to such promotions.

The Promotion of Collective Investment Schemes (PCIS) Order does not contain an exemption for local authorities from the restriction on the promotion of units in an Unregulated Collective Investment Scheme (UCIS). Therefore we will not provide any separate exemption from the scheme promotion restriction for units in UCIS.

3 Strengthening the consumer journey for high-risk investments

3.1 This chapter summarises the feedback on our proposals to strengthen the consumer journey into high-risk investments (Chapter 3 of CP22/2). Overall, half of the proposals received net positive feedback (see figure 3).

Figure 3: Summary of responses on strengthening the consumer journey for high-risk investments



Improving risk warnings

CP proposals

3.2 In CP22/2 we proposed a standard risk warning to be included on all financial promotions for Restricted Mass Market Investments and Non-mass Market Investments, and a set of prescribed format requirements for how this should be displayed. We also proposed that a standard summary of risk information for the particular investment type (a 'risk summary') would need to be linked to from the 'Take 2min to learn more' text, or be provided to the consumer in a durable medium where possible outside of digital settings. The risk warning we consulted on was as follows:

Don't invest unless you're prepared to lose all your money invested. This is a high-risk investment. You could lose all the money you invest and are unlikely to be protected if something goes wrong. Take 2min to learn more

- 3.3** The risk warning wording, risk warning prominence and the format of linking to a risk summary were all tested and found to be effective at improving consumers' perception and understanding of key investment risks in a behavioural science setting.

Feedback received

- 3.4** We received 59 responses to this question. Respondents had a net positive view on the risk warning proposals (56% agreed, 17% were neutral and 27% disagreed).
- 3.5** There was widespread agreement with moving away from the status quo 'capital at risk' warning, due to this often being seen as 'wallpaper' and poorly understood by consumers. Respondents that both agreed and disagreed with the question overall often said that a more consumer-friendly warning was needed, either for a subset of, or all, high-risk investments. The use of behavioural science to inform the proposals was also widely supported (nine respondents). The most common rationale where respondents agreed with the proposal was the belief that the risk warning would support consumer decision making (eight respondents). Respondents that agreed also frequently expressed support for the risk summary proposal, due to its ability to educate consumers on the risks of the investment (seven respondents).
- 3.6** Most respondents that disagreed with this proposal requested some form of variation of the risk warning for different high-risk investments or requested for firms to be able to tailor the risk warning rather than the wording being prescribed. These respondents usually raised a subset of high-risk investments for which they thought the risk warning wording was inappropriate or thought that a single risk warning across a wide range of investments would become 'white noise' like 'capital at risk.' They often stated that it would be important for the FCA to monitor the effectiveness of a standard warning over time, potentially using further consumer testing. Some respondents thought that firms should be able to amend the warning, so they can ensure it is aligned with the most significant risks of their investment offering and consumers don't become desensitised.
- 3.7** Similar concerns were raised about the standardised wording for the risk summaries (12 respondents in total asked for firms to be able to tailor the warning and/or the summary). Areas of the summaries that may be irrelevant or misleading in some cases were cited in some responses and in our industry engagement. It was also raised that having prescribed wording meant the risks couldn't be updated to reflect wider market changes over time. A few respondents raised that having such a prescriptive approach was not in line with the focus on outcomes within the Consumer Duty and the Future Regulatory Framework.
- 3.8** The most common reason for disagreement with the proposal was that the risk warning would be misleading for investments in P2P loans (7 respondents). These respondents said it would be overly conservative, given the low overall loss rate in the sector, and the remoteness of the possibility of an investor losing 100% of their invested capital in P2P. This was stressed most strongly for investment offerings where the investor is diversified over a large portfolio of loans, and where the loans are asset-backed. However, factors relating to the sector as a whole were also raised to explain this, such as the regulatory requirements on P2P platforms and the recoveries that can be made on defaulted loans. These respondents also tended to disagree with the premise that P2P lending is a high-risk investment, and therefore the inclusion of this statement in the risk warning.

- 3.9** Some respondents said that there should be a different risk warning for Restricted Mass Market Investments and Non-mass Market investments. They often raised concerns with a 'one size fits all' approach and the suggestion this gives that all investments in each category are equally risky. Some respondents thought that the risk warning should be tailored depending on whether the firm offering the investment is authorised or not.
- 3.10** A particular area of the risk warning that some respondents raised concerns with was the wording on consumers being 'unlikely to be protected if something goes wrong'. Some respondents said that the wording was too broad and suggested that the investment had no protective features at all which may not be the case. Some respondents raised that the wording would be misleading for investments that retain protection from both the Financial Ombudsman Service (FOS) and the Financial Services Compensation Scheme (FSCS), for example some Alternative Investment Funds (AIFs) managed by an authorised AIF manager (AIFM).
- 3.11** Another area where concerns were raised that the risk warning wording would be misleading is in the context of some overseas investment companies that are subject to the marketing restrictions for Non-mass Market Investments. Disagreement was raised with their classification as a Non-Mass Market Investment and the resulting risk warning, given that the shares in these companies are listed and therefore have the benefits of being traded on regulated markets such as transparency, liquidity and scrutiny from market participants. They are also subject to additional listing requirements such as rules on diversification, further reducing the risk of these investments.
- 3.12** Some respondents discussed issues they saw with the technology requirements of the risk warning proposals. A few respondents said they were unclear as to how to adhere to the risk warning requirements in digital settings where there is limited character availability. Other respondents said they weren't sure how the risk summary would be displayed in advertising on social media for example, where a 'pop-up' functionality may not be available.
- 3.13** Some respondents asked for greater clarity on how the proposals apply when an investment is only promoted to professional clients. For example, whether they would apply to a Qualified Investment Scheme (QIS) marketed at professional investors.

Our response

We tested several different risk warnings in our consumer testing on both crowdfunding and cryptoasset investments. They were all shown to be effective at improving consumer understanding of investment risk across both investment types. So we chose the warning that was most in line with our existing messaging on high-risk investments, namely that consumers should only invest if they are prepared to lose all of their money invested, given that the wording was deemed appropriate for all high-risk investments.

We understand concerns that the risk warning as consulted may not be appropriate in all cases. Firms will be allowed to use an alternative risk warning in certain circumstances, to avoid prescribing a risk warning that could be considered misleading or confusing for investors. We will still prescribe the warning that can be used in each case, as we believe

allowing firms to tailor their own warning would pose too much risk to consumers from underplayed risks and use of jargon to prevent understanding. We've seen too many examples of this happening under the flexibility of the current rules, and there are inherent complexities with monitoring compliance with such flexibility.

We have also reviewed the wording of the standard risk warning for high-risk investments in light of feedback. The standard warning for high-risk investments will be the following:

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 2 mins to learn more.

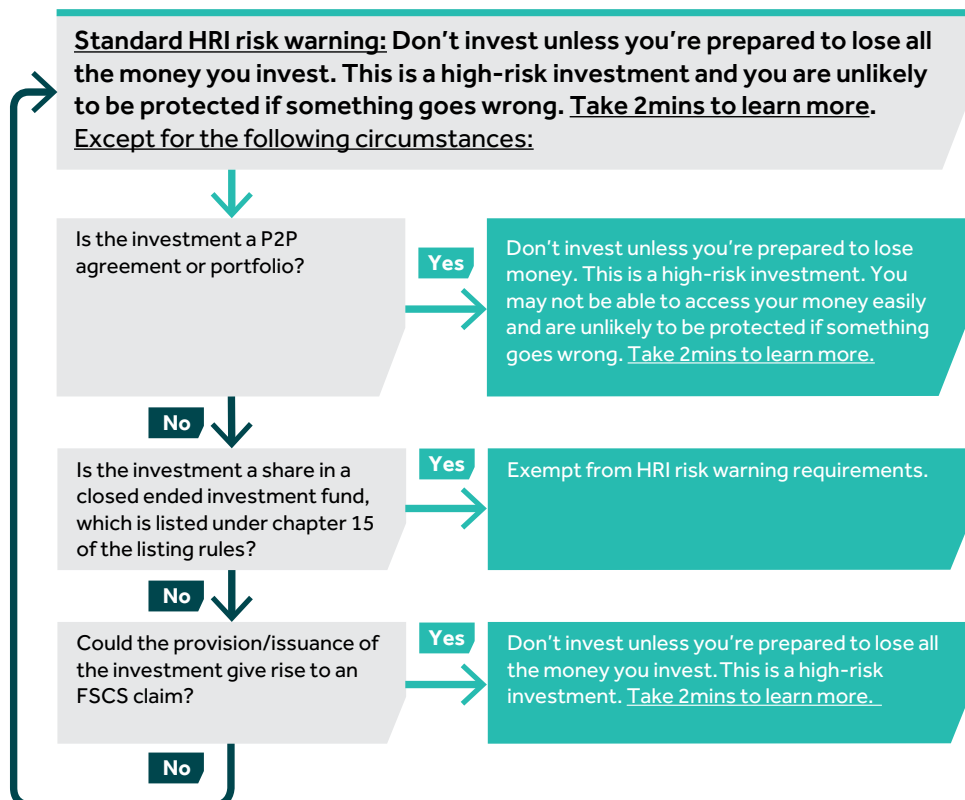
The wording as consulted included some repetition, and we have removed this given the importance of keeping the risk warning short. We have also amended the phrasing slightly, to ensure it reads as smoothly as possible while retaining the core behavioural features that were found to be effective in the testing.

We did explore options to make the 'unlikely to be protected' wording more specific to the protections we are referring to (ie FSCS and FOS), in light of feedback. However, including the names of each would make the warning too long, and the abbreviations would not be useful for consumers who do not know what FSCS and FOS are. We did consider alternatives like 'consumer protection' or 'regulatory protection,' but each of these come with other connotations (wider consumer Law, and the firm being regulated, respectively) that could give a different message and risk this becoming misleading. We don't think the wording as consulted is misleading (aside from in the cases addressed separately below), so we are keeping this.

The cases where we have decided to allow alternative risk warnings are as follows. Figure 4 below sets out what risk warning firms should use for the alternatives:

- peer to peer agreements and portfolios
- where the activity of issuing or providing the investment involves an authorised person (or an appointed representative), and could give rise to an FSCS claim

Figure 4: Summary of risk warnings and alternatives



We understand the factors raised that mean the risk warning as consulted, and the final standard risk warning above, may not be appropriate for the P2P sector. However, we disagree with the premise that investing in P2P is not high risk. These investments still tend to be highly illiquid, often involve lending to borrowers about whom limited public information may be available and are not within scope of the FSCS. We also believe the likelihood of losing money on the investment is such that this should still be highlighted in the risk warning. So we have written a bespoke warning that is tailored to the risks of investing in P2P lending:

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. Take 2 mins to learn more.

Firms must remove 'and you are unlikely to be protected if something goes wrong' from the risk warning, where the activity of issuing or providing the investment involves an authorised person (or an appointed representative), and could give rise to an FSCS claim. We do not allow this wording to be removed by reference to the potential for FSCS protection to apply as a result of the regulated activity of a firm involved in distributing the investment (e.g. where a firm is involved in advising on, or arranging, the investment). If a firm removes this wording from their risk

warning, they must retain their rationale for doing so (such as their legal advice), and we will draw on this where there are concerns. The standard risk warning in this case will be the following:

Don't invest unless you're prepared to lose all the money you invest. This is a high-risk investment. [Take 2mins to learn more.](#)

In response to feedback, we are also making changes for chapter 15 listed shares in investment companies that are subject to our rules for high-risk investments. We acknowledge that the risk warning and the non-mainstream pooled investment risk summary may be misleading for these investments, so we are exempting these investments from the risk warning, personalised risk warning and risk summary requirements. We will review the categorisation of these investments in the second phase of our work intended for next year.

We will look at whether any further differentiation of the risk warning is needed in our second phase of work intended for next year, alongside assessing the classification of investments within our financial promotion rules. We will monitor the effectiveness of the standard risk warning over time using our Financial Lives Survey and conduct further behavioural testing when appropriate. We also encourage firms to monitor this themselves, as part of their monitoring obligations under the Consumer Duty. Further detail on this is included under 'Record Keeping' below.

We understand respondents' concerns with the complete prescription of the risk summaries. We appreciate that there may be instances where some of the risk summary wording may not be relevant to or right for a particular investment. Given the length of the summaries and the number of cases where alternative wording would need to be offered, we do not think it is feasible to have the same approach to address this as we have taken with the risk warning. Instead, firms will be allowed to tailor the risk summary to their investment offering. Firms can diverge from their prescribed summary if they have a valid reason for doing so, such as if a certain bit of text would be irrelevant or misleading, or if there is another risk that firms think should be included. Firms must record their rationale for each change, and we will draw on this if there are concerns. The firm's amended risk summary must still summarise the key risks of the investment in a consumer friendly way, and take around 2 minutes to read.

This allows firms to keep their risk summary relevant to their offering, as their business changes over time. Firms should expect to explain to us what changes they're making to their risk summary and why, when they notify us of material business model changes.

As we did in the draft rules we consulted on, we have included shorter versions of the risk warnings in the final rules to be used when there are character limits imposed by a third-party marketing provider. These are the first lines of the main risk warnings, ie 'Don't invest unless you're

prepared to lose all the money you invest', and 'Don't invest unless you're prepared to lose money' for P2P agreements and portfolios. A financial promotion must, at least, include this shorter warning. We do not think it is appropriate for a financial promotion for a high-risk investment to not include any risk warning. However, we have added additional provisions for where a digital advertising route can include a risk warning, but not the additional 'Take 2 mins to learn more' wording and/or does not allow the text to be hyperlinked. This brings the requirements for digital and non-digital financial promotions in line with each other (see table 2 below).

In the draft rules, we stated that the risk summary should be displayed as a 'pop-up, or equivalent' on digital mediums. However, we did not state anything about our expectations on what an acceptable 'equivalent' would be. We acknowledge that 'pop-up' is a laptop-centric term, so firms may need to use other technologies in financial promotions that are designed for other digital mediums such as apps. We also understand that third-party marketing providers, such as social media platforms, may not offer a pop-up functionality. So we have added prominence requirements for how a digital risk summary should be displayed to consumers, similar to those we had already included for the risk warning itself. This sets out the conduct outcomes we expect, regardless of the digital technology used. For example, firms should not require the consumer to take any further action to see the full risk summary after they have clicked the hyperlink from the risk warning.

We have also applied some prominence requirements that apply to the risk warning, to risk summaries that are provided in a durable medium (ie in non-digital settings). A risk summary in a brochure for example, should be displayed within it prominently. The text should also be legible, and not hidden within other forms of disclosure.

Our rules are intended to address the harm from marketing high-risk investments to retail investors, where they do not match their risk tolerance. Our rules do not apply where an investment is marketed to professional investors.

Table 2: Provisions for the risk warning and associated risk summary, for digital and non-digital mediums of communication

	Digital medium (eg website, mobile application)	Non-digital medium (eg TV/ radio, phone call, postal communication)
Provisions for the risk warning text		
Shorter risk warning (prescribed in our rulebook for P2P/ other high-risk investments)	Can be used if the full risk warning would exceed the character limits permitted by a third-party marketing provider.	Can be used if the full risk warning would exceed the character limits permitted by a third-party marketing provider.

	Digital medium (eg website, mobile application)	Non-digital medium (eg TV/ radio, phone call, postal communication)
'Take 2mins to learn more' text at the end of the risk warning	Must be included, unless: • Inclusion would exceed the character limits permitted by a third-party marketing provider • The digital medium doesn't allow text to be linked	Does not need to be included.
Provisions for the presentation of the risk warning		
How it must be provided	Must always feature within the financial promotion in line with the relevant prominence requirements, no matter what medium is used.	Must always feature within the financial promotion in line with the relevant prominence requirements, no matter what medium is used. Must be provided in a durable medium, unless the medium of communication means that isn't possible.
Prominence requirements	Risk warning prominence requirements apply for all mediums. It must be: • prominent • legible and contained in its own border, with the right bold/underlined text • without a design feature that reduces visibility/prominence Additional requirements apply for websites/ mobile applications. Must be: • visible and statically fixed at the top of the screen, below anything else that also stays static, even when the client scrolls up/down the page • on every linked page from the promotion that relates to the investment	Risk warning prominence requirements apply for all mediums. It must be: • prominent • unless it cannot be provided in writing, legible and contained in its own border, with the right bold/underlined text • without a design feature that reduces visibility/prominence Over television broadcast, it must be prominently fixed on the screen for the duration of broadcast.
Provisions for the accompanying risk summary		
How it must be provided	Must be hyperlinked to from 'Take 2 mins to learn more' in the warning unless: • 'Take 2mins...' was excluded as it would exceed the character limits permitted by a third-party marketing provider. In this case, the risk summary must be linked to from the risk warning text instead • 'Take 2mins...' was excluded as the digital medium doesn't allow text to be linked. The risk summary does not need to be provided in this case.	Must be provided in a durable medium, unless the medium means this is not possible (eg television or radio broadcast), in which case the risk summary does not need to be provided. If it is a real time financial promotion, the summary should still be provided in a durable medium on or around the time of the promotion being communicated.

	Digital medium (eg website, mobile application)	Non-digital medium (eg TV/ radio, phone call, postal communication)
Prominence requirements	Pop-up (or equivalent) prominence requirements apply. It must be: • prominently brought to the client's attention • legible and contained in its own border, with the right bold/underlined text • statically fixed in the middle of the screen • the focus of the screen • without a design feature that reduces visibility/prominence	Risk warning prominence requirements apply to the summary. It must be: • prominent • legible and contained in its own border, with the right bold/underlined text • without a design feature that reduces visibility/prominence

Banning incentives to invest

CP proposals

- 3.14** In CP22/2 we proposed to ban financial promotions for high-risk investments from containing any monetary and non-monetary benefits that incentivise investment activity, such as "refer a friend" or new joiner bonuses. This is modelled on a similar ban that applies to the marketing and distribution of Contracts for Difference (see COBS 22.5.20). We asked respondents whether certain items should be excluded from the ban to avoid negative unintended consequences.

Feedback received

- 3.15** We received 52 responses on this topic. Respondents had a net negative view on the proposed ban (32% agreed with our proposal, 18% were neutral and 50% disagreed).
- 3.16** Where respondents agreed with the proposal the most common argument was that these incentives contribute to poor decision making that may not be aligned to the investor's risk tolerance (11 respondents). These respondents argued that consumers may take undue comfort from referrals from friends and family and may not fully consider whether the investment meets their own needs. The referral may also cause them to conduct less due diligence. These respondents thought it was particularly important to mitigate these effects due to the potential harm from high-risk investments.
- 3.17** Respondents who disagreed with the proposal presented a variety of arguments. The most common arguments from those who disagreed was that incentives were a legitimate commercial tool for generating revenue (17 respondents). These respondents argued that incentives were a widely used commercial tool and were more efficient at generating new customers than traditional advertising. Therefore, banning them would impact firms' profitability. They also argued that customer experience of these incentives had been positive, and a blanket ban would be disproportionate. Some respondents highlighted concerns about the impact on competition as incentives are often used by new entrants to gain an initial customer base.

- 3.18** Firms marketing NMMIs argued they were already highly restricted in how they could advertise, so incentives were a key way of generating new customers.
- 3.19** Another argument made was that existing rules are sufficient to protect consumers (14 respondents). These respondents argued that, even when an incentive is used the existing and proposed rules for the consumer journey would ensure the investment was appropriate for the consumer. These respondents also argued that existing rules on inducements that apply to authorised firms such as Treating Customers Fairly ('TCF'), conflicts of interest (in SYSC 10) and the inducement rules (in COBS 2.3 and COBS 2.3A) provided sufficient protection to mitigate any harms.
- 3.20** Some respondents argued that we should consider alternative restrictions that fall short of a blanket ban (11 respondents). Ideas suggested included: only banning incentives when used by unauthorised firms/products; limiting the size of incentives; limits on the number of referrals that can be made.
- 3.21** Some respondents from the P2P sector raised concerns that the inducements ban would impact affiliates and comparison sites (4 respondents). These respondents argued that affiliates and comparison sites provide a useful service to firms and consumers and so should not be covered by the ban.
- 3.22** Some respondents from the Crowdfunding sector argued that so called 'shareholder benefits', such as discounts on a company's products, should not be covered by the ban (6 respondents). These respondents argued that these benefits are a longstanding and legitimate part of capital markets and there is no evidence they result in consumer harm.
- 3.23** A few respondents highlighted concerns about the 'broad language' used to define inducements. They were concerned that this could potentially capture ordinary aspects of a financial promotion such as advertised rates of return.

Our response

We continue to believe that incentives to invest can unduly influence consumers' investment decisions and cause them to invest without fully considering the risks involved. Given the evidence from our consumer research which shows how social and emotional factors can have a powerful impact on investment decisions we will be proceeding with the ban largely as consulted.

We recognise the Crowdfunding sector's concerns about the potential impact on shareholder benefits. We agree with respondents that these are a legitimate part of capital markets and banning them would have negative unintended consequences. Our final rules will exempt from our ban products and services produced or provided by the issuer of, or borrower under, the relevant investment. For example, a brewing company raising funds on a crowdfunding platform can provide discounts to investors on the beer it produces. These goods or services must be 'real economy' goods or services. A firm which sells bonds cannot include free or discounted bonds as part of the promotion. We will closely watch the implementation of this rule. We will act if we see firms attempting to promote incentives that go against the intention of this exemption.

We recognise that the proposed ban may have a negative impact on firms' profitability. However, that is an inevitable consequence of what we are trying to achieve, namely preventing retail investors from making inappropriate investments. Our consumer research shows how social and emotional pressures can have a powerful influence on investment decisions. Given the significant harm that can occur from high-risk investments, we do not believe it is appropriate for consumers to invest on the basis of short-term 'refer a friend' or 'new joiner' bonuses.

The rules in COBS 2.3/2.3A only apply to authorised firms, not unauthorised firms issuing investments. Even when they do apply our existing rules do not address the harm we are trying to mitigate. An inducement may comply with our rules in COBS 2.3/2.3A but it can still create powerful social and emotional pressures to invest and cause consumers to take undue comfort from a friend or family member's referral. This harm can only be addressed by banning inducements to invest. Other proposals suggested by respondents, such as only banning inducements for unauthorised products/firms would not deliver an equivalent degree of consumer protection and would be challenging to effectively supervise.

