

CONDUCT OF BUSINESS SOURCEBOOK (AMENDMENT) INSTRUMENT 2021**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 rule-making power);
 - (b) section 137R (The FCA’s financial promotion rule-making power);
 - (c) section 137T (General supplementary powers);
 - (d) section 139A (Power of the FCA to give guidance); and
 - (2) regulation 3 of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc) (EU Exit) Regulations 2018; and
 - (3) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions sourcebook (GEN) of the FCA’s Handbook.
- B. The rule-making provisions referred to above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. Part 1 of this instrument comes into force on 1 March 2022.
- D. Part 2 of this instrument comes into force on 1 December 2021.

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 to this instrument listed in column (2).

(1)	(2)
Conduct of Business sourcebook (COBS)	Annex A
Market Conduct sourcebook (MAR)	Annex B
Recognised Investment Exchanges sourcebook (REC)	Annex C

Citation

- F. This instrument may be cited as the Conduct of Business Sourcebook (Amendment) Instrument 2021.

By order of the Board
25 November 2021

Annex A

Amendments to the Conduct of Business sourcebook (COBS)

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

Part 1: comes into force on 1 March 2022

2 Conduct of business obligations

...

2.3A Inducements relating to MiFID, equivalent third country or optional exemption business and insurance-based investment products

...

Acceptable minor non-monetary benefits

- 2.3A.19 R An acceptable minor non-monetary benefit is one which:
- (1) is clearly disclosed prior to the provision of the relevant service to the *client*, which the *firm* may describe in a generic way (where applicable, in accordance with *COBS* 2.3A.10R);
 - (2) is capable of enhancing the quality of service provided to the *client*;
 - (3) is of a scale and nature that it could not be judged to impair the *firm's* compliance with its duty to act honestly, fairly and professionally in the best interests of the *client*;
 - (4) is reasonable, proportionate and of a scale that is unlikely to influence the *firm's* behaviour in any way that is detrimental to the interests of the relevant *client*; and
 - (5) ...
 - (a) ...
 - ...
 - (e) research relating to an issue of *shares*, *debentures*, *warrants* or *certificates representing certain securities* by an *issuer*, which is:
 - (i) produced:
 - (A) prior to the issue being completed; and
 - (B) by a *person* that is providing underwriting or placing services to the *issuer* on that issue; and

- (ii) made available to prospective investors in the issue; or
- (f) research that is received so that the *firm* may evaluate the research provider's research service, provided that:
 - (i) it is received during a trial period that lasts no longer than three *months*;
 - (ii) no monetary or non-monetary consideration is due (whether during the trial period, before or after) to the research provider for providing the research during the trial period;
 - (iii) the trial period is not commenced with the research provider within 12 *months* from the termination of an arrangement for the provision of research (including any previous trial period) with the research provider; and
 - (iv) the *firm* makes and retains a record of the dates of any trial period accepted under this *rule*, as well as a record of how the conditions in (i) to (iii) were satisfied for each such trial period;
- (g) research on listed or unlisted companies with a market capitalisation below £200m, provided that it is offered on a rebundled basis or provided for free. The market capitalisation is to be calculated with reference to the average closing price of the *shares* of the company at the end of each month to 31 October for the preceding 24 months. For companies newly admitted to trading, determination of the threshold should be based on the market capitalisation at the close of day one trading and apply until the date of the next re-assessment (i.e. 31 October). For these purposes, *firms* may reasonably rely on the assessment of a third party that the research is on a company with a market capitalisation below £200m;
- (h) third party research that is received by a *firm* providing *investment services* or *