Our rules relate to incentives to invest in financial promotions for high-risk investments. They apply where the financial promotion is made to retail investors, including high net worth and sophisticated investors. They are not intended to impact business to business relationships such as those operated by affiliates or comparison websites. Our final Handbook guidance provides greater clarity about the types of schemes that are intended to be covered by our ban.

Our rules are intended to capture incentives such as refer a friend or new joiner bonuses. We do not consider information about the investment, such as advertised rates of return, to be within scope of this rule. Therefore, these rules should not limit information firms can provide to consumers about the investment.

Cooling off period

CP proposals

- 3.24** In CP22/2 we proposed a minimum 24-hour cooling off period for first time investors with a firm. This would mean that the consumer could not receive the financial promotion (in the case of 'Non-mass Market Investments') or the Direct Offer Financial Promotion (in the case of 'Restricted Mass Market Investments') unless they reconfirmed their request to proceed after waiting at least 24 hours.

Feedback received

- 3.25** We received 56 responses on this topic. Respondents had a net negative view on the proposed cooling off period (30% agreed with our proposal, 20% were neutral and 50% disagreed).

- 3.26** Where respondents agreed with the proposals the most common reason was that it would improve consumers' decision making (7 respondents). These respondents thought there shouldn't be an urgency to purchase high-risk investments and the cooling off period would give consumers time to reflect on whether the investment would meet their needs. Some respondents also thought it would help combat elements of 'gamification' investing.
- 3.27** One consumer who responded opposed the cooling off period for being too short and thought 14 days would be more appropriate.
- 3.28** Respondents who disagreed with the proposal presented a variety of arguments. The most common reason for disagreeing with the proposal was concern it would introduce too much friction into the consumer journey, leading to customer frustration and drop off (12 respondents). These respondents thought the cooling off period was disproportionate to the harms it was trying to mitigate and would cause consumers to drop out due to frustration, even if the investment was appropriate for them.
- 3.29** Many respondents thought it was not appropriate for the cooling off period to apply before a direct-offer financial promotion could be shown as consumers would not have access to all relevant information about the investment (12 respondents). These respondents thought the cooling off period should only apply once a consumer has access to all the relevant information. These respondents also asked for greater clarity on how the DOFP rules apply, particularly in the context of online/mobile app consumer journeys.
- 3.30** Some respondents argued that the proposal would have a particularly negative impact on time sensitive investments (11 respondents). These respondents noted that many investments have time limits. They argued that a 24-hour cooling off period would make offering these investments to consumers significantly more difficult for firms, as they would have to factor in the additional time delay and that some investors would not proceed after the cooling off period. They argued this would harm retail participation in company fundraising.
- 3.31** Some respondents from the IBCF/P2P sector thought a cooling off period was not necessary as these firms already applied their own version of a cooling off period (10 respondents). These respondents noted that many firms already operate a system whereby consumers can request a refund within 7–14 days of their investment. They thought an additional 24-hour cooling off period that applied **prior** to purchasing the investment was therefore unnecessary.
- 3.32** Some respondents, particularly from the IBCF/P2P sector, thought that existing requirements in the consumer journey were sufficient to protect investors (8 respondents). These respondents noted that for RMMIs, consumers are already required to be categorised and have an appropriateness assessment. They argued that this already provided sufficient 'friction' in the consumer journey and that a further 24-hour cooling off period would be disproportionate.
- 3.33** Some respondents seemed to have misunderstood the proposal and believed it applied after the consumer had already purchased the investment (6 respondents). These respondents raised significant concerns with implementing a cooling off period post investment purchase, including challenges in building a loan book for P2P loans and market risk firms may face if the consumer then decided to return their investments after holding it for 24 hours.

- 3.34** A few respondents argued that the proposal unfairly disadvantaged new consumers. They argued that the additional wait for new customers would mean they would have reduced access to time sensitive investments compared with existing customers. These respondents also raised concerns about the impact of the proposals on competition. They argued that the 24-hour cooling off period would encourage consumers to remain with their existing firms and discourage switching.

Our response

We continue to believe this measure is important to ensure consumers have sufficient time to consider whether the investment is appropriate for them. However, we understand concerns about how this proposal interacts with the other consumer journey proposals. There also appears to be uncertainty about how our Direct Offer Financial Promotion (DOFP) rules work for Restricted Mass Market Investments. We are proceeding with this proposal but will provide greater clarity on how it is intended to operate and how our DOFP rules work.

As set out in our Handbook [Glossary](#) a DOFP is defined as:

a financial promotion that contains:

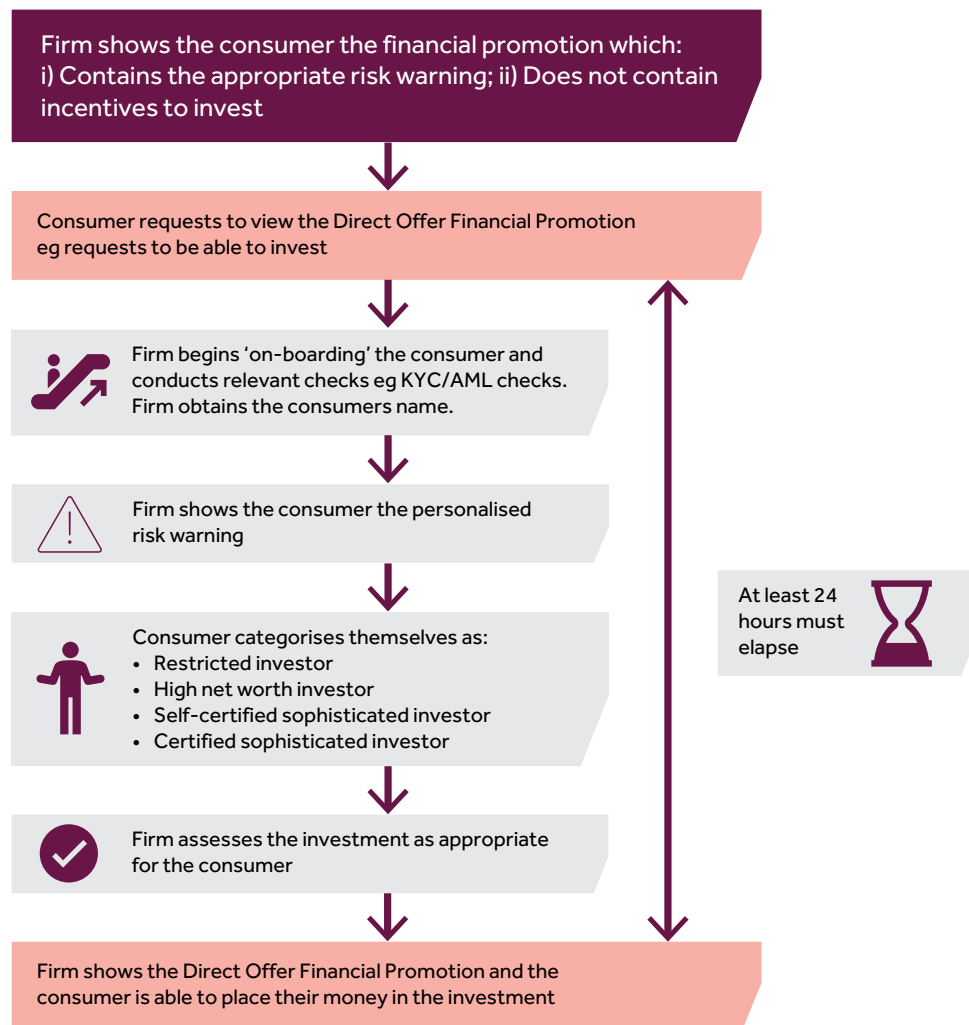
- (a) an offer by the firm or another person to enter into a controlled agreement with any person who responds to the communication; or
- (b) an invitation to any person who responds to the communication to make an offer to the firm or another person to enter into a controlled agreement;

and which specifies the manner of response or includes a form by which any response may be made.

A DOFP arises where the financial promotion specifies the manner of response or includes a form by which any response may be made. This is intended to ensure that extra protections kick in before consumers are in a position (as a result of the DOFP) to take the crucial step towards placing their money in the investment. A manner of response can take many forms. Examples might include a promotion containing a 'buy now' button which enables the consumer to invest or a form asking the consumer to provide their bank account details. An assessment of whether a particular financial promotion constitutes a DOFP will depend on the specific circumstances. However, anything that promotes an investment and contains a mechanism which enables consumers to place their money in that investment is likely to constitute a DOFP.

Firms must apply the additional consumer journey protections outlined in this Policy Statement before they can make a DOFP. We expect most firms will implement these proposals as part of a consumer 'on-boarding' journey alongside any other checks the firms may complete such as AML/KYC checks. Once the consumer has been on-boarded, and passed the relevant requirements, the firm can show the consumer the DOFP. Figure 5 provides a stylised example of how our DOFP rules could be applied.

Figure 5: Stylised example of how firms could apply the DOFP rules



The DOFP rules are not intended to limit the information firms can otherwise provide to consumers about the investment. For example, a financial promotion can contain information about the investment opportunity such as potential rates of return, the business model of the firm seeking investment and how clients' funds will be used. This information alone, without a 'manner of response' or 'form by which any response may be made' would not trigger the additional protections. This is aligned with guidance we have previously provided in PS19/14 to P2P firms on how to apply the DOFP rules. In particular that to avoid being a DOFP the communication should not contain details of how to apply or to make an offer, or an application form (see paragraph 2.28 of PS19/14).

We will clarify in our final rules that the 24-hour cooling off period starts from when the consumer requests to view the DOFP (for RMMI) or the financial promotion (for NMMI).

For RMMIs, firms must not show the DOFP until at least 24 hours have elapsed since the consumer requested to view the DOFP. However, firms may proceed with other parts of the client on-boarding process while the cooling off period is in effect. For example, performing KYC/AML

checks, showing the personalised risk warning, client categorisation and the appropriateness assessment (including any lock out period from the investment being considered inappropriate for the investor). If these processes take more than 24 hours then firms will not need to wait an additional period before showing the DOFP, though consumers must still give their active consent that they wish to proceed with the consumer journey.

For NMMIs, firms must not show the financial promotion until at least 24 hours have elapsed since the consumer requested to view the financial promotion. However, firms may proceed with other parts of the client on-boarding process while the cooling off period is in effect. For example, performing KYC/AML checks, showing the personalised risk warning, client categorisation and the preliminary assessment of suitability. If these processes take more than 24 hours then firms will not need to wait an additional period before showing the financial promotion, though consumers must still give their active consent that they wish to proceed with the consumer journey.

We do not believe this proposal is disproportionate to the harms it is trying to mitigate. This intervention is designed to counter the social and emotional pressures to invest identified in our consumer research by introducing a small pause in the consumer journey. We think 24 hours is a short period for a consumer to wait, given the significant harm that can occur from high-risk investments. Research from the FSCS shows that almost half (44%) of those surveyed wished they'd spent more time researching their investment before making a decision. Our rules will help give consumers more time to consider whether the investment is appropriate for them. Our clarification of how this rule will work, particularly its interaction with the other parts of the consumer journey and our DOFP rules, will also minimise the impact on reputable firms who already have robust consumer journeys.

We understand the concerns about the potential impact on time sensitive investments. However, that is an inevitable consequence of what we are trying to achieve, namely to ensure consumers have the time to consider whether the investment is likely to be appropriate for them. We do not think that consumers should be rushed into making investment decisions. We also note this rule will only apply to a consumer's first investment with a firm and will not impact subsequent investments. As first-time investors will not have previous experience in the investment, and so are likely to have less understanding of the potential risks compared with more experienced investors, it is right that our rules provide greater protection for them.

Whilst the 7–14 day cancellation rights offered by IBCF and P2P platforms is beneficial and we encourage firms to provide this, it does not provide an equivalent degree of consumer protection compared with our cooling off period. Behavioural science research shows that a post-investment cancellation right is significantly less effective than a pre-investment cooling off period. The endowment effect shows that people are more likely to attach a higher value to a product they own, than they would if they did not already own that product. Owning

a product for some time and becoming 'attached' to it leads to a reluctance to give it up.

This theory has also been demonstrated by previous FCA interventions. We applied similar interventions to our CP proposals in the add-on insurance market by: i) mandating additional disclosures; ii) introducing a pause in the sale process (referred to as 'deferred opt-in'). An FCA post-implementation evaluation of these proposals found that this pause encouraged consumers to engage more with the decision-making process, shopping around more than doubled and a number of consumers decided on reflection not to proceed with the purchase. Before the pause in sales was introduced, the FCA had noted a low incidence of customers cancelling their add-on GAP insurance policies post-sale.

Firms subject to our rules in COBS 15.2 must provide consumers with a right to cancel certain contracts with the firm. The cooling off period we are introducing does not affect any rights consumers have to cancel after the event.

While we are not proceeding with requiring firms to record the number of consumers who do not proceed with the consumer journey after the cooling off period (see paragraph 3.75), firms may wish to still record this voluntarily. We will carefully monitor the implementation of this rule and would be interested to see the data that firms collect on it, to understand the practical experience of firms when operationalising this rule.

Personalised risk warning pop-up

CP proposals

3.35

In CP22/2 we proposed introducing a personalised risk warning pop-up (or equivalent) for first time investors with a firm. For 'Restricted Mass Market Investments', this would appear before a Direct Offer Financial Promotion could be communicated. For 'Non-Mass Market Investments', this would appear before the financial promotion could be communicated (assuming all necessary conditions for the financial promotion to be lawfully communicated are satisfied).

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

- 3.36** The 'Take 2min to learn more' would link to the same product specific risk summary as in the main risk warning. Where the financial promotion does not appear on a website, mobile application or other digital medium, firms would need to provide the personalised risk warning and the risk summary to the consumer in a durable medium.
- 3.37** This intervention was informed by the findings of our behavioural research. We did not test the intervention in this exact format, but the testing did show that personalised messages and prominent directions to further information were the most effective intervention in getting consumers to click on the risk summary. Therefore, we believed this intervention would be effective in getting consumers to read the risk summary and that the risk summary would be effective in influencing consumers' understanding of the investment.

Feedback received

- 3.38** We received 56 responses on this topic. Respondents had a net positive view on the proposed personalised risk warning (45% agreed, 20% were neutral, 36% disagreed). Where respondents agreed with the proposal, the most common reason was that it would help consumers make more informed investment decisions (13 respondents). These respondents thought a personalised risk warning would help investors better understand the risk of the investment and therefore to decide whether it is appropriate for them. They also thought that personalising the warning would help get consumers' attention and increase the likelihood of them reading the risk summary. A few respondents noted that the proposed language was clear and understandable to consumers.
- 3.39** Where respondents disagreed with the proposal, the most common reason was that it would be practically difficult and costly for firms to implement (9 respondents). These respondents argued that a firm may not necessarily know a customer's name early in the consumer journey. They highlighted that for online journeys, firms have no control on whether consumers are using software which blocks pop-ups.
- 3.40** Some respondents argued that the proposed method of personalisation would be counter-productive (six respondents). They argued that consumers who see their name in the message will view it as a form of spam, and the phrasing of the message as a question has the feel of a cold call solicitation.
- 3.41** A few respondents argued that existing risk warnings are sufficient (4 respondents). They argued that the risk warning proposed for all high-risk investments was sufficient and this additional warning was unnecessary.
- 3.42** A few respondents argued that firms should be allowed to change the wording of the risk warning (4 respondents). These respondents argued that some of the warning may not be appropriate for a specific investment, and the language could lead to consumer confusion or potentially be misleading.
- 3.43** A few respondents cautioned that the personalised risk warning was likely to become less effective over time, as consumers become used to the message (4 respondents).

Our response

We continue to believe that this intervention is important to help consumers understand the risks of an investment. Given the evidence from behavioural testing which supported this as a key element in helping consumers understand the risks of an investment, we continue to believe that this intervention is needed in order to protect consumers. We will therefore be largely proceeding with the rules as consulted on.

To align with the changes to our main risk warning, the risk summary linked to in the personalised risk warning can diverge from our prescribed risk summary wording. Firms will be allowed to tailor a template risk summary if they have a valid reason for doing so. For example, if the information would be misleading to include or is irrelevant, or if an additional risk should be included for the investment. Firms will be required to record their rationale for any changes.

We will exempt closed-ended investment funds listed under the chapter 15 listing rules from these requirements, as we have for the main risk warning requirements.

We do not believe it will be disproportionately burdensome to require firms to collect the name of the respondent before displaying this risk warning. We expect firms to already collect this information, particularly as many firms will be subject to AML/KYC requirements where they will be required to know the identity of the client. We expect most firms will integrate this proposal into their client on-boarding process. But we are not prescriptive as to how firms achieve this so long as the warning is displayed before the client categorisation and appropriateness assessment stages for Restricted Mass-Market Investments.

We do not believe our proposed method of personalisation will be counterproductive. We have carefully tested this method of personalisation to ensure its effectiveness and have decided against proposals that were shown to be ineffective. This testing showed that our proposed method of personalisation resulted in 69% of consumers clicking on the 'take 2 mins to learn more' risk summary, a 388% increase on the control treatment. In contrast, an 'active click' method of personalisation whereby consumers had to tick a button to confirm that they understood that they could lose all their money, only resulted in 37% of consumers clicking on the 'take 2 mins to learn more' risk summary.

Our proposals are designed to complement the main risk warning and we do not view the proposals as substitutes for each other. This intervention will ensure consumers have the greatest possible opportunity to view the risk summary and understand the risks of their investment. While this intervention was effective in our behavioural testing, we are conscious it may become less effective over time. We will carefully monitor the implementation and effectiveness of this proposal, and we encourage firms to do so also.

As with the risk summary, we proposed that the personalised risk warning must be displayed using a 'pop-up or equivalent.' However, we did not give any guidance as to what an acceptable 'equivalent' might be. We have decided to introduce prominence requirements for a 'pop-up, or equivalent' (ie for risk summaries and personalised risk warnings) when these are displayed on digital mediums. This sets out the conduct outcomes we expect to see from how firms choose to display these, regardless of what technology is used.

Table 3: Provisions for the personalised risk warning and the associated risk summary, for digital and non-digital mediums of communication

	Digital medium (eg website, mobile application)	Non-digital medium (eg phone call)
Provisions for the personalised risk warning		
How it must be provided	Must be clearly brought to the retail client's attention by means of a pop-up box (or equivalent).	Must be communicated.
Prominence requirements	Pop-up (or equivalent) prominence requirements apply. It must be: • prominently brought to the client's attention • legible and contained in its own border, with the right bold/underlined text • statically fixed in the middle of the screen • the focus of the screen • without a design feature that reduces visibility/prominence	No specific requirements.
'Take 2mins to learn more' text at the end of the warning	Must be included.	Does not need to be included.
Next step	Personalised risk warning must be accompanied by an invitation to the retail client to specify whether they wish to leave, or continue with, the investment journey.	Following the communication of the personalised risk warning and the provision of the risk summary in a durable medium, the retail client must be invited to specify whether they wish to leave, or continue with, the investment journey.
Provisions for the accompanying risk summary		
How it must be provided	Must be linked to from 'Take 2 mins to learn more' in the personalised risk warning. Must be provided in a further pop-up box or equivalent.	Must be provided in a durable medium.

	Digital medium (eg website, mobile application)	Non-digital medium (eg phone call)
Prominence requirements	Pop-up (or equivalent) prominence requirements apply. It must be: • prominently brought to the client's attention • legible and contained in its own border, with the right bold/underlined text • statically fixed in the middle of the screen • the focus of the screen • without a design feature that reduces visibility/prominence	Risk warning prominence requirements apply to the summary. It must be: • prominent • legible and contained in its own border, with the right bold/underlined text • without a design feature that reduces visibility/prominence

Helping clients better categorise themselves

CP proposals

3.44 In CP22/2 we proposed to implement an evidence component to the investor declaration forms whereby consumers will be required to state why they meet the relevant criteria. For example, stating their income to show they are high net worth. This was informed by our behavioural testing which found that adding this evidence component reduced rates of self-certification by 36%. We also propose to simplify the declaration using 'plain English' and to add a 'none of the above' option to the declarations.

3.45 We proposed to include the Long Term Asset Fund (LTAF) within scope of this proposal. This is to avoid there being duplicative versions of the investor declaration forms in our Handbook.

Feedback received

3.46 We received 57 responses on this topic. Respondents were split on this proposal (37% agreed, 26% were neutral, 37% disagreed).

3.47 Where respondents agreed with the proposal, the most common argument was in support of greater use of plain English and simplifying the declarations (17 respondents). They noted that the current declarations are legalistic and that simplifying the language would help consumers better understand the declaration and reduce mis-categorisation of investors.

3.48 Respondents also agreed that the evidence declaration would increase consumer engagement with the declaration (9 respondents). These respondents thought the declaration would help consumers better engage with the forms and understand whether they met the relevant criteria.

- 3.49** Respondents agreed with the LTAF being included within this change to avoid having duplicative versions of the declarations in the FCA's Handbook.
- 3.50** Where respondents disagreed with the proposals the most common concern was that consumers would be reluctant to provide information for the evidence component (14 respondents). These respondents argued that consumers would be unwilling to provide information on their income or net assets. They also highlighted concerns around privacy and the potential sensitivity of this information.
- 3.51** Some respondents raised concerns about any future changes that would require firms to verify a client's categorisation, such as requiring consumers to provide bank statements (7 respondents). Some of these respondents appear to have misunderstood the proposals and thought the 'evidence declaration' would require consumers to provide third-party evidence to demonstrate their certification.
- 3.52** A few respondents, particularly from the IBCF/P2P sector, thought the existing declarations were working well and no changes were needed (5 respondents). Some of these respondents noted that firms already perform source of funds checks for investments above a certain amount.
- 3.53** Several respondents commented on the links between these proposed changes and the changes considered in the Treasury's consultation on reforming the FPO exemptions. In particular that changes to the FPO exemptions could have consequential implications for changes the FCA could make to the exemptions in our Handbook (9 respondents).

Our response

We continue to believe this proposal is important to ensure that consumers accurately categorise themselves. Accurate categorisation is vital to ensure consumers are only exposed to promotions of high-risk investments when they are capable of absorbing potential losses and when the investment is likely to be appropriate to their circumstances. Given the evidence from our behavioural testing which showed that this measure was highly effective at reducing rates of incorrect self-certification we will proceed with these proposals largely as consulted. We will also be including the LTAF within scope of these changes.

This evidence component requires consumers to state why they believe they meet the relevant criteria when signing the declaration. For example, to state their income if they sign the high-net-worth investor declaration or state which company they are the director of if they sign the self-certified sophisticated investor declaration. Firms will be required to check that the evidence stated by the consumer does in fact meet the relevant criteria, for example that the income/net asset amount stated is above the relevant threshold and that the company stated does in fact exist. However, this proposal does not necessarily require firms to verify the evidence beyond this, for example asking consumers to provide documentation to support their statements. However, firms may request such documentation as part of their on-boarding process, such as for proof of funds checks. Firms marketing NMMIs should also have regard to their duties under the Principles and

the client's best interests rule. In particular, a firm marketing an NMMI should take reasonable steps to ascertain that the retail client does, in fact, meet the relevant criteria.

We recognise the concerns raised by respondents about potential privacy issues and the reluctance of consumers to provide their exact income or net assets. To address this we will change the high-net-worth investor declaration to clarify that consumers can provide their income/net assets to the nearest £10,000/£100,000 respectively.

We do not believe that these requirements will be disproportionately burdensome for consumers. In our behavioural testing a clear majority of respondents (77%) still completed the experiment when asked to provide an evidence component as part of the declarations. Given the significant harm that can arise from investments that can only be promoted to high net worth or sophisticated investors, if a consumer is unwilling to provide this evidence component to support their categorisation then this raises questions as to whether the investment is likely to be appropriate or suitable for them.

We do not believe that the existing declarations are working well. We continue to see significant harm from consumers incorrectly categorising themselves. Our behavioural testing showed that the current declaration resulted in almost 50% of consumers self-certifying themselves as high net worth or sophisticated, significantly more than those who stated they met the objective criteria.

Even with these changes, our testing shows that many consumers are likely to incorrectly self-certify, even without bad actors actively coaching them through. We still believe that self-certification is fundamentally not the right approach, given the potential for consumers to incorrectly self-certify or bad actors to exploit consumers' lack of understanding. We welcome the Treasury's consultation on reforming the FPO exemptions, including a proposal that would require a firm to come to a reasonable belief that investors met the conditions of the exemptions. We will continue to keep this issue under review and consider whether further changes are needed once the Treasury has concluded its consultation.

Appropriateness test

CP proposals

3.54

In CP22/2 we proposed a package of measures to strengthen our appropriateness rules for RMMIs. These were designed to ensure that consumers must always be subject to a robust assessment of their knowledge and experience and to minimise opportunities for 'gaming' this assessment. In summary we proposed to:

- Introduce guidance on the types of questions to be covered by an appropriateness assessment for RMMLs, building on the existing guidance for P2P agreements. We also proposed to extend the guidance discouraging binary yes/no answers.
- Amend our rules to ensure that an investment must always be determined as appropriate for a consumer, before an order or application for the 'Restricted Mass Market Investment' is fulfilled in response to a Direct Offer Financial Promotion.
- Introduce a rule that where an investment is assessed as being inappropriate for a consumer, the firm cannot re-assess the appropriateness of that investment for the same client for at least 24 hours. We also proposed to introduce a rule that the questions firms ask must be different each time a consumer is subject to the assessment. Further, consumers should only be told the broad areas that caused the investment to be assessed as inappropriate rather than the specific questions.
- Introduce guidance stating that firms should not, in their communications with consumers, encourage them to retake the test after the investment has been assessed as inappropriate for them if they have not attempted to do so on their own initiative.

Feedback received

- 3.55** We received 56 responses to this question. Respondents had a net positive view of these proposals, with 43% agreeing, 25% responding as neutral and 32% disagreeing.
- 3.56** 10 respondents explicitly expressed agreement that the appropriateness test should be a robust assessment of knowledge and expertise in high-risk investments. Several respondents said these proposals would improve consumer outcomes, and it was mentioned that consumers in vulnerable circumstances and those least informed would be afforded the most protection. A few respondents said they already meet many of the changes we proposed.
- 3.57** The appropriateness test proposal that received the most support was introducing guidance that firms should not encourage consumers to undergo the assessment again (10 respondents). An example was raised from the London Economics report into the non-transferable debt securities market, where a mini bond provider called a consumer for whom the investment had been assessed as inappropriate and told them to complete the form again 'in such ways [sic] as to ensure it accepted her application.' It goes on to say that in that example, the consumer went on to invest with the firm and 'lost £80,000 as the company went into administration'. However, some respondents did ask for more clarity on what the line would be between informing investors of the option to retake, and encouraging them to do so.
- 3.58** 6 respondents specifically stated agreement with the removal of the exemptions that allow a consumer to invest despite not undergoing an appropriateness test, or despite the investment being considered inappropriate for them. The proposals to stop feedback being given during the test, and the proposed question guidance for different sectors, were also specifically supported (5 and 4 respectively).
- 3.59** The proposal that received the most disagreement was the requirement for the question sets to be different each time a consumer undertakes the appropriateness test (6 respondents). The most common reason for this was being unsure about how many questions sets firms should have, and how different the questions would need to be in each set (4 respondents). Some respondents asked for more guidance on this, and some questioned how differently you could write certain questions (such as whether there is FSCS protection). It was also raised that this proposal would require

a longer implementation period, to allow the different questions to be coded into the online consumer journey. Some respondents said this would be a significant extra burden for firms with multiple product types.

- 3.60** The proposed minimum 24-hour lock out period following the investment being assessed as inappropriate for a consumer was the least popular intervention with those respondents that disagreed with the appropriateness proposals overall. Some respondents said they find many investors fail the first test not because they don't know the answers, but because they skim through it in irritation, do not take it seriously enough or allow overconfidence to influence their behaviour. They may also make a minor mistake in their first attempt. 5 respondents thought that more resits of the test should be allowed before the 24-hour lock out period kicks in.
- 3.61** Some respondents thought the proposal to only allow the broad areas a consumer got wrong to be communicated to the investor following the test, and not the specific questions, represented a block on educating investors. They often said that consumers learn as they go through and use what they got wrong to decide whether the investment is appropriate for them. It was raised that from an educative perspective, it is helpful to tell people exactly what they got wrong as this is how people learn best from their mistakes.
- 3.62** A few respondents said that questions with binary answers should still be allowed where it is sensible to do so. These respondents may not have been aware that this is guidance rather than a rule.
- 3.63** A general comment that was made on a few occasions was concern that the appropriateness proposals are not in line with the focus on good outcomes within the Consumer Duty. Some respondents thought they were too prescriptive or unnecessary in their entirety, as the Consumer Duty should incentivise firms to make sure their test is robust. Some respondents also thought some of these proposals limited firms' ability to educate consumers, and that this was not in line with the focus of the Duty.
- 3.64** Conversely, a couple of respondents said that despite these additional measures, the test could still be easily 'gamed' by consumers. Some respondents requested that data on the appropriateness test is required as a regulatory return, rather than just being available on request by the FCA.
- 3.65** There was some confusion in the responses about where these measures apply. For example, over when an appropriateness test is required, which appropriateness tests are subject to these new proposals and how these proposals link to preliminary assessments of suitability for Non-mass Market Investments.
- 3.66** Similarly to the cooling off period, it was raised that the position of the assessment in the consumer journey is inappropriate due to a conservative interpretation of the Direct Offer Financial Promotion rules. Under this interpretation, the assessment would be asking the consumer questions about the risks of the investment before the consumer has the opportunity to see all of the information about it.

Our response

We only proposed that these measures apply where a firm is required to comply with the appropriateness rules in relation to a Restricted Mass Market Investment. The appropriateness rules must be followed with all categories of retail client for Restricted Mass Market Investments (namely restricted, certified high-net worth, certified and self-certified sophisticated investors), unless the investor is receiving advice. We did not propose that these enhancements to the appropriateness regime be applied beyond the specific application to Restricted Mass Market Investments. They would not apply to appropriateness assessments required in other contexts by virtue of the application of COBS 10 and 10A.

In the case of Non-mass Market Investments, self-certified sophisticated and high-net worth investors requesting to see a financial promotion must be subject to a preliminary assessment of suitability (unless the investor is receiving advice). A preliminary assessment of suitability, and an appropriateness assessment, are targeted towards different things. The appropriateness assessment is centred around whether the client has sufficient knowledge and experience to understand the risks of the investment. This is an important pre-requisite when assessing suitability. However, the preliminary assessment of suitability means a firm goes a step further. It requires the firm to understand the client's personal circumstances, so they can assess whether the investment is likely to meet the client's needs and objectives. This is not something that is learnt by the consumer and then tested, so our changes to how firms conduct appropriateness tests for Restricted Mass Market Investments are not applicable to firms' approaches to preliminary assessments of suitability.

A further clarification we'd like to make is on the position of the appropriateness test in the consumer journey. Our rules require that the RMMI must be considered appropriate before a client's application or order for a RMMI in response to a DOFP can be processed. However, our rules allow firms to gather the information necessary to conduct the assessment, and complete its assessment, prior to the DOFP being shown. We expect that most firms will conduct their appropriateness assessment prior to the DOFP being shown so that they can implement this as part of their client on-boarding alongside other requirements in the consumer journey such as showing the personalised risk warning, client categorisation and any AML/KYC checks that may be required. Conducting the assessment prior to showing the DOFP also allows the time taken for the assessment to be counted against the 24 hour cooling off period. We have clarified our view on the DOFP rules in 3.34. We are content that the appropriateness test is in the right position in the journey to assess the consumer's understanding of the risks, given that the DOFP rules do not restrict the amount of information that a consumer can see about the investment before this.

Our aim with these proposals was to provide a strong framework of minimum standards for firms to adhere to, to bring up the average quality of appropriateness tests for high-risk investments. Firms

should consider if they need to go beyond these minimums to deliver good outcomes for consumers, in line with expectations under the Consumer Duty. For example, having a lock out period longer than 24 hours or applying the lock out period after the first time an investment is assessed as not appropriate. We think our proposals strike the right balance between ensuring there are a strong set of standards to tackle the weaknesses we've seen in the market, while still leaving firms the flexibility they need to tailor their appropriateness assessment to what is right for their clients and investments. With most proposals, we have decided to proceed as consulted. However, we have made a change to the proposed minimum 24-hour lock out period, and clarify the remaining proposals below.

With the proposal to require the appropriateness test to contain different questions each time a consumer undertakes the assessment, we have decided to proceed as consulted. We think this is an important measure to prevent consumers from disengaging with the content and 'gaming' the assessment. However, we acknowledge the concerns raised by firms that the technological requirements of this would be challenging to implement in 3 months. So we have extended the implementation period for these measures along with most of our other proposals (see 'Approach to implementation' section below).

The rationale behind this was to prevent firms coaching consumers through the assessment, and to prevent consumers 'gaming' the test. We encourage consumers to learn from taking this assessment, and to apply their learning from a previous attempt to their next attempt if they choose to undergo it again. However, what we want to avoid is consumers using their memory of the format of the previous set of questions to inform their answers on the next set. A consumer being able to do this makes the next attempt easier, without their knowledge of the risks of the investment necessarily being higher. Firms should consider this when they are designing their questions.

We understand that questions will need to have similar elements in each appropriateness test, given that we are introducing (or retaining) guidance on the topics that the test should cover. However, there are methods that firms can use to differentiate questions even on topics where the question itself might be difficult to ask particularly differently. For example, firms can also give different formulations of answers for the consumer to choose from in each attempt, and/or have a different number of correct answers that need to be selected in each. We understand that it may be difficult to come up with many different iterations of questions. But firms should consider whether they think the investment is likely to be appropriate for consumers if many attempts are required. Firms can decide what technology they use to offer these different questions. For example, having a different set of questions that is used for each attempt in sequence, or have a question bank from which one question on each topic is drawn on each attempt. It is also up to firms how many attempts they offer, and therefore how many questions they write.

We understand that this will be more work for firms that offer multiple product types. However, this is an inevitable consequence of having a business model that offers different products with different risks. Understanding of these risks needs to be tested in a robust way regardless of whether the firm offers other products too, and questions being different if a consumer retakes the test is an important element of this.

The minimum 24-hour lock out period after an investment is assessed as being inappropriate for a consumer was also designed to prevent consumers from 'gaming' the test, and to encourage consumers to do further research on the risks of the investment before undergoing the test again. We still think this is an important measure to achieve these aims. However, we acknowledge that a consumer may narrowly miss out on the investment being considered appropriate for them the first time they undergo the assessment. So we have amended this measure to mean that firms can allow consumers to retake the assessment after their first attempt without the 24-hour lock out period if they wish to, but the consumer must wait at least 24 hours to undergo the assessment again if the investment is considered inappropriate for them from their second attempt onwards. However, this is a minimum requirement and firms should still implement this from the first attempt if they deem it appropriate.

The rationale behind the proposal that firms should not inform consumers of the specific answers that caused an investment to be assessed as inappropriate for them, was to avoid firms coaching consumers through the test and to encourage further research before they retake the assessment. We understand that the fact consumers will now have to answer a different set of questions if they undertake the assessment again, may reduce the incentive for firms to tell consumers the question numbers they got wrong. However, we still think this measure is important to solidify a movement away from the test being immediately repeated. We have added some further guidance into the rules to explain what practices we are targeting here, and to clarify that this should not serve as a block on educating investors. This measure does not prevent firms from explaining to consumers why the investment was deemed inappropriate for them, so consumers are made aware of their misconceptions. However, firms should not simply highlight the specific questions that were answered incorrectly. This trivialises the misunderstanding and encourages an approach of immediately taking the test again to switch the answer on those topics in the next test, without reflecting on it.

On preventing firms from encouraging consumers to undergo the appropriateness assessment again after the investment has been assessed as inappropriate for them, we are proceeding as consulted. We think this is important to avoid situations where consumers feel pressured into continuing a consumer journey they otherwise would have left.

We understand firms may be unclear on where the line is between encouragement and informing consumers of their options. As we stated

in the consultation, firms can inform consumers of the facts- such as the option to retake the assessment, or that a 24-hour lock out period has ended. However, this communication should be in no way persistent or persuasive in nature. It should not tell or suggest to the consumer what to do in this scenario, or place any other form of pressure on the consumer such as giving them a time limit. Firms should ensure the consumer understands what the conclusion of the appropriateness test meant, so they can then make an informed decision on whether to undergo the assessment again. Firms should also consider pointing the consumer towards educational material, so they can improve their knowledge on the risks if they're still interested in continuing.

For all other proposals on the appropriateness assessment, we did not receive any significant disagreement and are proceeding with the measures as consulted.

Record keeping requirements

CP proposals

3.67

In CP22/2 we proposed that firms should record various metrics throughout the consumer journey, to help us monitor the effect of our proposals. We proposed the following data items, to be used alongside total transactions with retail consumers:

- the number of users who are presented with the risk warning for RMMI, and the number of users that click on the 'Take 2 mins to learn more' within the risk warning
- the number of users that click to proceed to the Direct Offer Financial Promotion, ie express interest in responding to the financial promotion
- the number of consumers the personalised risk warning is presented to, and the number of consumers who click on the 'Take 2 mins to learn more' within the personalised risk warning
- the number of consumers who do not proceed with the consumer journey after the personalised risk warning
- the number of consumers that are subject to the 24-hour cooling off period, and the number of consumers who do not proceed with the consumer journey after the 24-hour cooling off period
- the outcome of client categorisation (ie the number of consumers categorised as HNW, sophisticated and restricted and the reason why they believe they meet those criteria)
- the number of consumers who do not proceed with the consumer journey at client categorisation (ie do not get categorised)
- the outcome of the appropriateness assessment (ie the final outcome of the appropriateness assessment for each consumer and the number of times they were subject to the assessment for the same investment, the number of assessments that determined the investment to be appropriate and inappropriate, and the total number of assessments undertaken).

Feedback received

- 3.68** We received 51 responses to this question. The response was net positive, with 45% of respondents agreeing, 18% responding as neutral and 37% disagreeing.
- 3.69** The main reason for agreement with the proposal was belief that it would be useful information for the FCA (11 respondents). 6 respondents said this would be useful data for firms.
- 3.70** The main reason for disagreement with this proposal was concern that it was too onerous and not justified by the benefits (16 respondents). These respondents often said that for online journeys it would require almost every element of the customer journey to be re-engineered and coded again. 5 respondents noted that firms will already have to do this under the requirement to monitor and maintain records of consumer outcomes as part of the Consumer Duty, but have a longer period to implement this. Some of these respondents said the Consumer Duty was a better way to get to the same outcome; firms can monitor outcomes in a way that works for them, and this can be evidence of both their Consumer Duty compliance and be used for monitoring the effectiveness of these measures, avoiding duplication.
- 3.71** Five respondents said it would not be possible to collect these metrics in offline settings, or more clarity was needed on expectations for compliance with this for non-online journeys.
- 3.72** Four respondents said this proposal would require a longer implementation period, to allow the necessary work to be done to collect the prescribed metrics. A couple of respondents said this requirement should be optional, and a few others said firms should be able to decide their own metrics. 3 respondents said it would be disproportionately burdensome on small firms.
- 3.73** Some respondents disagreed with this proposal on principle. They did not think that the FCA should require record keeping by firms beyond what is required to demonstrate compliance with regulation, eg monitoring the effectiveness of it. Some respondents said the FCA should collect data to monitor the effectiveness of these measures ourselves.
- 3.74** Some respondents raised technical elements of some of the metrics as prescribed that would need further clarity, or could be collected differently by different firms due to being open for interpretation.
- 3.75** Four respondents said the record keeping metrics should be a regulatory return.

Our response

We prescribed data points for firms to collect throughout the consumer journey, so we could draw on this data in an assessment of the effectiveness of our consumer journey measures. We could use this data to see if our proposals were having the intended effect and were continuing to do so over time. This could inform a conclusion on whether we have got the balance wrong at any point, and whether any alterations are needed.

However, we recognise the interplay between our requirements here and the requirements under the Consumer Duty ('the Duty'). Given the number of data points we proposed to request, we understand that it may be disproportionate to require firms to recode their consumer journey to collect our metrics in our implementation period, while firms will also need to do this for the metrics they need to collect under the Duty over a longer implementation period. This could either lead to firms having to recode their consumer journey twice, or comply with a significant element of the Duty within a shorter time period than the Duty itself allows.

We have decided to only proceed with requiring firms to record the metrics relating to client categorisation and appropriateness assessments that we proposed. Firms should already be recording this data in both online and offline settings, and it is useful for supervisory purposes. However, we still think that the other metrics we proposed would be useful for firms and suggest that firms consider collecting them as part of their monitoring obligations under the Duty.

Under the 'consumer understanding' element of the Duty, firms will be required to monitor the impact of communications throughout the consumer journey. For example, whether consumers access additional information on risk warnings when taking out investments, and whether they act on this information. Firms will also need to assess, test, understand and be able to evidence the outcomes their customers are receiving. The data we requested as part of this consultation was primarily focused on whether consumers engage with protections in the journey and where consumers drop out of it, which is likely to be very important for these Duty elements.

Firms collecting this data will also have evidence if our proposals have unintended consequences. We encourage firms to collect and share this data with us where they can, so we have as much data as possible with which to inform any amendments to our proposals over time. We will also monitor the effectiveness of our proposals using many of the suggestions that were put forward by respondents when we asked how we should do this. This includes looking at complaints data (5 respondents) and having direct engagement with industry (5 respondents). We will also use our Financial Lives Survey and further behavioural testing where appropriate.

We will closely monitor the implementation of our proposals alongside the Duty. If we feel that firms should be doing more in this area, or that a more standardised approach is needed, we will revisit introducing a set of metrics for firms to record on top of those already collected under the Duty.

We have also extended the implementation period for most of our interventions (including this one), to ensure firms have adequate time to make the necessary system and process changes (see 'Approach to implementation' below).

We have made an amendment to the scope of the remaining required metrics. Previously, this record keeping was only required for authorised firms communicating financial promotions. We have extended this to require firms which approve DOFP for RMMI to take reasonable steps to ensure that adequate records of this data are made and shared with the approving firm. Approving firms should consider using this data as part of their ongoing monitoring. This formalises the guidance to do this within the non-Handbook guidance for s21 approvers on client categorisation and appropriateness.

Approach to implementation

CP proposals

- 3.76** In CP22/2 we proposed to give firms three months from final rules being made to comply with our proposals. We also proposed that the changes to risk warnings and banning inducements to invest would apply to all financial promotions for 'Restricted Mass Market Investments' and 'Non-Mass Market Investments'. The proposed changes around positive frictions, client categorisation and appropriateness tests would generally only apply to new customers being marketed to.
- 3.77** For appropriateness assessments, we proposed that existing clients would only need to be subject to this assessment (in line with the proposed changes) if they are the subject of new Direct Offer Financial Promotions (ie they want to increase their investment holdings with the firm) and they have not already passed an appropriateness assessment for the relevant investment type. Existing customers who have already passed an assessment for the relevant type of investment would not need to repeat the assessment. However, firms may consider it appropriate to require consumers to undergo the revised appropriateness assessment even if they have undergone one for the relevant investment previously. For example, if the firm has undergone significant business model changes since the consumer was last subject to the assessment.

Feedback received

- 3.78** We received 51 responses to this question. Respondents had a net negative view of the proposed approach to implementation (33% agreed, 20% were neutral and 47% disagreed).
- 3.79** Most of those that agreed with this proposal did not give a particular reason. However, 3 respondents that agreed seemed to think this question was about the proposals more generally, so their reason was not related to the proposed implementation approach. 4 respondents that disagreed also had unrelated rationale.
- 3.80** Where respondents disagreed with our proposal the main reason was a belief that the proposed implementation period was too short, particularly given the cumulative size and number of changes (21 respondents). These respondents argued that 3 months was too short to assess, plan and design, code, test, and implement the changes while ensuring accessibility and security standards are maintained. Firms did not pick out specific initiatives that would take longer than others; they talked about the package of

changes more generally. Some respondents highlighted the particular pressures this would place on smaller firms.

- 3.81** Some respondents were concerned about the availability of developers to support firms to implement these proposals. They said the developers that will be needed to help firms will typically already be engaged in other high-priority projects.
- 3.82** A small number of respondents said that the short implementation period risks changes being implemented incorrectly or poorly.
- 3.83** Some respondents raised concerns about the volume of regulatory and legislative changes happening at the same time as our proposals, creating additional pressure on firms. These respondents highlighted that firms impacted by these proposals are also likely to be impacted by our new Consumer Duty and changes to the AR regime. The Treasury initiatives, such as changes to the FPO exemptions and the s21 gateway were also mentioned by respondents.

Our response

We understand the concerns raised by respondents about the length of the implementation period, particularly given other regulatory and legislative changes that are occurring at the same time. Based on this feedback we will extend the implementation period for these rules to 6 months, meaning they come into force on 1 February 2023, with the exception of our main risk warning proposals (ie main risk warning and risk summary) which must be implemented in 4 months and will come into force on 1 December 2022.

The extension is to ensure an orderly implementation of the rules. We expect firms to use this additional time to ensure they have robust implementation plans, including user testing where appropriate. To be clear, the personalised risk warning pop-up (or equivalent) is within the extension to 6 months.

We have decided to have a shorter extension to the implementation period for our main risk warning proposals. The main risk warning must be displayed on each financial promotion, rather than being incorporated as part of a consumer journey. We believe this rule is more straightforward for firms to implement and 4 months is sufficient time. We believe it is important to implement this proposal as soon as is practicable so we can start helping consumers to better understand the risks of these investments and to mitigate the harm.

We are proceeding with our approach for how the rules apply to new and existing customers as set out in CP22/2.

4 Strengthening the role of authorised firms approving and communicating financial promotions

CP proposals

- 4.1** We proposed that all approved promotions include the name of the authorised firm approving the promotion, as well as the date of approval. These measures are aimed at both helping the consumer to determine whether a promotion has been approved (and which firm provided approval), as well as helping the FCA in our enforcement efforts against firms in breach of our rules.
- 4.2** We proposed to strengthen the rules relating to a firm having the relevant competence and expertise in the type of investment being promoted, when communicating or approving a financial promotion. Currently, our rules do not contain a specific restriction on firms approving or communicating financial promotions for products or services where they lack relevant expertise. To address the potential for harm, we proposed to introduce a new rule that will require firms to self-assess whether they have the necessary competence and expertise (C&E) in an investment product or service before approving or communicating a relevant financial promotion. If a firm wishes to communicate a promotion but does not have the relevant competence and expertise in-house, they must find an authorised person that does. In this circumstance, an authorised firm with the necessary competence and expertise would need to confirm compliance of the promotion with the financial promotions rules, to enable the promotion to be communicated.
- 4.3** We also proposed to require approvers to play a more active role in ensuring approved promotions remain compliant for the lifetime of the promotion – not just at a single point in time. This is intended to move s21 approvers away from a ‘once and done’ approach. An approver would need to take reasonable steps to monitor the continuing compliance of approved promotions to consider whether, amongst other factors, there have been any changes which may affect whether the promotion continues to be clear, fair and not misleading, including consideration of the ongoing commercial viability of the proposition described in the promotion.
- 4.4** As part of our requirement for ongoing monitoring, approver firms will be required to obtain attestations of ‘no material change’ from clients with approved promotions every 3 months, for the lifetime of the approved promotion. These attestations are intended to serve as an early warning to s21 approvers of any changes or issues with approved promotions. Approvers should consider any changes disclosed in an attestation and, where necessary, withdraw approval as soon as reasonably practicable.
- 4.5** A second proposed requirement to aid ongoing monitoring is to ensure compliance with our appropriateness rules. A s21 approver’s responsibility for ensuring compliance with the appropriateness rules should not be limited to a one-off assessment on

approval of the promotion. We proposed a new requirement on s21 approvers to check the compliance of appropriateness tests periodically, throughout the lifetime of a promotion. We proposed to require s21 approvers to take reasonable steps to ensure that the relevant processes for appropriateness tests comply with our rules for the lifetime of the promotion.

4.6 We also proposed to extend existing 'conflicts of interest' obligations to firms approving financial promotions for unauthorised persons and to firms confirming compliance of a financial promotion for an authorised firm. It may be that a firm that can approve financial promotions will be asked to do so by competitors or competitors of their group businesses. It is not appropriate for firms to use their position as a s21 approver to gain a competitive advantage over their rivals. This proposal would reduce the likelihood of anti-competitive behaviour by ensuring that firms take all appropriate steps to identify and manage conflicts of interest.

4.7 Finally, we proposed to clarify our existing requirements of approvers in client categorisation and preliminary suitability assessments for 'Non-Mass Market Investments'. The requirements will reiterate that firms approving financial promotions for 'Non-Mass Market Investments' must undertake a preliminary assessment of suitability before a firm can communicate a promotion to high net worth or sophisticated investors. This should be based on the client's profile and objectives. We considered that this would improve firm understanding of our existing requirements for preliminary assessments of suitability.

Feedback received

4.8 Feedback to these consultation proposals in general was positive, and was supportive of our proposed requirements (see Figure 6). Most respondents agreed with all of our proposals in this chapter. Agreement was strongest for proposals on:

- including name of approver & date of approval
- competence & expertise
- ongoing monitoring
- conflict of interest obligations

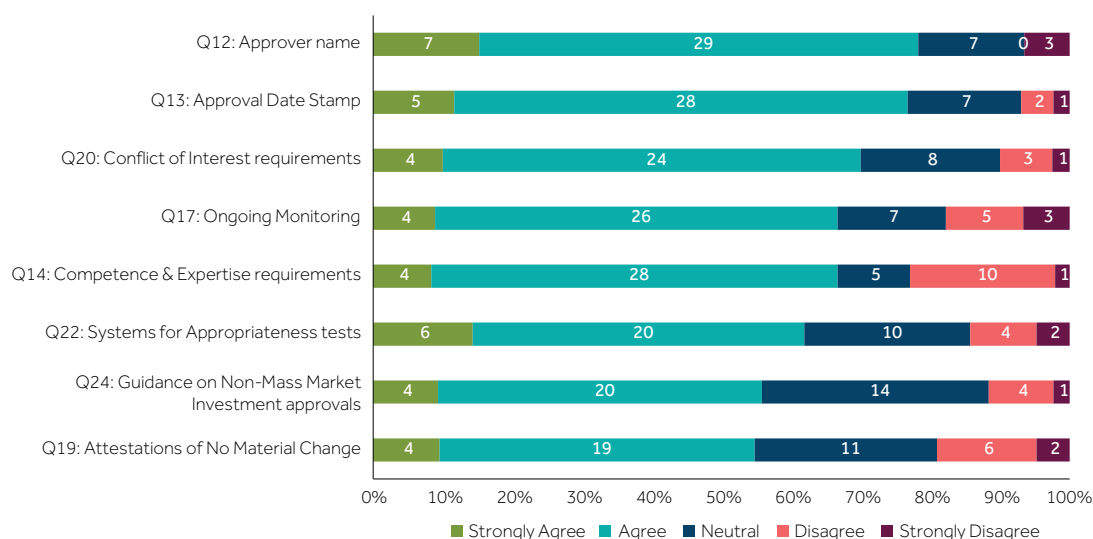
with a minimum of 65% in agreement. Agreement was lowest for proposals on:

- obtaining attestations
- approving promotions for Non-mass Market Investments

with 55% and 56% in agreement, respectively.

4.9 Where respondents disagreed with our intended changes, it was mostly due to a lack of clarity as to how we would assess compliance with our proposals, and the fact that some of our proposals would be burdensome on the firms concerned. Most responses that disagreed with our proposals were received from the crypto-asset sector.

Figure 6 – Summary of responses to our proposals on strengthening the role of authorised firms approving and communicating financial promotions



- 4.10** Multiple respondents made the point that naming the approver on a promotion would allow the public to assess their suitability, expertise, knowledge and competence to approve each promotion, and would provide an additional level of transparency.
- 4.11** Some respondents thought that the competence and expertise proposal (C&E) would give consumers assurance that promotions have met a set of robust criteria. One respondent stated that this proposal would result in the prevention of inappropriate approvals of financial promotions, which would have otherwise been to the detriment of consumers.
- 4.12** Some respondents thought that it was necessary for approvers to actively monitor investments after approval for any changes that result in the promotion becoming misleading. This would allow approvers to assess whether they need to withdraw approval and thereby reduce potential detriment to consumers. A few respondents stated their agreement with the attestations of 'no material change', noting that this would aid s21 approvers in their ongoing monitoring responsibilities, and would provide a warning to such approvers that it may be 'in order' to withdraw their approval of a promotion. Some respondents noted that this will be a burdensome measure for firms, and that the proposed ongoing monitoring requirements will dissuade s21 approvers from approving promotions.
- 4.13** Most respondents agreed with the steps to be taken with appropriateness testing, and thought these steps to be both reasonable and necessary. They thought that this process would result in better monitoring of the suitability of each investment to the investor.
- 4.14** Some respondents thought that it would be impractical to include the name of the approver and date of approval in the body of every promotion. They suggested that there should instead be the ability to 'click through' to this information. It was pointed out that mobile-based applications in particular would be restricted in how much data is visible on each promotion.
- 4.15** A few respondents presented a variety of suggestions on how the date stamp could be reinforced and expanded, with the aim of clarifying the validity of approval. One suggestion was an implementation of controls to ensure that the approval is up to date

and still valid. Another was to have an 'out-of-date' or 'best-before' type practice, so that consumers can ascertain whether the promotion they are viewing still has a valid approval. This may include a process that requires the approver to re-evaluate the promotion after a set period.

- 4.16** A respondent stated that they are not aware of any industry standard of competence and expertise, and asked us to provide examples of what expertise would be relevant for various areas of financial promotions. Several respondents raised the issue of competence and expertise being relevant to the promotion of an 'investment product', as opposed to the underlying assets within the investment product. The concern was that the approver cannot be expected to have expertise in such a wide range of underlying assets. An example provided was that an investment product may hold a farming business (requiring expertise in farming), as well as expertise in unlisted equities.

Our response

In light of the broad support for our proposals, we will proceed with all the proposed changes related to strengthening the role of authorised firms communicating and approving financial promotions, with a minor amendment to our requirements to display the name of the approver and date of approval on a promotion.

A firm issuing a promotion will be permitted to replace our standard requirements with text that refers to the authorised firm's FRN (Firm Reference Number), where space limitations imposed by a third-party marketing provider do not allow the display of the full name of an approver firm, and the date of approval. The required format is 'Approver FRN xxxxxx', (and the relevant FRN number must be inserted). This text must be 'clickable', and must open a page where the firm's full name, and the date of the approval, must be displayed.

We expect a financial promotion to comply with the financial promotion rules on the face of the promotion (ie be 'stand alone compliant'). We have made an exception to this standard approach in this case, as we do not wish to unnecessarily prevent firms from using promotional avenues that they would have otherwise been able to access. However, this deviation in no way sets a precedent to depart from our established approach, and still enables us to meet our supervisory aims. Including the FRN on the face of the promotion still allows us to identify the approving firm, even where a financial promotion is sent to us using a screenshot for example.

While we acknowledge that our proposed measures to strengthen the role of firms approving promotions will lead to an additional resource burden on these firms, we think that the benefits derived from these measures outweigh the costs. In response to the claim that these measures will dissuade firms from approving promotions for unauthorised firms, we envisage that any additional costs will be absorbed into the fee charged by the approving firms.

We received several requests for clarification on our proposal to require firms to self-assess whether they have the necessary competence and

expertise (C&E) in an investment product or service before approving or communicating a relevant financial promotion. We require that the firm self-assesses that they have the necessary C&E with regard to the investment product itself, but not necessarily C&E with regard to the specific commercial sector/s that the underlying investments relate to. For example, a firm approving a promotion of an unlisted equity share should have C&E in unlisted equities, but is not required to assess whether it has necessary C&E in farming or mining business if the underlying investments within the unlisted equity structure are in these sectors.

We acknowledge the requests for an extension and elaboration of our date of approval proposal on the face of a promotion. However, we view this requirement as strengthening our ability to supervise firms and to provide market oversight, and our ability to gather the necessary data for our investigations and enforcement of our rules. So we will proceed with our date of approval proposal.

We have decided to extend the implementation period for these proposals to six months, in line with the implementation period for most of our consumer journey proposals.

5 Cost benefit analysis (CBA)

- 5.1** In our [CP](#), we provided an analysis of the costs and benefits we expected from a policy package that included proposals for promotions of cryptoassets. The updated breakeven analysis and summary table below exclude the costs and benefits resulting from our consultation proposals for cryptoassets, as these are not covered in this policy statement. Subject to any changes in circumstances, we expect to take a consistent approach to cryptoassets to that taken for other high-risk investments.
- 5.2** The interventions in this PS have been designed to prevent harm to consumers from investing in high-risk investments that do not match their risk tolerance. These consumers face potentially significant financial losses and adverse wellbeing consequences if those products lose value. Given the evidence from our behavioural testing, we expect our rules will lead to a reduction in retail consumers unknowingly purchasing high-risk investments that do not match their risk tolerance, and hence the risk of consumers suffering unexpected financial losses that they cannot easily absorb would be reduced as a result. Our consumer [research](#) suggests that this would decrease the risk of knock-on financial difficulties, for example consumers falling into debt and facing repayment difficulties, and bring benefits in the form of improved wellbeing as a result. There are also benefits to consumers if they purchase more appropriate investments instead. Our judgement is that our new rules, and the more appropriate investment decisions they encourage, will lead to improved trust and confidence in the retail investments market. This should ultimately encourage consumers to further participate in retail investment markets, and make it easier for all firms to raise capital.
- 5.3** In CP22/2, we presented a breakeven analysis to further illustrate the benefits of our proposals. This provided estimates of the benefits that will need to be realised for the package to be 'net beneficial', given the compliance costs incurred by firms. We have now updated our breakeven analysis to exclude our cryptoasset proposals which are not covered in this policy statement.
- 5.4** We now estimate a total quantifiable year one cost (one-off and ongoing) of approximately £19m (which excludes our cryptoasset proposals). As explained in CP22/2, we estimated that 142,000 consumers will purchase high-risk investments (excluding cryptoassets) for the first time, or increase their holdings in these, per year.
- 5.5** For the impact of our interventions to break even in monetary terms, each new potential high-risk investment consumer, or existing holder increasing their holdings, would need to save £135 on average. To calculate our break-even figure of £135 per consumer, we have summed the total quantified year one costs (one off and ongoing), and divided this (around £19m) by the total number of consumers we expect to purchase or increase their holdings in HRI (142,000 per year).
- 5.6** Our breakeven figure has therefore risen from £38 to £135 when we exclude cryptoassets from our proposals. This is due to the larger number of people who were likely to purchase or increase their holdings in cryptoassets (1.48m) relative to the other high-risk investments (142,000). As a result, the smaller population of new investors or existing investors who increase holdings would need to realise a larger saving per person on average for our proposals to break even. Although the per person saving that needs to be realised to break even is now larger than we consulted on

(because of the exclusion of cryptoassets), we consider that the amount per person that needs to be saved is still relatively small and as such it should be achievable in the context of the high-risk investment market.

5.7 In recent years, we have seen significant high-risk investment losses to consumers. The collapse of London Capital and Finance in January 2019 resulted in consumer losses of £230 million. At the point the P2P firm 'Lendy' collapsed in May 2019, investors were owed more than £150m (though final losses may be smaller than this as some loans are recovered during the administration process). Our interventions are not primarily aimed at addressing these specific cases, which have been mitigated by other FCA interventions. However, such cases demonstrate the potential for harm with firms issuing and distributing high-risk investments, and the scale of consumer losses that can result. In the case of London Capital and Finance, the FSCS paid over £57.6m to 2,871 bondholders who were eligible for compensation. This represents an average redress paid to the consumer of approximately £20,000.

5.8 This package aims to ensure that consumers understand the risks before they invest in the high-risk end of the market, and are given the information and time they need to make mindful investment decisions. As set out in our CP, our consumer research found that nearly six in ten (59%) self-directed (non-advised) investors who invested in high-risk products claimed that a significant investment loss would have a fundamental, negative impact on their current or future lifestyle. Our behavioural testing work highlighted several positive effects of the consumer journey interventions we are implementing with this PS, indicating that consumers' understanding would be improved and therefore they may be less likely to invest inappropriately. Evidence from our behavioural testing supports our expectations that the policy package, even without cryptoassets, will lead to positive behavioural change by consumers and therefore that the benefits are likely to exceed the costs.

5.9 Table 4 below provides an updated summary of the costs and benefits of our policy package.

Table 4: Updated summary table of the costs and benefits

	Costs	Benefits
Firms	Quantified one-off compliance costs – £18.56m (upper bound) Quantified ongoing compliance costs – £554k (upper bound) Increased financing costs/ reduced revenue and profitability	Less risk of loss of reputation from customers investing in inappropriate investments Savings from loss of monetary/ non-monetary inducement expenditure – £740k Benefits from improved trust in the retail investments market
Consumers	Potentially fewer investment options available Increased time needed to purchase HRI – £46k Loss of monetary/non-monetary inducement benefits- £740k Potentially higher costs when purchasing HRI	Reduced risk of unexpected financial loss for consumers, and associated wellbeing benefits Reduced risk of any further financial difficulty because of an unexpected financial loss, and associated wellbeing benefits Improved trust in the retail investments market and consumer confidence
FCA	Absorbed as business as usual	

Feedback received

We asked respondents to provide any feedback they had on our cost benefit analysis. We received very few responses to this question, and the majority were about the costs and benefits of our consultation proposals for cryptoassets which are not covered by this policy statement. These comments will be addressed in our policy statement on financial promotions for cryptoassets once the relevant legislation is laid.

Some respondents said the cost benefit analysis should have included an assessment of the impact of our proposals on the competitiveness of UK capital markets, such as the effect on SME financing and the wider market impact on the P2P and IBCF sectors. And some respondents said that the cost benefit analysis should have accounted for the combined effect of the consultation and other legislative and regulatory changes proposed for financial promotions, such as the Treasury's consultation on changes to the FPO exemptions and the introduction of the s21 gateway.

Our response

We outlined in our cost benefit analysis that we did not think it was reasonably practicable to estimate the ongoing costs of decreased revenue/ increasing financing costs for firms and issuers as a result of our proposals. This is because we do not know by how much investment in high-risk investments will reduce as a result of our proposals, and therefore by how much revenues may decrease or financing costs increase for firms and issuers that are affected. However, it is our view that strengthening our rules on high-risk investments will build trust in UK markets and by implication increase long-term growth and competitiveness.

We asked respondents to provide us with data that we could use to add further analysis to our CBA, and a few respondents did so. We investigated whether any of this could be used, particularly to give any additional indication or quantification of the wider market impacts of our proposals. However, we concluded that the data received did not allow us to conduct any new substantive analysis on the costs of the policy to firms, or provide any further illustrative points on the impact on firms' competitiveness.

The CBA did not include an assessment of the combined effect of other planned legislative/regulatory changes in the financial promotions space, since these are still being consulted on. However, we do recognise that there are a number of changes in progress relating to financial promotions (as well as other areas) at present, and the cumulative workload this may represent for firms affected. This is one of the reasons why we have extended the implementation period for the majority of our proposals to 6 months.

Respondents did not provide detailed evidence or data that would lead us to question the findings of our CBA, which are that any costs associated with our proposals are likely to be outweighed by the benefits. We consider that the targeted amendments we have made to our rules in response to consultation feedback will likely decrease the costs to firms of implementing our measures, but have an insignificant effect on the breakeven position between costs and benefits overall.

Annex 1

List of non-confidential respondents

4thWay

Advanced Analytica

Aimichia Technology Co., Ltd.

ArchOver

Association of British Insurers

Aviation and Tech Capital Ltd

Barton Brown Limited

British Venture Capital Association

CrowdProperty

Electronic Money Association

Enterprise Investment Scheme Association

Fiat Republic Ltd

Financial Services Consumer Panel

FOLK2FOLK Ltd

Global Digital Finance

Gunnercooke LLP

HNW Lending Ltd

Ignacio Corral

Interactive Investor Services Limited

Invest and Fund Limited

James Matthews

Jay sharma

Kuflink Ltd

Martyn Rich

MCBorrelli Advisors Limited

Memery Crystal

Par Fund Management Limited

Prosper Capital LLP

ShareIn Ltd

Simple Property Limited

SimplyBiz

Society of Trust and Estate Practitioners

Socios Technologies AG

Sturgeon Ventures LLP

The Investing and Saving Alliance

The Investment Association

UK Business Angels Association

UK Crowdfunding Association

Wealth Club Limited

Annex 2

Final Non-Handbook Guidance: Approving financial promotions

1. Read our guidance on approving the financial promotions of unauthorised persons. Firms which approve financial promotions are already required to ensure that those promotions comply with our rules, both in presentation and in substance. The guidance explains some practical implications of our existing requirements.
2. We have particular concerns about the promotion of unlisted debt securities or 'mini-bonds', although the broad principles outlined here are also likely to be relevant to approving financial promotions in other sectors. In our Dear CEO letter of 11 April 2019 we set out some examples of firms failing to meet our requirements when approving the financial promotions of retail investments (for example 'mini-bonds').

Background

3. We aim to deliver a consumer investment market that works well for the millions of people who stand to benefit from it, helping them to invest with confidence and save for planned and unexpected life events, and for the businesses in the real economy for which it provides essential funding.
4. Our Consumer Investments Strategy, published in September 2021, sets out our plan to achieve this. A key part of the strategy is addressing the harm from consumers investing in high-risk investments that do not match their risk tolerance.
5. The main way consumers build their understanding of the risks and regulatory protection associated with an investment is through the information they are given in a financial promotion when deciding whether to invest.
6. A financial promotion is an invitation or inducement to engage in investment activity (or claims management activity), that is communicated in the course of business. They can take a wide variety of forms, including adverts placed through print, broadcast or online media, marketing brochures, emails, websites or social media posts. For the purposes of this guidance, we are principally concerned with financial promotions that relate to investment business and are subject to the financial promotion rules in COBS 4, although the broad principles outlined here are also likely to be relevant to approving financial promotions in other sectors.
7. The financial promotion restriction in section 21 (s21) of the Financial Services and Markets Act 2000 (FSMA) means that a person must not communicate an invitation or inducement to engage in investment activity (or claims management activity), unless:
 - the person is an authorised person, i.e. generally authorised by the FCA or the Prudential Regulation Authority (PRA) under Part 4A of FSMA to carry on certain regulated activities;
 - the promotion has been approved by an authorised person, i.e. a s21 approver; or

- an exemption in the Financial Promotion Order (FPO) applies.

Introduction

8. On this page, where we refer to a 'firm', we mean an authorised person approving a financial promotion of, and for communication by, an unauthorised person. Where we refer to a 'product provider', we mean an unauthorised provider of retail investment products (eg, a company issuing a bond) that has its financial promotions approved by a firm.
9. If you intend to begin approving the financial promotions of unauthorised persons, you should consider whether this is something you need to tell us about in accordance with Principle 11 (relations with regulators).
10. We have permanently banned the mass marketing of speculative mini-bonds to retail consumers from 1 January 2021, to prevent consumer harm. Read our Policy Statement [here](#).

Ensuring that a promotion is fair, clear and not misleading

11. Before a firm approves a financial promotion for communication by an unauthorised person, it must confirm that the financial promotion complies with our financial promotion rules (COBS 4.10.2 R (1)). This is also true of firms which approve their own financial promotions for communication by unauthorised persons (see PERG 8.9.3 G).
12. All financial promotions must be fair, clear and not misleading (COBS 4.2.1 R). This means that you must not approve the content of a financial promotion for communication by an unauthorised person, unless you are satisfied that the promotion is fair, clear and not misleading.
13. To be in a position to confirm this, you should consider both:
 - the presentation of the promotion (eg, whether the risk warnings are given sufficient prominence)
 - the substance (eg, the fairness and veracity of claims made and whether these can be substantiated)
14. You should therefore analyse, and carry out due diligence regarding, the substance of a promotion before approving its content for communication by an unauthorised person. The extent and substance of the analysis and diligence needed to be able confirm that a promotion is fair, clear and not misleading will vary from case-to-case and will depend on the form and content of the promotion.
15. When assessing whether a promotion is fair, clear and not misleading, a firm may need to consider (among other things):
 - The authenticity of the proposition described in the relevant promotion. This may mean undertaking background checks on directors, controllers or other key individuals associated with the product provider.

- The commercial viability of the proposition described in the promotion. Has the promotion adequately disclosed any significant factors that could threaten the product's viability? Could potential investors make an informed decision about investment?
- Whether advertised or headline rates of return are reasonably capable of being achieved. This may mean reviewing materials such as the product provider's financial statements and/or management accounts, business plan, financial projections and capital position.
- Whether there are any fees, commissions or other charges within the investment's structure or elsewhere that could materially affect the ability of the product provider to deliver advertised or headline rates of return.
- If the product is advertised as being eligible for a particular tax treatment (eg, for inclusion within an Innovative Finance ISA), does the product actually meet the requirements for this treatment? (For tax treatment, see also COBS 4.5.7 R; COBS 4.5A.8 UK)

16. In assessing whether a financial promotion is fair, clear and not misleading, a firm should consider the guidance in COBS 4. In particular, firms are reminded that COBS 4.2.5 G states that 'a financial promotion should not describe a feature of a product or service as 'guaranteed', 'protected' or 'secure', or use a similar term unless:

- that term is capable of being a fair, clear and not misleading description of it, and
- 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.

17. This means that where an investment is described in a promotion as 'secured' or 'asset-backed' (or equivalent), you should consider whether the promotion contains the information necessary to enable investors to:

- understand how such protection operates, and
- assess any potential weaknesses or deficiencies in it

18. This may involve taking steps to ascertain the likelihood of any security being sufficient to cover investors' investments (eg, capital repayments, interest payments).

19. You are also reminded of the importance of being clear with investors about the extent to which a product or service is regulated. A financial promotion that you approve for a product provider should not suggest or imply that the product provider's activities (eg, issuing bonds) are regulated if they are not (COBS 4.2.4 G (4)). We wrote separately to firms in January 2019 on the importance of being clear with consumers about the extent of regulation applicable to products or services. Ensuring that a promotion complies with the financial promotion rules COBS 4 also contains other requirements applying to different types of financial promotion.

20. A firm approving a financial promotion must confirm that the promotion complies with all applicable financial promotion rules (COBS 4.10.2 R (1)). In particular, a financial promotion that is likely to be received by a retail client must give a fair and prominent indication of relevant risks when referencing potential benefits (COBS 4.5.2 R (2); COBS 4.5A.3 UK).

21. On the need to ensure that risk warnings are afforded sufficient prominence within financial promotions, firms are reminded of our guidance.

- 22.** When approving a financial promotion, you should form your own view of the risks associated with an investment in order to confirm that this requirement is satisfied (ie, that the promotion gives sufficient prominence to all relevant risks). You should not assume that the product provider has done so.
- 23.** Where a financial promotion contains certain types of comparison, the firm approving the promotion must ensure that such comparisons are meaningful and presented in a fair and balanced way (COBS 4.5.6 R); COBS 4.5A.7 UK). This would include, for example, where a retail investment product is compared to a bank savings account. The promotion should contain enough information to enable prospective investors to make an informed decision.

Name of s21 Approver

- 24.** S21 approvers are required by our rules in COBS 4.5.2R to ensure a financial promotion to a retail client includes the name of the firm that approved the promotion. This information is important to consumers so that they can confirm the identity of the authorised firm on the FCA's Financial Services Register. S21 approvers must also ensure that the financial promotion clearly states on its face the date on which it was approved.
- 25.** We expect firms to give sufficient prominence to the name of the firm that approved the financial promotion to assist consumers should they wish to confirm the identity of the approving firm to understand who is responsible for ensuring the financial promotion complies with applicable FCA rules.
- 26.** When promotions are placed on digital media, firms may encounter space limitations, for example, on mobile phones. In these instances, firms are permitted to display text on the face of the promotion that refers to the approver's FRN number, instead of the full name and date of approval. This text must include a link that opens a web page where the firm's full name and the date of the approval is displayed. The format to be used is 'Approver FRN xxxxxx' (the firm's relevant number to be inserted).

Reliance on others

- 27.** When approving a financial promotion of, and for communication by, an unauthorised person, it is unlikely to be appropriate to accept at face value information provided by the unauthorised person. You should form your own view as to whether the promotion complies with our financial promotion rules.
- 28.** That said, in carrying out the types of assessment and analysis described here, you may be able to rely on information and analysis prepared by independent professional advisers on behalf of the unauthorised person. You should consider the appropriateness of relying on this type of information on a case-by-case basis.

Social media and digital communications

- 29.** Retail investment product providers are increasingly relying on social media and other forms of digital communication to promote their products. Firms approving financial promotions for communication through this type of channel are reminded of our guidance (FG15/4).

Systems and controls

- 30.** COBS 4.10.1 G reminds firms that approve financial promotions that they should have in place systems and controls or policies and procedures, or an effective internal control system, in order to comply with our financial promotion rules in COBS 4.
- 31.** You are also reminded of the importance of maintaining adequate records of the financial promotions which you approve (COBS 4.11.1 R (1)). When you approve a financial promotion, you should consider recording how the promotion complies with our rules (COBS 4.11.2 G).

Ongoing monitoring

- 32.** A firm that has approved a financial promotion is also required to take reasonable steps to monitor the continuing compliance of the financial promotion with the financial promotion rules for the lifetime of the promotion (COBS 4.10.2 R), i.e. not just at the point of approval. This means that a s21 approver is expected to monitor each financial promotion it has approved periodically to assess whether (among other things and as applicable):
- there have been any changes to the promotion, which mean it is no longer being lawfully communicated
 - there have been any changes which may affect whether the promotion continues to be fair, clear and not misleading, including consideration of the ongoing commercial viability of the proposition described in the promotion, and whether the headline rates of return in the promotion continue to be reasonably achievable
 - funds raised are being used for the purposes described in the promotion
 - any new and relevant requirements, i.e. that have come into force post-approval, are being complied with.
- 33.** If at any time the firm becomes aware that the approved promotion no longer complies with the financial promotion rules – through its monitoring activity or otherwise – it must withdraw its approval and notify any person known to be relying on its approval (COBS 4.10.2 R (2)).
- 34.** As part of the ongoing monitoring requirements, firms that have approved promotions for unauthorised persons are also required to collect quarterly attestations of 'no material change' from the unauthorised persons for whom they have approved promotions (COBS 4.10.2R(1B)). Where a client is unable to provide the attestation, because there have been material changes or the client is unresponsive, the firm should consider all information available to it and where appropriate consider withdrawing its approval. Firms cannot rely solely on attestations of no material

change to meet their responsibilities under the ongoing monitoring requirement and should take reasonable steps to satisfy themselves that approved promotions remain compliant.

- 35.** The ongoing monitoring requirement applies to firms for the lifetime of the approved promotion, so it is in a better position to withdraw its approval if necessary.

High-risk investments

- 36.** A s21 approver may approve a direct offer financial promotion relating to a restricted mass market investment or a financial promotion relating to a non-mass market investment for communicating to a retail client. In this case, the s21 approver must take reasonable steps to ensure, on a continuing basis, that the detailed conditions applying to such promotions (in COBS 4.12A and 4.12B) are being satisfied (COBS 4.10.2A R (2)).

Appropriateness assessments

- 37.** Where the rules on restricted mass market investments require an appropriateness assessment to be undertaken, s21 approvers must ensure that the relevant automated, or other, processes for appropriateness tests comply with our rules periodically throughout the life of the promotion, not just at the point of first approval (where the s21 approver will not itself carry out the appropriateness assessment). We would expect firms to consider the following in reviewing the processes in place to assess appropriateness – where this is to be undertaken by a person other than the s21 approver – that the person who will undertake the assessment has:
- adequate systems and controls in place to assess the knowledge and experience of the customer
 - adequate systems and controls in place to assess the customer's understanding of the risks involved with the product or service
 - adequate systems and controls in place to record the customer's information (see also COBS 4.11.6 R which requires a s21 approver to take reasonable steps to ensure that adequate records are made and are available to it).
- 38.** An assessment of what is adequate should be objective and unbiased. If a firm is not satisfied with any of the above, having conducted its checks or via any other information it has available to it, it must withdraw its approval.

Preliminary suitability assessments (NMMI promotions)

- 39.** Firms approving financial promotions for NMMI products must conduct a preliminary assessment of suitability before an unauthorised person can communicate a promotion to a high-net worth or self-certified sophisticated investor. The s21 approver should take reasonable steps to acquaint itself with the intended client's profile and objectives as stated in COBS 4.12B.9G 2(c).

- 40.** This may include a s21 approver having sight of the following information in relation to the client, which is not an exhaustive list:
- knowledge and history of investing in the type of product in question
 - financial circumstances
 - investment objectives
- 41.** If a firm is not satisfied that the NMMI product is likely to be suitable for the client, having conducted a preliminary assessment of suitability, or via any other information it has available to it, it should not grant its approval for the promotion.

Competence & Expertise

- 42.** We expect firms to have persons with the relevant competence and expertise (C&E) in-house before approving or communicating a financial promotion (PRIN 2, SYSC 3.1.6 R and SYSC 5.1.1 R). In assessing whether it has the relevant competence and expertise to communicate or approve a particular financial promotion a firm should, as a minimum, consider:
- whether the firm has adequate resources, systems and controls in place to approve and monitor the financial promotion, particularly when the firm is approving volumes of promotions
 - whether it has relevant experience and/or qualifications in the investment product/sector that is the subject of the financial promotion
 - the previous employment history and qualifications of the individuals responsible for approving promotions and whether they align with the product and sector underlying the promotion.
- 43.** Where the promotion is related to a regulated activity for which the firm has a Part 4A permission (e.g. dealing in investments) in relation to the relevant type of investment, we would generally expect the firm to have met the C&E requirement by virtue of its regulated business. However, we expect firms to take particular care when considering their competence and expertise and when approving financial promotions related to new or innovative products in their respective fields.
- 44.** We require that the firm self-assesses that they have the necessary C&E with regard to the investment product itself, but not necessarily C&E with regard to any specific commercial sector/s underlying the investment. For example, a firm approving a promotion of an unlisted equity share should have C&E in relation to unlisted equities, but is not required to assess whether it has C&E in farming or mining business, for example, if the underlying business to which the share offer relates is in these sectors.
- 45.** Firms are also reminded of the importance of maintaining adequate records of the financial promotions which they approve (COBS 4.11.1 R (1)). This includes making an adequate record of how the firm has met the competence and expertise rule when communicating or approving a financial promotion (COBS 4.11.1R (2B)).

Conflicts of Interest

- 46.** Firms approving financial promotions are required to identify and prevent or manage any conflicts of interest relevant to s21 approval activity (COBS 4.10.12R).

Complying with FCA requirements

- 47.** Our guidance on approving financial promotions is not exhaustive and is not a complete description of the steps which you should take when approving a financial promotion relating to a retail investment. It is up to you to determine the extent of the analysis or review needed to confirm that a financial promotion complies with our rules on a case-by-case basis.
- 48.** Where we identify a financial promotion that has been approved by a firm but that does not meet our requirements, there are a range of steps which we can take. These include:
- Asking the firm that approved the promotion to ensure that it is changed or withdrawn.
 - Directing the firm to withdraw its approval of the financial promotion using the power in section 137S of the Financial Services and Markets Act 2000.
 - Opening an Enforcement investigation which, if we find serious misconduct, may lead to Enforcement action such as a financial penalty.

Annex 3

Abbreviations used in this paper

Abbreviation	Description
AR	Appointed Representative
CBA	Cost benefit analysis
CP	Consultation Paper
COBS	Conduct of Business Sourcebook
DP	Discussion Paper
FCA	Financial Conduct Authority
FSCS	Financial Services Compensation Scheme
FOS	Financial Ombudsman Service
FPO	Financial Promotion Order
FSMA	Financial Services and Markets Act
IBCF	Investment-Based Crowdfunding
LTAF	Long Term Asset Fund
NMMI	Non-Mass Market Investment
NMPI	Non-Mainstream Pooled Investment
NRRS	Non-Readily Realisable Security
P2P	Peer-to-Peer
RMMI	Restricted Mass Market Investment
RRS	Readily Realisable Security
SIS	Speculative Illiquid Security
SME	Small and Medium-sized Enterprises
S21 approver	Section 21 Approver

Abbreviation	Description
UCIS	Unregulated Collective Investment Scheme

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Appendix 1

Made rules (legal instrument)

FINANCIAL PROMOTIONS AND HIGH-RISK INVESTMENTS INSTRUMENT 2022

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137D (FCA general rules: product intervention);
 - (c) section 137R (Financial promotion rules);
 - (d) section 137T (General supplementary powers);
 - (e) section 138C (Evidential provisions);
 - (f) section 139A (Power of the FCA to give guidance);
 - (g) section 238(5) (Restrictions on promotion);
 - (h) section 247 (Trust scheme rules);
 - (i) section 248 (Scheme particulars rules);
 - (j) section 261I (Contractual scheme rules);
 - (k) section 261J (Contractual scheme particulars rules); and
 - (2) regulation 6(1) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228).
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Commencement

- C. The following parts of this instrument come into force on 1 December 2022:
- (1) Part 1 of Annex A; and
 - (2) Part 1 of Annex C.
- D. All other parts of this instrument come into force on 1 February 2023.

Amendments to the Handbook

- E. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes in this instrument listed in column (2) below.

(1)	(2)
Glossary of definitions	Annex A
General Provisions (GEN)	Annex B
Conduct of Business sourcebook (COBS)	Annex C
Banking: Conduct of Business sourcebook (BCOBS)	Annex D

Collective Investment Schemes sourcebook (COLL)	Annex E
Credit Unions sourcebook (CREDS)	Annex F
Listing Rules sourcebook (LR)	Annex G

Amendments to material outside the Handbook

- F. The Perimeter Guidance manual (PERG) is amended in accordance with Annex H to this instrument.

Notes

- G. In the Annexes to this instrument, the “notes” (indicated by “**Note:**” or “*Editor’s note:*”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- H. This instrument may be cited as the Financial Promotions and High-Risk Investments Instrument 2022.

By order of the Board
29 July 2022

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Part 1: Comes into force on 1 December 2022

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>local authority security</i>	any of the following: (a) a <i>non-readily realisable security</i> or <i>non-mass market investment</i> (other than a <i>unit</i> in an <i>unregulated collective investment scheme</i>) issued, or to be issued, by a <i>local authority</i>; (b) a <i>P2P agreement</i> entered, or to be entered, into by a <i>local authority</i> as <i>borrower</i>; (c) a <i>P2P portfolio</i> consisting exclusively of agreements entered, or to be entered, into by one or more <i>local authorities</i> as <i>borrower</i>.
<i>non-mass market investment</i>	either of the following: (a) a <i>non-mainstream pooled investment</i>; (b) a <i>speculative illiquid security</i>.
<i>restricted mass market investment</i>	any of the following: (a) a <i>non-readily realisable security</i>; (b) a <i>P2P agreement</i>; (c) a <i>P2P portfolio</i>.

Part 2: Comes into force on 1 February 2023

Amend the following definitions as shown.

<i>certified high net worth investor</i>	a person who meets the requirements <u>set out in article 21 of the <i>Promotion of Collective Investment Schemes Order</i>, in article 48 of the <i>Financial Promotion Order</i> or in COBS 4.12.6R 4.12B.38R.</u>
<i>certified sophisticated investor</i>	a person who meets the requirements set out in article 23 of the <i>Promotion of Collective Investment Schemes Order</i> , in article 50 of the <i>Financial</i>

~~Promotions Order~~ Financial Promotion Order or in COBS 4.12.7R
4.12B.39R.

*controlled
activity*

...

- (e) ~~arranging (bringing about) deals in investments~~ arranging (bringing about) deals in investments (paragraph 4(1));
- (f) ~~making arrangements with a view to transactions in investments~~ making arrangements with a view to transactions in investments (paragraph 4(2));

...

- (g) ~~managing investments~~ managing investments (paragraph 5);

...

- (i) ~~advising on investments (except P2P agreements)~~ advising on investments (except P2P agreements) (paragraph 7(1));

...

*investment
trust*

a company which:

- (a) ...
- (b) (for the purposes of COBS 4.14 4.12B and the definitions of *non-mainstream pooled investment* and *packaged product* only) is resident in an *EEA State* and would qualify for such approval if resident in the *United Kingdom*.

*non-readily
realisable
security*

a security which is not any of the following:

...

- (c) a ~~non-mainstream pooled investment~~ non-mass market investment;

...

- (e) a deferred share issued by a *credit union*; or

- (f) *credit union subordinated debt*; ~~or~~

- (g) ~~a speculative illiquid security~~. [deleted]

(except in COBS 4.14 4.12B, *COLL* and for the purposes of the definition of *non-readily realisable security*):

	...
<i>readily realisable security</i>	(in <i>COBS</i> 4.14 4.12B , <i>COLL</i> and for the purposes of the definition of <i>non-readily realisable security</i>):
	...
<i>retail investment product</i>	... whether or not any of (a) to (h) are held within an <i>ISA</i> or a <i>CTF</i> . [Note: Section 238 of the <i>Act</i> and <i>COBS</i> 4.12.3R 4.12B set out restrictions on the promotion of <i>non-mainstream pooled investments</i> <i>non-mass market investments</i> to retail clients. See also <i>COBS</i> 9.3.5G and <i>COBS</i> 9A.2.22G (<i>Non-mainstream pooled investments</i> <i>Investments subject to restrictions on retail distribution</i>).]
<i>self-certified sophisticated investor</i>	a person who meets the requirements set out in article 23A of the <i>Promotion of Collective Investment Schemes Order</i> , in article 50A of the <i>Financial Promotions Order</i> <i>Financial Promotion Order</i> or in <i>COBS</i> 4.12.8R 4.12B.40R .
<i>single company</i>	a single company that is not part of the same group as the single-company holding vehicle investing in it and which:
	(a) ...
	(b) does not undertake any of the activities in <i>COBS</i> 4.14.20R(2)(a) to (e) 4.12B.50R(2)(a) to (e) subject to <i>COBS</i> 4.14.22R 4.12B.52R and <i>COBS</i> 4.14.24R(1) 4.12B.54R(1) (for these purposes, <i>COBS</i> 4.14.20R(2)(a) to (e) 4.12B.50R(2)(a) to (e) , <i>COBS</i> 4.14.22R 4.12B.52R and <i>COBS</i> 4.14.24R(1) 4.12B.54R(1) must be read as though references to the issuer are to the single company).
<i>single- company holding vehicle</i>	a single body corporate which: ...
	(3) ensures that neither the single company, nor members of its group, will use any of the monies received from the single-company holding vehicle directly or indirectly for one or more of the purposes in <i>COBS</i> 4.14.20R(2) 4.12B.50R(2) as modified by limb (b) of the single company Glossary definition.

speculative has the meaning in *COBS* ~~4.14.20R~~ 4.12B.50R.
illiquid
security

Annex B

Amendments to the General Provisions (GEN)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2 **Interpreting the Handbook**

...

2.2 **Interpreting the Handbook**

...

Guidance applying while a firm has temporary permission

...

- 2.2.35A G *A TP firm should refer to the provisions listed below, which identify the rules and guidance in their sourcebooks that came into force after IP completion day and in respect of which special provision has been made to apply them to TP firms.*

...

~~COBS 4.12.3R~~ 4.12A.3R

~~COBS 4.14.1R~~ 4.12B.1R

...

...

Annex C

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Part 1: Comes into force on 1 December 2022

[Editor's note: The text in **bold** at COBS 4.7.6ER(3)(a)(i) is to appear as underlined.]

4.7 **Direct offer financial promotions and promotions of non-readily realisable securities and P2P agreements**

...

Non-readily realisable securities and P2P agreements

4.7.6C R (1) COBS 4.7.6DR to COBS 4.7.15G:

(a) apply to:

(i) TP firms; and

(ii) Gibraltar-based firms,

as they apply to a firm;

(b) do not apply in relation to a communication to the extent that it relates to a local authority security.

4.7.6D R A firm must not communicate or approve a financial promotion which relates to a non-readily realisable security, a P2P agreement or a P2P portfolio to, or for communication to, a retail client unless it contains a risk warning that complies with COBS 4.7.6ER.

4.7.6E R (1) For the purposes of COBS 4.7.6DR, 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.

- (2) Where the number of characters contained in the relevant 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*:

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.

- (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 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) The risk warning required by (1) or (2) and the risk summary required by (4)(b) must comply with COBS 4.7.6HR and COBS 4.7.6JR.

(7) The risk summary required by (3)(a)(ii) must comply with COBS 4.7.6LR and COBS 4.7.6NR.

4.7.6F G (1) Reference in COBS 4.7.6ER(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, a *person arranging investments* or an *operator of an electronic system in relation to lending*.

- (2) A firm relying on COBS 4.7.6ER(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 4.7.6ER(5)(c).

4.7.6G 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 4.7.6ER(4)(b)).

- (2) It is unlikely to be possible to comply with COBS 4.7.6ER(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 4.7.6ER(1).

Requirements of risk warnings and non-digital risk summaries

4.7.6H R (1) The relevant risk warning in COBS 4.7.6ER(1) or (2) and the relevant risk summary in COBS 4.7.6ER(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 4.7.6ER or COBS 4 Annex 1R.

- (2) The relevant risk warning in COBS 4.7.6ER(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.

4.7.6I 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/>

- 4.7.6J 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>]

- 4.7.6K G For the purposes of COBS 4.7.6JR, 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 risk summaries

- 4.7.6L R The relevant risk summary in COBS 4.7.6ER(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 Annex 1R;
- (3) statically fixed and visible in the middle of the screen; and
- (4) the main focus of the screen.

4.7.6M 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 summary will be displayed: <https://www.w3.org/WAI/WCAG21/quickref/>

4.7.6N 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 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>]

4.7.6O G For the purposes of COBS 4.7.6NR, design features which might reduce the visibility or prominence of a risk summary include, but are not limited to:

- (1) using a font size for the 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 risk summary;
- (4) placing the 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 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 risk summary from other forms of information.

...

Risk summaries

- 4.7.14 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.
- 4.7.15 G For the purposes of COBS 4.7.14R(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.

...

[*Editor's note:* The text in **bold** at COBS 4.12.17R (3)(a)(i) is to appear as underlined.]

4.12 **Restrictions on the promotion of non-mainstream pooled investments**

...

Restrictions on the promotion of non-mainstream pooled investments

4.12.3 R ...

- (2A) The restriction in (1) and the remaining *rules* in this section do not apply to *financial promotions* to the extent that they relate to *non-mainstream pooled investments* which are *local authority securities*.

...

...

4.12.14 G ...

Risk warning to be included in the financial promotion

4.12.15 R COBS 4.12.16R applies to *financial promotions* which:

- (1) relate to *non-mainstream pooled investments* unless the only *non-mainstream pooled investment* to which the *financial promotion* relates is:
 - (a) a *unit* in a *long-term asset fund*;
 - (b) a *security* in a *closed-ended investment fund* applying for, or with, a *premium listing* and which complies with the requirements of *LR 15*; and
- (2) are *communicated* to, or are to be *communicated* to, *certified high net worth investors*, *certified sophisticated investors* or *self-certified sophisticated investors*.

4.12.16 R A *firm* must not *communicate* or *approve* a *financial promotion* which relates to a *non-mainstream pooled investment* unless it contains a risk warning that complies with *COBS 4.12.17R*.

4.12.17 R (1) For the purposes of *COBS 4.12.16R*, 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 the risk summary in
COBS 4 Annex 1R(6) in a pop-up box (or equivalent)
relating to *non-mainstream pooled investments*;
- (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 the risk summary in COBS 4 Annex 1R(6)
relating to *non-mainstream pooled investments* 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 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) The risk warning required by (1) or (2) and the risk summary required by (4)(b) must comply with COBS 4.12.20R and COBS 4.12.22R.

(7) The risk summary required by (3)(a)(ii) must comply with COBS 4.12.24R and COBS 4.12.26R.

4.12.18 G (1) Reference in COBS 4.12.17R(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 4.12.17R(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 4.12.17R(5)(c).

4.12.19 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 4.12.17R(4)(b)).

Requirements of risk warnings and non-digital risk summaries

4.12.20 R (1) The relevant risk warning in COBS 4.12.17R(1) or (2) and the relevant risk summary in COBS 4.12.17R(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 4.12.17R or COBS 4 Annex 1R.

(2) The relevant risk warning in COBS 4.12.17R(1) or (2) must, if the financial promotion is, or is to be, communicated by means of a website or mobile communication:

- (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-mainstream pooled investment*.

4.12.21 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/>

4.12.22 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>]

4.12.23 G For the purposes of COBS 4.12.22R, 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 risk summaries

- 4.12.24 R The relevant risk summary in COBS 4.12.17R(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 Annex 1R;
 - (3) statically fixed and visible in the middle of the screen; and
 - (4) the main focus of the screen.
- 4.12.25 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 summary will be displayed: <https://www.w3.org/WAI/WCAG21/quickref/>
- 4.12.26 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 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>]

- 4.12.27 G For the purposes of COBS 4.12.26R, design features which might reduce the visibility or prominence of a risk summary include, but are not limited to:
- (1) using a font size for the 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 risk summary;
 - (4) placing the 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 risk summary to be seen;
 - (6) using a font or background in the 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 summary in the same colour as other forms of disclosure and standard information; the colour of the font and background should distinguish the risk summary from other forms of information.

Risk summaries

- 4.12.28 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.
- 4.12.29 G For the purposes of COBS 4.12.28R(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.

...

[*Editor's note:* The text in **bold** at COBS 4.14.8AR (3)(a)(i) is to appear as underlined.]

4.14 **Restrictions on the promotion of speculative illiquid securities to retail clients**

Application and purpose

...

- 4.14.3A R This section does not apply to a *financial promotion* to the extent that it relates to a *local authority security*.

...

Requirements governing the form and content of financial promotions for speculative illiquid securities

- 4.14.8 R Subject to *COBS* 4.14.5R and *COBS* 4.14.6R, a *firm* or *TP firm* must not *communicate* or *approve* a *financial promotion* which relates to a *speculative illiquid security* unless it contains:

- (1) a risk warning that complies with ~~*COBS* 4.14.9R~~ *COBS* 4.14.8AR;
- (2) if applicable, the date on which the *financial promotion* was *approved*; and
- (3) statements that comply with *COBS* 4.14.12R disclosing all costs, charges and commission.

- 4.14.8A R (1) For the purposes of *COBS* 4.14.8R(1), 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 the risk summary in *COBS* 4 Annex 1R(5) relating to *speculative illiquid securities* in a pop-up box (or equivalent);
- (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 the risk summary in COBS 4 Annex 1R(5) relating to *speculative illiquid securities* 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 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) The risk warning required by (1) or (2) and the risk summary required by (4)(b) must comply with COBS 4.14.8DR and COBS 4.14.8FR.

(7) The risk summary required by (3)(a)(ii) must comply with COBS 4.14.8HR and COBS 4.14.8JR.

4.14.8B G (1) Reference in COBS 4.14.8AR(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 4.14.8AR(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 4.14.8AR(5)(c).

4.14.8C 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 4.14.8AR(4)(b)).

Requirements of risk warnings and non-digital risk summaries

4.14.8D R (1) The relevant risk warning in COBS 4.14.8AR(1) or (2) and the relevant risk summary in COBS 4.14.8AR(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 4.14.8AR or COBS 4 Annex 1R.

(2) The relevant risk warning in COBS 4.14.8AR(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 speculative illiquid security.

4.14.8E G The FCA expects firms and TP 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/>

- 4.14.8F 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>]

- 4.14.8G G For the purposes of COBS 4.14.8FR, 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 risk summaries

- 4.14.8H R The risk summary in COBS 4.14.8AR(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 Annex 1R;

- (3) statically fixed and visible in the middle of the screen; and
- (4) the main focus of the screen.

4.14.8I G The FCA expects *firms* and *TP firms* to take account of the latest version of the international Web Content Accessibility Guidelines (WCAG) accessibility standard when designing how the risk summary will be displayed:
<https://www.w3.org/WAI/WCAG21/quickref/>

4.14.8J 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 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>]

4.14.8K G For the purposes of COBS 4.14.8JR, design features which might reduce the visibility or prominence of a risk summary include, but are not limited to:

- (1) using a font size for the 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 risk summary;
- (4) placing the 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 risk summary to be seen;
- (6) using a font or background in the 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 summary in the same colour as other forms of disclosure and standard information; the colour of the font and background should distinguish the risk summary from other forms of information.

Risk summaries

4.14.8L 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.

4.14.8M G For the purposes of COBS 4.14.8LR(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.

4.14.9 R (1) For the purposes of COBS 4.14.8R(1), and subject to COBS 4.14.9R(2) and COBS 4.14.9R(3), the financial promotion must contain the following risk warning: [deleted]

~~You could lose all of your money invested in this product.~~
~~This is a high-risk investment and is much riskier than a savings account.~~

- (2) Where the financial promotion contains a reference to an innovative finance ISA, the risk warning is as follows:

~~You could lose all of your money invested in this product.~~
~~This is a high-risk investment and is much riskier than a savings account.~~
~~ISA eligibility does not guarantee returns or protect you from losses.~~

- (3) ~~Where the number of characters contained in the risk warnings in this *rule* exceeds the character limit permitted by a third-party marketing provider, the following risk warning must be used:~~

You could lose all of your money invested in this product.

- (4) ~~Where the *financial promotion* does not appear on a website or mobile application, the risk warning must be provided in a *durable medium*.~~

4.14.10 R The relevant risk warning in *COBS* 4.14.9R must be: [deleted]

- (1) ~~prominent;~~
- (2) ~~contained within its own border and with bold and underlined text as indicated;~~
- (3) ~~if provided on a website or via a mobile application, statically fixed and visible at the top of the screen even when the *retail client* scrolls up or down the webpage; and~~
- (4) ~~if provided on a website, included on each linked webpage on the website.~~

4.14.11 G The relevant risk warning, including the font size, should be: [deleted]

- (1) ~~proportionate to the *financial promotion*, taking into account the content, size and orientation of the *financial promotion* as a whole; and~~
- (2) ~~published so that it is clearly legible against a neutral background.~~

...

Insert the following new annex, COBS 4 Annex 1, after COBS 4.14 (Restrictions on the promotion of speculative illiquid securities to retail clients). The text is not underlined.

4 Annex R Risk summaries 1

This Annex belongs to *COBS* 4.7.6ER, *COBS* 4.12.17R and *COBS* 4.14.8AR.

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* 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 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	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
	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 • 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.

2. You won't get your money back quickly

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

2	Risk summary for <i>P2P agreements</i> or <i>P2P portfolios</i>
	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 <u>high-risk investments</u>. [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 <i>non-readily realisable securities</i> which are <i>shares</i>
	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/]] [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 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 <u>high-risk investments</u>. [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 <u>here</u>. [https://www.fca.org.uk/investsmart]
4	Risk summary for <i>non-readily realisable securities</i> which are <i>debentures</i>
	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/]] 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/]] [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 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]
5	Risk summary for <i>speculative illiquid securities</i>
	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 <u>high-risk investments</u>. [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 <u>here</u>. [https://www.fca.org.uk/investsmart] For further information about minibonds, visit the FCA's website <u>here</u>. [https://www.fca.org.uk/consumers/mini-bonds]
6	Risk summary for <i>non-mainstream pooled investments</i>
	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 <u>here</u>. [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/]] 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/]] • [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 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]
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	If you are interested in learning more about how to protect yourself, visit the FCA’s website <u>here</u>. [https://www.fca.org.uk/investsmart] [For further information about unregulated collective investment schemes (UCIS), visit the FCA’s website <u>here</u>. [https://www.fca.org.uk/consumers/unregulated-collective-investment-schemes]]
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Part 2: Comes into force on 1 February 2023**1 Application****1.1 General application**

...

Deposits (including structured deposits)

1.1.1A R ...

	Section / chapter	Application in relation to deposits
...		
(4)	COBS 4.10 (Systems and controls and approving and communicating) <u>Approving and confirming compliance of financial promotions</u>	To the extent that other <i>rules</i> in <i>COBS 4</i> apply.
...		

...

2 Conduct of business obligations

...

2.2 Information disclosure before providing services (other than MiFID and insurance distribution)

Application

2.2.-1 R ...**(2) ...**

- (a) in relation to a *derivative*, a *warrant*, a *non-readily realisable security*, a ~~*speculative illiquid security*~~ *non-mass market investment*, a *P2P agreement*, or *stock lending activity*, but as regards the matters in *COBS 2.2.1R(1)(b)* only; and

...

- (3) Where a *rule* in this section applies to a *firm* carrying on *designated investment business* in relation to a ~~*speculative illiquid security non-mass market investment*~~ the *rule* also applies to:
- (a) a *TP firm* (to the extent that the *rule* does not already apply to such a *TP firm* as a result of *GEN 2.2.26R*); and
 - (b) a ~~Gibraltar-based firm (having the same meaning as in the Gibraltar Order)~~ *Gibraltar-based firm* to the extent that the *rule* does not already apply to such a ~~Gibraltar-based firm~~ *Gibraltar-based firm* as a result of *GEN 2.3.1R*).

...

4 Communicating with clients, including financial promotions

4.1 Application

Who? What?

...

- 4.1.1B R (1) *TP firms* must comply with the *rules* in (3) 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) 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).
- 4.1.1C 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*.

...

4.5 Communicating with retail clients (non-MiFID provisions)

...

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;
 - ...
- 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*.
- ...

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:
- ...
- (2) ...
- (b) a request for transfer of all or part of the *innovative finance components* in the *innovative finance ISA*; ~~and~~
- (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)*).

...

4.7 Direct offer financial promotions ~~and promotions of non-readily realisable securities and P2P agreements~~

[*Editor's note:* *COBS 4.7.6CR* to *COBS 4.7.15G* are deleted in their entirety, as shown below. Equivalent provisions now appear at *COBS 4.12A*.]

Non-readily realisable securities and P2P agreements

- 4.7.6C R ~~(1)~~ ~~*COBS 4.7.6DR* to *COBS 4.7.15G*: [deleted]~~
- (a) apply to:
- (i) *TP firms*; and
- (ii) *Gibraltar-based firms*,
- as they apply to a *firm*;
- (b) ~~do not apply in relation to a communication to the extent that it relates to a *local authority security*.~~
- 4.7.6D R ~~A *firm* must not communicate or approve a financial promotion which relates to a *non-readily realisable security*, a *P2P agreement* or a *P2P portfolio* to, or for communication to, a *retail client* unless it contains a risk~~

warning that complies with ~~COBS 4.7.6ER, COBS 4.7.6HR and COBS 4.7.6JR~~. ~~[deleted]~~

- 4.7.6E R (1) For the purposes of ~~COBS 4.7.6DR~~, the *financial promotion* must contain: ~~[deleted]~~
- (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.~~**
- (2) Where the number of characters contained in the relevant 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*:
- ~~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.~~**
- (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 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) ~~The risk warning required by (1) or (2) and the risk summary required by (4)(b) must comply with COBS 4.7.6HR and COBS 4.7.6JR.~~
- (7) ~~The risk summary required by (3)(a)(ii) must comply with COBS 4.7.6LR and COBS 4.7.6NR.~~
- 4.7.6F G (1) ~~Reference in COBS 4.7.6ER(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, a person arranging investments or an operator of an electronic system in relation to lending. [deleted]~~
- (2) ~~A firm relying on COBS 4.7.6ER(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 4.7.6ER(5)(c).~~
- 4.7.6G 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 4.7.6ER(4)(b)). [deleted]~~
- (2) ~~It is unlikely to be possible to comply with COBS 4.7.6ER(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 4.7.6ER(1).~~

Requirements of risk warnings and non-digital risk summaries

- 4.7.6H R (1) ~~The relevant risk warning in COBS 4.7.6ER(1) or (2) and the relevant risk summary in COBS 4.7.6ER(4)(b) must: [deleted]~~
- (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 4.7.6ER or COBS 4 Annex 1R.~~

- (2) The relevant risk warning in *COBS 4.7.6ER*(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.

4.7.6I 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/> [deleted]

4.7.6J 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. [deleted]

[**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>]

- 4.7.6K G For the purposes of *COBS 4.7.6JR*, design features which might reduce the visibility or prominence of a risk warning or risk summary include, but are not limited to: [deleted]
- (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 risk summaries

- 4.7.6L R The relevant risk summary in *COBS* 4.7.6ER(3)(a)(ii) must be: [deleted]
- (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 Annex 1R;
 - (3) statically fixed and visible in the middle of the screen; and
 - (4) the main focus of the screen.
- 4.7.6M 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 summary will be displayed: <https://www.w3.org/WAI/WCAG21/quickref/> [deleted]
- 4.7.6N 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 summary. [deleted]

[**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>]

- 4.7.6O G For the purposes of *COBS* 4.7.6NR, design features which might reduce the visibility or prominence of a risk summary include, but are not limited to: [deleted]
- (1) using a font size for the 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 risk summary;

- (4) placing the 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 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 risk summary from other forms of information.

- 4.7.7 R (1) Unless permitted by *COBS 4.7.8R*, a *firm* must not *communicate or approve a direct offer financial promotion* relating to a *non-readily realisable security*, a *P2P agreement* or a *P2P portfolio* to or for communication to a *retail client* without the conditions in (2) and (3) being satisfied. [deleted]
- (2) The first condition is that the *retail client* recipient of the *direct offer financial promotion* is one of the following:
- (a) certified as a 'high net worth investor' in accordance with *COBS 4.7.9R*;
 - (b) certified as a 'sophisticated investor' in accordance with *COBS 4.7.9R*;
 - (c) self-certified as a 'sophisticated investor' in accordance with *COBS 4.7.9R*; or
 - (d) certified as a 'restricted investor' in accordance with *COBS 4.7.10R*.
- (3) The second condition is that the *firm* itself or:
- (a) the *person* who will *arrange or deal* in relation to the *non-readily realisable security*; or
 - (b) the *person* who will facilitate the *retail client* becoming a *lender* under a *P2P agreement* or a *P2P portfolio*;

will comply with the *rules* on appropriateness (see *COBS 10* and *COBS 10A*) or equivalent requirements for any application or order that the *firm* or *person* is aware, or ought reasonably to be aware, is in response to the *direct offer financial promotion*.

- 4.7.8 R ~~A firm may communicate or approve a direct offer financial promotion relating to a non-readily realisable security, a P2P agreement or a P2P portfolio to or for communication to a retail client if: [deleted]~~
- (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.~~
- 4.7.9 R (1) ~~A certified high net worth investor, a certified sophisticated investor or a self-certified sophisticated investor is an individual who has signed, within the period of twelve months ending with 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): [deleted]~~
- (a) ~~certified high net worth investor: COBS 4.12.6R;~~
 - (b) ~~certified sophisticated investor: COBS 4.12.7R;~~
 - (c) ~~self-certified sophisticated investor: COBS 4.12.8R.~~
- (2) ~~Each of the statements in (1), when used in relation to non-readily realisable securities, P2P agreements or a P2P portfolio, must, as appropriate, be modified as follows:~~
- (a) ~~in all of the statements, any references to “non-mainstream pooled investments” must be replaced with references to “non-readily realisable securities” or “P2P agreements or P2P portfolios”, as applicable;~~
 - (b) ~~in the statement in COBS 4.12.8R, the reference to “unlisted company” must be replaced with a reference to “P2P agreement or P2P portfolio”; and~~
 - (c) ~~in the statement in COBS 4.12.8R, the reference to “private equity sector, or in the provision of finance for small and medium enterprises” must be replaced with a reference to “provision of finance, resulting in an understanding of the P2P agreements or P2P portfolios to which the promotions will relate.”~~
- 4.7.10 R ~~A certified restricted investor is an individual who has signed, within the period of twelve months ending with the day on which the communication is made, a statement in the following terms, substituting “P2P agreements~~
-

or P2P portfolios” for “non-readily realisable securities”, as appropriate:
[deleted]

“RESTRICTED INVESTOR STATEMENT	
I make this statement so that I can receive promotional communications relating to non-readily realisable securities as a restricted investor. I declare that I qualify as a restricted investor because:	
(a)	in the twelve months preceding the date below, I have not invested more than 10% of my net assets in non-readily realisable securities; and
(b)	I undertake that in the twelve months following the date below, I will not invest more than 10% of my net assets in non-readily realisable securities.
Net assets for these purposes do not include:	
(a)	the property which is my primary residence or any money raised through a loan secured on that property;
(b)	any rights of mine under a qualifying contract of insurance; or
(c)	any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependants are), or may be entitled; or
(d)	any withdrawals from my pension savings (except where the withdrawals are used directly for income in retirement).
I accept that the investments to which the promotions will relate may expose me to a significant risk of losing all of the money or other property invested. I am aware that it is open to me to seek advice from an authorised person who specialises in advising on non-readily realisable securities.	
Signature:	
Date:”	

- 4.7.11 G ~~COBS 4.7.7R 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. [deleted]~~
- 4.7.11A G ~~COBS 4.7.7R does not apply to speculative illiquid securities. Firms, TP firms and Gibraltar based firms (having the same meaning as in the~~

~~Gibraltar Order~~) are reminded of the restrictions on financial promotions in relation to speculative illiquid securities in COBS 4.14. [deleted]

- 4.7.12 G ~~Where a firm communicates or approves direct offer financial promotions relating to both non-readily realisable securities and P2P agreements or P2P portfolios, the condition in COBS 4.7.7R(2) may be satisfied by the retail client signing a combined statement that meets the requirements in COBS 4.7.9R or COBS 4.7.10R, as applicable, in respect of both non-readily realisable securities and P2P agreements or P2P portfolios. [deleted]~~
- 4.7.13 G ~~In relation to a P2P agreement or a P2P portfolio, a firm may communicate to a retail client information about a P2P agreement or a P2P portfolio before needing to satisfy the conditions in COBS 4.7.7R(2) and (3), 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 18.12.28R, including information about: [deleted]~~
- ~~(1) the identity of the borrower(s);~~
 - ~~(2) 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;~~
 - ~~(3) the term;~~
 - ~~(4) the risk categorisation; and~~
 - ~~(5) a description of any security interest, insurance, guarantee or other risk mitigation measures adopted by the firm.~~

Risk summaries

- 4.7.14 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: [deleted]~~
- ~~(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.~~

- 4.7.15 G ~~For the purposes of COBS 4.7.14R(2), the following reasons are considered to be valid: [deleted]~~
- (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.~~

...

4.10 ~~Systems and controls and approving and communicating~~ Approving and confirming compliance of financial promotions

Systems and controls

4.10.1 G ...

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*.

4.10.2 R (1) ...

- (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>]

(1B) 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.

(1C) 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.

...

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.

4.10.3 G ...

(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*.

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).

...

4.10.7A 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).

...

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.
- 4.10.9B R (1) 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.
- (2) 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.

...

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*; or
- (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.

...

- (2A) ~~If a *firm* communicates or approves an invitation or inducement to participate in, acquire, or underwrite a *non-mainstream pooled investment* which is addressed to or disseminated in such a way that it is likely to be received by a *retail client*: [deleted]~~

[Editor's note: This provision now appears with minor amendments at COBS 4.11.4R]

- ~~(a) 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 invitation or inducement complies with the restrictions set out in section 238 of the *Act* and in COBS 4.12.3R, as applicable;~~
- ~~(b) the making of the record required in (a) 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 invitation or inducement;~~
- ~~(c) when making the record required in (a), the *firm* must make a record of which exemption was relied on for the purposes of the invitation or inducement, together with the reason why the *firm* is satisfied that that exemption applies;~~
- ~~(d) where the *firm* relies on an exemption that requires investor certification and warnings to investors, the record required in~~

~~(a) 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;~~

- ~~(e) if the exemption relied on is that for an *excluded communication* under COBS 4.12.4R(5), the *firm* must identify in the record required in (a) which type of *financial promotion* defined as an *excluded communication* corresponds to the invitation or inducement 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 invitation or inducement, together with the reason why the *firm* is satisfied that the exemption applies;~~

- (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.

...

...

[*Editor's note:* The provision at COBS 4.11.4R is not new; it is moved with minor amendments from COBS 4.11.1R(2A).]

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.

COBS 4.12 (Restrictions on the promotion of non-mainstream pooled investments) is deleted in its entirety. The deleted text is not shown but the section is marked deleted, as shown below.

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

4.12 ~~Restrictions on the promotion of non-mainstream pooled investments~~ [deleted]

Insert the following new sections COBS 4.12A and COBS 4.12B after COBS 4.12 (Restrictions on the promotion of non-mainstream pooled investments). The text is not underlined.

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 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.
- 4.12A.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.

- (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*:

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.

- (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 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) 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.

4.12A.12 G (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 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*.
- 4.12A.15 R (1) Unless permitted by COBS 4.12A.17R and subject to (2) and (3), 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.

4.12A.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* to a particular *retail client*;
- (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 *COBS* 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.

- 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) 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.

- (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) 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) 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 (2)(a) 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.

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 ‘high net worth investor’;
 - (2) certified as a ‘sophisticated investor’;
 - (3) self-certified as a ‘sophisticated investor’; or
 - (4) certified as a ‘restricted 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 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*.
- 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*; or
 - (b) facilitate the *retail client* becoming a *lender* under a *P2P agreement* or a *P2P portfolio*,

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 the ‘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
 - (a) 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
- (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).

- 4.12A.35 G (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 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/>

4.12A.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) 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 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/>
- 4.12A.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) 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.

This list is not exhaustive.

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* other than a *unit* in a *long-term asset fund*; 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
<i>COBS</i> 4.12B.6R	<i>Firms must not communicate or approve financial promotions in relation to non-mass market investments to retail clients</i>	All <i>non-mass market investments</i> other than <i>units in unregulated collective investment schemes</i>	At all times.
<i>COBS</i> 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 <i>COBS</i> 4.12B.7R(5)
<i>COBS</i> 4.12B.14R and <i>COBS</i> 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 (1) <i>units in long-term asset funds</i> ; and (2) in relation to the personalised risk warning and summary of risks, <i>securities in a closed-ended investment fund</i> applying for, or with, a <i>premium listing</i> and which	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 <i>COBS</i> 4.12B.7R(5)

		complies with the requirements of LR 15	
<i>COBS 4.12B.17R</i>	Restrictions on monetary and non-monetary benefits being included within the <i>financial promotions</i>	All <i>non-mass market investments</i> except for <i>units in long-term asset funds</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 <i>COBS 4.12B.7R(5)</i>
<i>COBS 4.12B.20R, COBS 4.12B.21R, COBS 4.12B.24R, and COBS 4.12B.26R</i>	<i>Firms</i> must ensure that a risk warning is provided to the <i>client</i>	All <i>non-mass market investments</i> except for (1) <i>units in long-term asset funds</i> ; and (2) <i>securities</i> in a <i>closed-ended investment fund</i> applying for, or with, a <i>premium listing</i> and which complies with the requirements of LR 15	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 <i>COBS 4.12B.7R(5)</i>
<i>COBS 4.12B.32R, COBS 4.12B.33R, and COBS 4.12B.35R</i>	<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 <i>COBS 4.12B.7R(5)</i>

- (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*.
- (5)

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:	Any <i>non-mainstream pooled investment</i> which is such an arrangement.

	(1) the Church Funds Investment Measure 1958 (available at www.legislation.gov.uk/ukcm/Eli/2014-01-01/2014-01-01); (2) section 96 or 100 of the Charities Act 2011 (available at www.legislation.gov.uk/ukpga/2011/25/2014-01-01); (3) section 25 of the Charities Act (Northern Ireland) 1964 (available at www.legislation.gov.uk/apni/1964/33/section/25/2014-01-01); (4) the Regulation on European Venture Capital Funds ('EuVECA') or the <i>RVECA Regulation</i> ('RVECA'); or (5) the Regulation on European Social Entrepreneurship Funds ('EuSEF') or the <i>SEF Regulation</i> ('SEF').	
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3. Eligible employees	An eligible <i>employee</i>, that is, a <i>person</i> who is: (1) an officer; (2) an <i>employee</i>; (3) a former officer or <i>employee</i>; or (4) a member of the immediate family of any of (1) – (3), of an employer which is (or is in the same <i>group</i> as) the <i>firm</i>, or which has accepted responsibility for the activities of the <i>firm</i> in carrying out the <i>designated investment business</i> in question.	1. A <i>non-mainstream pooled investment</i>, the instrument constituting which: A. restricts the property of the <i>non-mainstream pooled investment</i>, apart from cash and near cash, to: (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.] (2) (in any case), any property, provided that the <i>non-mainstream pooled investment</i> takes the form of: (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 (ii) a trust which the <i>firm</i> reasonably believes not to contain any risk that any eligible employee may be liable 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 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>. 2. Any <i>non-mainstream pooled investment</i>, provided that the participation of eligible employees is to facilitate their co-investment: (i) with one or more <i>companies</i> in the same <i>group</i> as their employer (which may include the employer); or (ii) with one or more <i>clients</i> of such a <i>company</i>.
4. Members of the	A <i>person</i> admitted to membership of the Society of Lloyd's or any	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.

Society of Lloyd's	<i>person</i> by law entitled or bound to administer his affairs.	
5. Exempt Persons	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 <i>general prohibition</i> .	Any <i>non-mainstream pooled investment</i> .
6. Non-retail clients	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 <i>COBS</i> 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 <i>COBS</i> 4.12B.9G(2).]
10. Certified sophisticated investor	An individual who meets the requirements set out in <i>COBS</i> 4.12B.39R, including an individual who is legally empowered (solely or jointly with others) to make investment decisions on	Any <i>non-mass market investment</i> .

	behalf of another <i>person</i> who is the <i>firm's client</i> .	
11. Self-certified sophisticated investor	An individual who meets the requirements set out in <i>COBS</i> 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 <i>COBS</i> 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, who has a relevant business relationship with the <i>firm</i> .	
Note 4	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 <i>client</i> categorisation regime that applies to business other than <i>MiFID</i> or equivalent <i>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.)
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- 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 unless the only non-mass market investment to which the financial promotion relates is a unit in a long-term asset fund; 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 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 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.13 G For the purposes of *COBS 4.12B.13R(2)*, the following reasons are
A 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 or long-term asset funds) 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.

Long-term asset funds

- 4.12B.48 G A *firm* which wishes to promote *units* in a *long-term asset fund* 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*. As explained in COLL 15.1.4G (Long-term asset funds – explanation), *long-term asset funds* are *authorised funds* which are intended only for *professional clients* and for *retail clients* who are sophisticated investors or *certified high net worth investors*.

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.

COBS 4.14 (Restrictions on the promotion of speculative illiquid securities to retail clients) is deleted in its entirety. The deleted text is not shown but the section is marked deleted, as shown below.

[*Editor's note:* The substance of the provisions in COBS 4.14 are now incorporated in, and appear at, COBS 4.12B.]

4.14 ~~Restrictions on the promotion of speculative illiquid securities to retail clients~~ [deleted]

Amend the following text as shown.

4 Annex R Risk summaries
1

This Annex belongs to ~~COBS 4.7.6R~~ 4.12A.11R, ~~COBS 4.12.17R~~ 4.12A.20R, COBS 4.12B.14R and ~~COBS 4.14.8AR~~ 4.12B.21R.

...

Insert the following new annexes, COBS 4 Annex 2 to COBS 4 Annex 5, after COBS 4 Annex 1 (Risk summaries). The text is not underlined.

4 Annex R Certified high net worth investor statement
2

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

HIGH-NET-WORTH INVESTOR STATEMENT
Please confirm whether you qualify as a high-net-worth investor on the basis that A or B apply to you. In the last financial year did you have: A) an annual income of £100,000 or more? Income does NOT include any one-off pension withdrawals. ☐ No ☐ Yes If yes, please specify your income (as defined above) to the nearest £10,000 in the last financial year _____ 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.

☐ No ☐ Yes If yes, please specify your net assets (as defined above) to the nearest £100,000 in the last financial year _____ OR C) None of these apply to me. ☐ Yes
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. Signature: Date:

4 Annex 3 R 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
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]. ☐ No ☐ Yes If yes, what is the name of the authorised firm? _____ OR This does not apply to me. ☐ Yes
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 seek professional advice before making any investment in a high-risk investment. Signature: Date:

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*.

4 Annex 4 R 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

Please confirm whether you qualify as a self-certified sophisticated investor on the basis that A, B, C or D apply to you.

In the **last two years** have you:

A) worked in **private equity** or in the **provision of finance for small and medium enterprises**?

☐ No

☐ Yes

If yes, what is/was the name of the business or organisation? _____

B) been the **director of a company** with an annual turnover of at least £1 million?

☐ No

☐ Yes

If yes, what is/was the name of the company? _____

C) made two or more **investments in an unlisted company**?

☐ No

☐ Yes

If yes, how many investments in unlisted companies have you made in the last two years? _____

D) been a **member of a network or syndicate of business angels for more than six months**?

☐ No

☐ Yes

If yes, what is the name of the network or syndicate? _____

OR

E) None of these apply to me.

☐ Yes

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].

Signature:

Date:

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*.

4 Annex R Restricted investor statement 5

This Annex belongs to COBS 4.12A.22R.

RESTRICTED INVESTOR STATEMENT
Putting all your money into a single business or type of investment is risky. Spreading your money across different investments makes you less dependent on any one to do well. You should not invest more than 10% of your net assets in high-risk investments. Doing so could expose you to significant losses. For the purposes of this statement, net assets do NOT include: your home (primary residence), your pension (or any pension withdrawals) or any rights under qualifying contracts of insurance. For the purposes of this statement high-risk investments are: peer-to-peer (P2P) loans; investment based crowdfunding; and unlisted debt and equity (such as in companies not listed on an exchange like the London Stock Exchange).
Please confirm whether you qualify as a restricted investor on the basis that A and B apply to you. A) In the past twelve months have you invested less than 10% of your net assets in high-risk investments (as defined above)? ☐ Yes (I have invested less than 10% of my net assets) ☐ No (I have invested more than 10% of my net assets) If yes, over the last twelve months roughly what percentage of your net assets have you invested in high-risk investments (as defined above)? _____ and B) In the next twelve months do you intend to limit your investment in high-risk investments (as defined above) to less than 10% of your net assets? ☐ Yes (I intend to invest less than 10% of my net assets) ☐ No (I intend to invest more than 10% of my net assets)

If yes, in the next twelve months roughly what percentage of your net assets do you intend to invest in high-risk investments (as defined above)?

I accept that being a restricted investor will expose me to promotions for investment where there is a risk of losing all the money I invest. I am aware that it is open to me seek professional advice before making any investment in a high-risk investment.

Signature:

Date:

Amend the following text as shown.

9 Suitability (including basic advice) (other than MiFID and insurance-based investment products)

...

9.3 Guidance on assessing suitability

...

Investments subject to restrictions on retail distribution

- 9.3.5 G (1) *Firms* should note that restrictions and specific requirements apply to the retail distribution of certain *investments*:
- (a) ~~*non-mainstream pooled investments*~~ *non-mass market investments* are subject to a restriction on *financial promotions* (see section 238 of the ~~Act~~ *Act* and ~~COBS 4.12~~ *4.12B*);
 - (b) ~~*non-readily realisable securities*~~ *restricted mass market investments* are subject to a restriction on *direct offer financial promotions* (see ~~COBS 4.7~~ *4.12A*);
 - ...
 - (f) *credit union subordinated debt* is subject to a restriction on *direct offer financial promotions* (see *CREDS 3A.5*);
 - (g) ~~*speculative illiquid securities*~~ *are subject to a restriction on financial promotions* (see ~~COBS 4.14~~); ~~[deleted]~~

...

...

9A Suitability (MiFID and insurance-based investment products provisions)

...

9A.2 Assessing suitability: the obligations

...

Investments subject to restrictions on retail distribution: MiFID business and insurance-based investment products

- 9A.2.22 G (1) *Firms* should note that restrictions and specific requirements apply to the retail distribution of certain *investments*:
- (a) ~~*non-mainstream-pooled-investments*~~ *non-mass market investments* are subject to a restriction on *financial promotions* (see section 238 of the *Act* and COBS 4.12 4.12B);
 - (b) ~~*non-readily realisable securities*~~ *restricted mass market investments* are subject to a restriction on *direct offer financial promotions* (see COBS 4.7 4.12A);
 - ...
 - (d) *contingent convertible instruments* and *CoCo funds* are subject to a restriction on sales and on promotions (see COBS 22.3);
 - (e) ~~*speculative illiquid securities*~~ are subject to a restriction on ~~*financial promotions*~~ (see COBS 4.14). [deleted]

...

...

10 Appropriateness (for ~~non-MiFID and non-insurance-based investment products~~ non-advised services) (non-MiFID and non-insurance-based investment products provisions)

10.1 Application

...

- 10.1.2 R (1) This chapter applies to a *firm* which:
- (a) arranges or deals in relation to a:
 - (i) *non-readily realisable security*;
 - (ii) *speculative illiquid security*;
 - (iii) *derivative*; or
 - (iv) *warrant*;

with or for a *retail client*, other than in the course of *MiFID* or *equivalent third country business*; or

- (b) facilitates a *retail client* becoming a lender under a *P2P agreement*;

and the *firm* is aware, or ought reasonably to be aware, that the application or order is in response to a *direct offer financial promotion*.

- (2) ~~Where a rule in this chapter applies to a firm which arranges or deals in relation to a speculative illiquid security, the rule also applies to~~ The rules in this chapter also apply to:

- (a) a *TP firm* (to the extent that the *rule* does not already apply to such a *TP firm* as a result of *GEN 2.2.26R*); and
- (b) a ~~Gibraltar-based firm~~ Gibraltar-based firm (having the same meaning as in the ~~Gibraltar Order~~) to the extent that the *rule* does not already apply to such a ~~Gibraltar-based firm~~ Gibraltar-based firm as a result of *GEN 2.3.1R*).

...

10.2 Assessing appropriateness: the obligations

...

P2P agreements Restricted mass market investments

- 10.2.9 G (1) When determining whether a *client* has the necessary knowledge to understand the risks involved in relation to a ~~*P2P agreement* or a *P2P portfolio*~~ *restricted mass market investment*, a *firm* should consider asking the *client* ~~multiple-choice~~ questions that ~~avoid binary (yes/no) answers and~~ cover, at least, the following matters ~~in~~:
- (a) ~~the nature of the client's contractual relationships with the borrower and the firm~~ *COBS 10 Annex 1G* in relation to *non-readily realisable securities*; or
- (b) ~~the client's exposure to the credit risk of the borrower~~ *COBS 10 Annex 2G* in relation to *P2P agreements* or *P2P portfolios*;
- (c) ~~that all capital invested in a *P2P agreement* or *P2P portfolio* is at risk;~~ [deleted]
- (d) ~~that *P2P agreements* or *P2P portfolios* are not covered by *FSCS*;~~ [deleted]
- (e) ~~that returns may vary over time;~~ [deleted]

- (f) ~~that entering into a *P2P agreement* or investing in a *P2P portfolio* is not comparable to depositing money in a savings account; [deleted]~~
- (g) ~~the characteristics of any: [deleted]~~
 - (i) ~~security interest, insurance or guarantee taken in relation to the *P2P agreements* or *P2P portfolio*; or~~
 - (ii) ~~risk diversification facilitated by the *firm*; or~~
 - (iii) ~~*contingency fund* offered by the *firm*; or~~
 - (iv) ~~any other risk mitigation measure adopted by the *firm*;~~
- (h) ~~that any of the measures in (g) adopted by the *firm* cannot guarantee that the *client* will not suffer a loss in relation to the capital invested; [deleted]~~
- (i) ~~that where a *firm* has not adopted any risk mitigation measures (such as those in (g)), the extent of any capital losses is likely to be greater than if risk mitigation measures were adopted by the *firm*; [deleted]~~
- (j) ~~illiquidity in the context of a *P2P agreement* or *P2P portfolio*, including the risk that the lender may be unable to exit a *P2P agreement* before maturity even where the *firm* operates a secondary market; [deleted]~~
- (k) ~~the role of the *firm* and the scope of its services, including what the *firm* does and does not do on behalf of lenders; and [deleted]~~
- (l) ~~the risks to the management and administration of a *P2P agreement* or *P2P portfolio* in the event of the *firm's* becoming insolvent or otherwise failing. [deleted]~~

...

Insert the following new annexes COBS 10 Annex 1 and COBS 10 Annex 2, after COBS 10.7 (Record keeping and retention periods for appropriateness records). The text is not underlined.

10 G Assessing appropriateness: non-readily realisable securities Annex 1

This Annex belongs to *COBS 10.2.9G(1)(a)* and *COBS 10A.2.11G*.

When determining whether a *retail client* has the necessary knowledge to understand the risks involved in relation to a *non-readily realisable*

security, a *firm* should consider asking the *client* questions that cover, at least, the following matters:

- (1) the nature of the *client's* contractual relationship with the *issuer* and any underlying beneficiaries of the investment;
- (2) the possibility that the *client* could lose all the money they invest;
- (3) the risk of failure of the *issuer* and the associated risk of losing all of the money invested;
- (4) the regulated status of the investment activity, including that the issuance of *securities* does not ordinarily involve *regulated activity* and the implications in relation to *FCA* regulation;
- (5) the extent to which the protection of the *Financial Ombudsman Service* or *FSCS* apply to the investment activity (including the fact that these services do not protect investors against poor investment performance and that the *Financial Ombudsman Service* cannot ordinarily consider complaints in relation to *unauthorised persons*);
- (6) the potential illiquidity of *non-readily realisable securities* (including the unlikelihood or impossibility that the *client* will be able to sell the *security* and the nature of the mechanisms through which the *client* could be paid their money back);
- (7) the risk to any management and administration of the *client's* investment in the event of the *issuer* becoming insolvent or otherwise failing;
- (8) the role of the *issuer* (including its role in assessing and making underlying investments);
- (9) that where a *security* is held in an *innovative finance ISA* (IFISA), this does not reduce the risk of the *security* or otherwise protect the *client* from the risk of losing their money;
- (10) the benefits of diversification and that *retail clients* should not generally invest more than 10% of their net assets in *restricted mass market investments*;
- (11) where the *security* is a *share*:
 - (a) the likelihood of dividend payments;
 - (b) the risk of dilution from further issues of *shares* and the implications for the value of the *security*; and
 - (c) the risk of any further issues of *shares* granting preferential rights that negatively impact existing investors and the implications for the value of the *security*;

- (12) where the *security* is a *debenture*:
 - (a) the *client's* exposure to the credit risk of the *issuer*;
 - (b) that investing in a *debenture* is not comparable to depositing money in a savings account; and
 - (c) that returns may vary over time; and
- (13) where an investment in a *non-readily realisable security* is, or is to be, *arranged* by a *firm*:
 - (a) the nature of the *client's* contractual relationships with the *firm*;
 - (b) the role of the *firm* and the scope of the service it provides to *clients* (including the extent of the due diligence that the *firm* undertakes in relation to the *securities* that it distributes); and
 - (c) the risk to any management and administration of the *client's* investment in the event of the *firm* becoming insolvent or otherwise failing.

10 G Assessing appropriateness: P2P agreements and P2P portfolios

Annex 2

This Annex belongs to COBS 10.2.9G(1)(b).

When determining whether a *retail client* has the necessary knowledge to understand the risks involved in relation to a *P2P agreement* or a *P2P portfolio*, a *firm* should consider asking the *client* questions that cover, at least, the following matters:

- (1) the nature of the *client's* contractual relationships with the borrower and the *firm*;
- (2) the *client's* exposure to the credit risk of the borrower;
- (3) that the *client* can lose all of the money that they invest in a *P2P agreement* or *P2P portfolio*;
- (4) that *P2P agreements* or *P2P portfolios* are not covered by FSCS and that the *Financial Ombudsman Service* does not protect investors against poor performance of *P2P agreements* or *P2P portfolios*;
- (5) that returns may vary over time;
- (6) that entering into a *P2P agreement* or investing in a *P2P portfolio* is not comparable to depositing money in a savings account;
- (7) the characteristics of any:

- (a) security interest, insurance or guarantee taken in relation to the *P2P agreements* or *P2P portfolio*; or
 - (b) risk diversification facilitated by the *firm*; or
 - (c) *contingency fund* offered by the *firm*; or
 - (d) any other risk mitigation measure adopted by the *firm*;
- (8) that any of the measures in (7) adopted by the *firm* cannot guarantee that the *client* will not suffer a loss in relation to the money invested;
 - (9) that where a *firm* has not adopted any risk mitigation measures (such as those in (7)), the extent of any loss of money invested is likely to be greater than if risk mitigation measures were adopted by the *firm*;
 - (10) illiquidity in the context of a *P2P agreement* or *P2P portfolio*, including the risk that the lender may be unable to exit a *P2P agreement* before maturity even where the *firm* operates a secondary market (including the fact that any advertised access to money invested is not guaranteed);
 - (11) the role of the *firm* and the scope of its services, including what the *firm* does and does not do on behalf of *clients*;
 - (12) the risks to the management and administration of a *P2P agreement* or *P2P portfolio* in the event of the *firm's* becoming insolvent or otherwise failing;
 - (13) that where a *P2P agreement* or *P2P portfolio* is held in an *innovative finance ISA* (IFISA), this does not reduce the risk of the *P2P agreement* or *P2P portfolio* or otherwise protect the *client* from the risk of losing their money; and
 - (14) the benefits of diversification and that *retail clients* should not generally invest more than 10% of their net assets in *restricted mass market investments*.

Amend the following text as shown.

10A Appropriateness (for non-advised services) (MiFID and insurance-based investment products provisions)

...

10A.2 Assessing appropriateness: the obligations

...

10A.2.10 G ...

Restricted mass market investments

- 10A.2.11 G When determining whether a *client* has the necessary knowledge to understand the risks involved in relation to a *restricted mass market investment*, a *firm* should consider asking the *client* questions that cover, at least, the matters in COBS 10 Annex 1G in relation to *non-readily realisable securities*.

...

22 Restrictions on the distribution of certain complex investment products

...

22.2 Restrictions on the retail distribution of mutual society shares

...

Further requirements for non-advised, non-MiFID sales

...

- 22.2.4 R Each of the exemptions listed below applies only if the *retail client* is of the type described for the exemption and provided any additional conditions for the exemption are met.

Title	Type of retail client	Additional conditions
Certified high net worth investor <u>Certified high net worth investor</u>	(a) An individual who meets the requirements set out in COBS 4.12.6R <u>COBS 4.12B.38R</u> ; or (b) a <i>person</i> (or <i>persons</i>) legally empowered to make investment decisions on behalf of an individual who meets the earnings or net asset requirements in (a) above.	The <i>firm</i> must consider that the <i>mutual society share</i> is likely to be suitable for that individual, based on a preliminary assessment of that individual's profile and objectives (see COBS 4.12.5G(2) <u>COBS 4.12B.9G(2)</u>).
Certified sophisticated investor <u>Certified sophisticated investor</u>	(a) An individual who meets the requirements set out in COBS 4.12.7R <u>COBS 4.12B.39R</u> ; or (b) an individual who meets the requirements for (a) above and who is legally empowered (solely or jointly with	Not applicable.

	others) to make investment decisions on behalf of another person who is the <i>firm's</i> client.	
<i>Self-certified sophisticated investor</i> <u>Self-certified sophisticated investor</u>	(a) An individual who meets the requirements set out in <i>COBS 4.12.8R</i> <u><i>COBS 4.12B.40R</i></u> ; or (b) an individual who meets the requirements for (a) above and 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</i> client.	Not applicable.

Adaptation of other rules and guidance to mutual society shares

- 22.2.5 R (1) For the purposes of any assessments or certifications required by the exemptions in *COBS 22.2.4R*, any references in ~~*COBS 4.12 4.12B*~~ provisions to ~~*non-mainstream pooled investments non-mass market investments*~~ must be read as though they are references to *mutual society shares*.
- (2) ~~If the *firm* is relying on the exemptions for *certified high net worth investors*, *certified sophisticated investors* or *self-certified sophisticated investors* to comply with this section, the statement the investor must sign should have references to *non-mainstream pooled investments* replaced with references to *mutual society shares*.~~
[deleted]
- (3) ...

...

22.3 Restrictions on the retail distribution of contingent convertible instruments and CoCo funds

...

Exemptions

- 22.3.2 R Each of the exemptions listed below applies only if the *retail client* is of the type described for the exemption and provided any additional conditions for the exemption are met.

Title	Type of retail client	Additional conditions
-------	-----------------------	-----------------------

<i>Certified high net worth investor</i> <u>Certified high net worth investor</u>	(a) An individual who meets the requirements set out in <i>COBS 4.12.6R</i> <u>COBS 4.12B.38R</u> ; or (b) a <i>person</i> (or <i>persons</i>) legally empowered to make investment decisions on behalf of an individual who meets the earnings or net asset requirements in (a) above.	The <i>firm</i> must consider that the <i>investment</i> is likely to be suitable for that individual, based on a preliminary assessment of that individual's profile and objectives (see <i>COBS 4.12.5G(2)</i> <u>COBS 4.12B.9G(2)</u>).
<i>Certified sophisticated investor</i> <u>Certified sophisticated investor</u>	(a) An individual who meets the requirements set out in <i>COBS 4.12.7R</i> <u>COBS 4.12B.39R</u> ; or (b) an individual who meets the requirements for (a) above and who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another person who is the <i>firm's</i> client.	Not applicable.
<i>Self-certified sophisticated investor</i> <u>Self-certified sophisticated investor</u>	(a) An individual who meets the requirements set out in <i>COBS 4.12.8R</i> <u>COBS 4.12B.40R</u> ; or (b) an individual who meets the requirements for (a) above and 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</i> client.	The <i>firm</i> must consider that the <i>investment</i> is likely to be suitable for that individual, based on a preliminary assessment of that individual's profile and objectives (see <i>COBS 4.12.5G(2)</i> <u>COBS 4.12B.9G(2)</u>).
...		

Adaptation of other rules and guidance to contingent convertible instruments and CoCo funds

- 22.3.3 R (1) For the purposes of any assessments or certifications required by the exemptions in *COBS 22.3.2R*, any references in *COBS 4.12 4.12B* provisions to ~~*non-mainstream pooled investments*~~ *non-mass market*

investments must be read as though they are references to *contingent convertible instruments* or *CoCo funds*, as relevant.

- (2) If the *firm* is relying on the high net worth investor, the sophisticated investor or the ~~self-certified sophisticated investor exemption~~ to comply with this section, the statement the investor must sign should have references to *non-mainstream pooled investments* replaced with references to *contingent convertible instruments* or *CoCo funds*, as relevant. ~~[deleted]~~
- (3) ...

...

Schedule 1 Record keeping requirements

...

Sch 1.3G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
COBS 4.11.1R(1)	<i>Financial promotion</i>	A <i>financial promotion communicated</i> , or approved or <u>in relation to which the <i>firm</i> has confirmed compliance</u> (subject to exemptions)	When <i>communicated</i> , or approved or <u>confirmed</u>	See COBS 4.11.1R(3)
...				
COBS 4.11.1R(2A) <u>[deleted]</u>	<i>Non-mainstream pooled investments:</i> <i>certification of compliance</i>	Certification by the <i>person</i> allocated the <i>compliance oversight function</i> or <i>employees</i> of the <i>firm</i> reporting to and supervised by that <i>person</i> confirming that the <i>financial</i>	Date of certification Date the invitation or inducement is communicated or approved	

		promotion is compliant with the restrictions in section 238 of the Act and COBS 4.12.3R, as applicable. Which exemption applies and the reason why that exemption applies. Where the exemption requires a certificate, investor statement, warning or indication, a copy of that certificate, investment statement, warning or indication.		
<u>COBS 4.11.1R(2B)</u>	<u>Financial promotion: competence and expertise</u>	<u>Evidence of how the firm has satisfied the competence and expertise requirement in COBS 4.10.9AR</u>	<u>When relevant financial promotion communicated or approved, or compliance confirmed</u>	<u>See COBS 4.11.1R(3)</u>
<u>COBS 4.11.2G</u>	<u>Compliance of financial promotions</u>	<u>Firms encouraged to consider recording why a financial promotion is considered compliant.</u>	<u>Date of assessment of compliance</u>	
<u>COBS 4.11.4R</u>	<u>Non-mass market investments:</u>	<u>Certification by the person allocated the compliance oversight</u>	<u>Date of certification</u> <u>Date the financial</u>	<u>5 years</u>

	<u>certification of compliance</u>	<u>function or employees of the firm reporting to and supervised by that person confirming that the financial promotion is compliant with the restrictions in section 238 of the Act and COBS 4.12B, as applicable.</u> <u>Which exemption applies and the reason why that exemption applies. Where the exemption requires a certificate, investor statement, warning or indication, a copy of that certificate, investment statement, warning or indication.</u>	<u>promotion is communicated or approved</u>	
<u>COBS 4.11.5R</u>	<u>Restricted mass market investments: consumer journey</u>	<u>Records of the outcomes of the firm's categorisation (COBS 4.12A.21R) of retail clients and in relation to appropriateness assessments undertaken (COBS 4.12A.28R)</u>	<u>Ongoing basis in connection with the communication of financial promotions relating to restricted mass market investments</u>	<u>5 years</u>

<u>COBS</u> <u>4.12A.44R</u> <u>COBS</u> <u>4.12B.13R</u>	<u>Risk</u> <u>summaries</u>	<u>Grounds for</u> <u>using an</u> <u>alternative</u> <u>form of risk</u> <u>summary</u>	<u>When</u> <u>alternative</u> <u>form of risk</u> <u>summary for a</u> <u>particular</u> <u>investment is</u> <u>adopted</u>	<u>5 years</u> <u>(COBS</u> <u>4.11.8R)</u>
<u>COBS</u> <u>4.12A.11R(5)</u> <u>COBS</u> <u>4.12B.21R(5)</u>	<u>Protection</u> <u>language</u>	<u>Basis for</u> <u>omitting</u> <u>reference to</u> <u>investors being</u> <u>unlikely to be</u> <u>protected in</u> <u>risk warning</u>	<u>When risk</u> <u>warning for a</u> <u>particular</u> <u>investment is</u> <u>adopted</u>	<u>Not</u> <u>specified</u>
...				

Annex D

Amendments to the Banking: Conduct of Business sourcebook (BCOBS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2 **Communications and financial promotions**

...

2.2 **The fair, clear and not misleading rule**

...

- 2.2.3 G The *rules* in SYSC 3 (Systems and Controls) and SYSC 4 (General organisational requirements) require a *firm* to put in place systems and controls or policies and procedures in order to comply with the *rules* in COBS 4.6 (Past, simulated past and future performance), COBS 4.7.1R (Direct offer financial promotions), COBS 4.10 (~~Systems and controls and approving and communicating~~ Approving and confirming compliance of financial promotions) and this chapter of *BCOBS*.

...

Annex E

Amendments to the Collective Investment Schemes sourcebook (COLL)

In this Annex, underlining indicates new text and striking through indicates deleted text.

8 Qualified investor schemes

8.1 Introduction

...

Qualified investor schemes: eligible investors

- 8.1.3 R (1) Subject to (3), the *authorised fund manager* of a *qualified investor scheme* must take reasonable care to ensure that ownership of *units* in that *scheme* is recorded in the *register* only for a *person* to whom such *units* may be promoted under ~~COBS 4.12.4R~~ 4.12B.7R.

...

Qualified investor schemes - explanation

- 8.1.4 G (1) *Qualified investor schemes* are *authorised funds* which are intended only for *professional clients* and for *retail clients* who are sophisticated investors. For this reason, *qualified investor schemes* are subject to a restriction on promotion under ~~COBS 4.12.3R~~ 4.12B.6R. See also ~~COBS 4.12.13G~~ 4.12B.47G.
- (1A) The *authorised contractual scheme manager* of a *qualified investor scheme* which is an *ACS* must take reasonable care to ensure that subscription in relation to the *units* of this type of *scheme* should only be in relation to a *person* to whom such *units* may be promoted under ~~COBS 4.12.4R~~ 4.12B.7R and who also meets the criteria in *COLL 8 Annex 2*.

...

...

8.2 Constitution

...

Table: contents of the instrument constituting the fund

- 8.2.6 R This table belongs to *COLL 8.2.5R*

...

2 Constitution

The following statements:

...

(6) for an *ACS*:

(a) the *contractual scheme deed*:

...

(iv) states that *units* may not be *issued* to a *person* other than a *person*:

...

(B) to whom *units* in a *qualified investor scheme* may be promoted under *COBS 4.12.4R* 4.12B.7R;

...

(vii states:
)

...

(B) where a transfer of *units* is allowed by the *scheme* or, where appropriate the *sub-fund*, in accordance with (A)(ii), *units* may only be transferred in accordance with the conditions specified by *FCA rules*, including that *units* may not be transferred to a *person* other than a *person*:

...

(ii) to whom *units* in a *qualified investor scheme* may be promoted under *COBS 4.12.4R* 4.12B.7R; and

...

...

...

...

8.3 Investor relations

...

Table: contents of qualified investor scheme prospectus

8.3.4 R This table belongs to *COLL* 8.3.2R.

...

5A Issue of units in ACSs: eligible investors

(1) A statement that *units* may not be *issued* to a *person* other than to a *person*:

...

(b) to whom *units* in a *qualified investor scheme* may be promoted under *COBS* 4.12.4R 4.12B.7R.

...

5B Transfer of units in ACSs

...

(2) A statement that where transfer of *units* is allowed by the *instrument constituting the fund* and *prospectus* in accordance with (1)(b), *units* may only be transferred in accordance with the conditions specified by *FCA rules*, including that *units* may not be transferred to a *person* other than a *person*:

...

(b) to whom *units* in a *qualified investor scheme* may be promoted under *COBS* 4.12.4R 4.12B.7R.

...

...

...

8.5 Powers and responsibilities

...

Transfer of units in an ACS

8.5.10B R ...

(2) The *FCA* specifies that for the purposes of (1), and for the purposes of *COLL* 8.2.6R(2)(6)(a)(vii)(B) (Table: contents of the instrument constituting the fund) and *COLL* 8.3.4.R(5B)(2) (Table: contents of qualified investor scheme prospectus), *units* in the *ACS* may only be transferred to a *person*:

...

- (b) to whom *units* in a *qualified investor scheme* may be promoted under *COBS 4.12.4R* 4.12B.7R.

...

Responsibilities of the authorised contractual scheme manager in relation to ACS units

- 8.5.10D R (1) The *authorised contractual scheme manager* of an *authorised contractual scheme* which is a *qualified investor scheme* must take reasonable care to ensure that rights or interests in *units* in the *scheme* are not acquired by any *person* from or through an *intermediate Unitholder in a qualified investor scheme*, unless:

...

- (b) *units* in a *qualified investor scheme* may be promoted to that *person* under *COBS 4.12.4R* 4.12B.7R.

...

8 Annex 2 R ACS Qualified Investor Schemes: eligible investors

This Annex belongs to *COLL 8.1.3R* and *8.1.4G*.

For the purposes of the *rule* on qualified investors in a *qualified investor scheme* which is an *ACS* (*COLL 8.1.3R(3)*), the *authorised contractual scheme manager* must take reasonable care to ensure that ownership of *units* in the *scheme* is only recorded in the *register* for a *person*:

...

- (2) to whom *units* in a *qualified investor scheme* may be promoted to that *person* under *COBS 4.12.4R* 4.12B.7R.

...

15 Long-term asset funds

15.1 Introduction

...

Long-term asset funds: eligible investors

- 15.1.3 R (1) Subject to (3), the *authorised fund manager* of a *long-term asset fund* must take reasonable care to ensure that ownership of *units* in that *scheme* is recorded in the *register* only for a *person* to whom such *units* may be promoted under *COBS 4.12.4R* 4.12B.7R

(Exemptions from the restrictions on the promotion of ~~non-mainstream pooled~~ non-mass market investments).

...

Long-term asset funds - explanation

- 15.1.4 G (1) *Long-term asset funds* are authorised funds which are intended only for *professional clients* and for *retail clients* who are sophisticated investors or *certified high net worth investors*. For this reason, *long-term asset funds* are subject to a restriction on promotion under ~~COBS 4.12.3R~~ 4.12B.6R (Restrictions on the promotion of ~~non-mainstream pooled~~ non-mass market investments).
- (2) The *authorised contractual scheme manager* of a *long-term asset fund* which is an *ACS* must take reasonable care to ensure that it accepts subscription to units in the *LTAF* only from a *person* to whom such *units* may be promoted under ~~COBS 4.12.4R~~ 4.12B.7R (Exemptions from the restrictions on the promotion of ~~non-mainstream pooled~~ non-mass market investments) and who also meets the criteria in *COLL 15 Annex 1R*.

...

15.3 Constitution

...

Table: contents of the instrument constituting the fund

- 15.3.6 R This table belongs to *COLL 15.3.5R*.

...

3 Constitution

The following statements:

...

- (9) for an *ACS*:

- (a) the *contractual scheme deed*:

...

- (iv) ...

- (B) to whom *units* in a *long-term asset fund* may be promoted under ~~COBS 4.12.4R~~ 4.12B.7R;

...

(vii) states:

...

(B) where a transfer of *units* is allowed by the *scheme* or, where appropriate the *sub-fund*, in accordance with (A)(ii), *units* may only be transferred in accordance with the conditions specified by *FCA rules*, including that *units* may not be transferred to a *person* other than a *person*:

...

(ii) to whom *units* in a *long-term asset fund* may be promoted under *COBS 4.12.4R* 4.12B.7R; and

...

...

...

...

15.4 Prospectus and other pre-sale notifications

...

Table: contents of a long-term asset fund prospectus

15.4.5 R This table belongs to *COLL 15.4.2R*.

...

17 Issue of units in ACSs: eligible investors

(1) A statement that *units* may not be *issued* to a *person* other than to a *person*:

...

(b) to whom *units* in a *long-term asset fund* may be promoted under *COBS 4.12.4R* 4.12B.7R.

...

18 Transfer of units in ACSs

...

- (2) A statement that where transfer of *units* is allowed by the *instrument constituting the fund* and *prospectus* in accordance with (1)(b), *units* may only be transferred in accordance with the conditions specified by *FCA rules*, including that *units* may not be transferred to a *person* other than a *person*:

...

- (b) to whom *units* in a *long-term asset fund* may be promoted under *COBS 4.12.4R* 4.12B.7R.

...

...

15.8 Valuation, pricing, dealing and income

...

Transfer of units in an ACS

15.8.7 R ...

- (2) The *FCA* specifies that for the purposes of (1), and for the purposes of *COLL 15.3.6R(3)(9)(a)(vii)(B)* (Table: contents of the instrument constituting the fund) and *COLL 15.4.5R(18)(2)* (Table: contents of long-term asset fund prospectus), *units* in the *ACS* may only be transferred to a *person*:

...

- (b) to whom *units* in a *long-term asset fund* may be promoted under *COBS 4.12.4R* 4.12B.7R.

...

Responsibilities of the authorised contractual scheme manager in relation to ACS units

15.8.9 R (1) The *authorised contractual scheme manager* of an *authorised contractual scheme* which is a *long-term asset fund* must take reasonable care to ensure that rights or interests in *units* in the *scheme* are not acquired by any *person* from or through an *intermediate unitholder* in a *long-term asset fund*, unless:

...

- (b) *units* in a *long-term asset fund* may be promoted to that *person* under *COBS 4.12.4R* 4.12B.7R.

...

...

15 R ACS Long-term asset funds: Eligible investors
Annex 1

This Annex belongs to *COLL 15.1.3R* and *COLL 15.1.4G*.

For the purposes of the *rule* on qualified investors in a *long-term asset fund* which is an *ACS* (see *COLL 15.1.3R(2)*), the *authorised contractual scheme manager* must take reasonable care to ensure that ownership of *units* in the *scheme* is only recorded in the *register* for a *person*:

...

- (2) to whom *units* in a *long-term asset fund* may be promoted to that *person* under *COBS 4.12.4R* 4.12B.7R.

...

Annex F

Amendments to the Credit Unions sourcebook (CREDS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

3A Shares, deposits and borrowing

...

3A.5 Requirements on the retail distribution and financial promotion of capital instruments

...

Application of exemptions in COBS 22.2.4R

3A.5.8 R ...

- (2) For the purposes of any assessments or certifications required by the exemptions in *COBS 22.2.4R*, as applied for the purposes of this section under *CREDS 3A.5.1R(3)*, any reference in *COBS 4.12 4.12B* provisions to ~~*non-mainstream pooled investments*~~ *non-mass market investments* must be read as though it is a reference to *deferred shares* or *credit union subordinated debt*, as applicable.
- (3) If the *firm* is relying on the exemptions for ~~*certified high net worth investors, certified sophisticated investors or self-certified sophisticated investors*~~ to comply with this section, the statement the investor must sign should have any reference to ~~*non-mainstream pooled investments*~~ replaced with a reference to *deferred shares* or *credit union subordinated debt*, as applicable. [deleted]

...

...

10 Application of other parts of the Handbook to credit unions

10.1 Application and purpose

...

Application of other parts of the Handbook and of Regulatory Guides to Credit Unions

10.1.3

G

Module	Relevance to Credit Unions
...	

Conduct of Business sourcebook (COBS)	A <i>credit union</i> which acts as a <i>CTF provider</i> or provides a <i>cash-deposit ISA</i> will need to be aware of the relevant requirements in <i>COBS</i>. <i>COBS</i> 4.6 (Past, simulated past and future performance), <i>COBS</i> 4.7.1R (Direct offer financial promotions), <i>COBS</i> 4.10 (Systems and controls and approving and communicating <u>Approving and confirming compliance of</u> financial promotions), <i>COBS</i> 13 (Preparing product information) and <i>COBS</i> 14 (Providing product information to clients) apply with respect to <i>accepting deposits</i> as set out in those provisions, <i>COBS</i> 4.1 and <i>BCOBS</i>. A <i>credit union</i> that communicates with clients, including in a <i>financial promotion</i>, in relation to the promotion of <i>deferred shares</i> and <i>credit union subordinated debt</i> will need to be aware of the requirements of <i>COBS</i> 4.2 (Fair, clear and not misleading communications) and <i>COBS</i> 4.5 (Communicating with retail clients).
...	

Annex G

Amendments to the Listing Rules sourcebook (LR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

Appendix 1 Relevant definitions

App 1.1 Relevant definitions

Note: The following definitions relevant to the listing rules are extracted from the Glossary.

...		
<i>investment trust</i>	a <i>company</i> which:	
	(a)	...
	(b)	(for the purposes of <i>COBS</i> 4.14 <u>4.12B</u> and the definitions of <i>non-mainstream pooled investment</i> and <i>packaged product</i> only) is resident in an <i>EEA State</i> and would qualify for such approval if resident in the <i>United Kingdom</i> .
...		

Annex H

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

8 Financial promotion and related activities

...

8.20 Additional restriction on the promotion of collective investment schemes

...

- 8.20.4 G The *FCA* has made *rules* under section 238(5) which allow *authorised firms* to *communicate* or *approve* a *financial promotion* for an *unregulated collective investment scheme* in certain specified circumstances. These circumstances are set out in *COBS* ~~4.12.4R~~ 4.12B.7R. To date, the Treasury has not made an order exempting single property schemes under section 239.

...

9 Meaning of open-ended investment company

...

9.10 Significance of being an open-ended investment company

...

- 9.10.6 G The *FCA* has also made *rules* under section 238(5) which allow *authorised persons* to *communicate* or *approve* a *financial promotion* for an *open-ended investment company* that is an *unregulated collective investment scheme* (that is, one that does not fall within *PERG* 9.10.4G). The circumstances in which such a communication or approval is allowed are explained in *COBS* ~~4.12.4R~~ 4.12B.7R.

...

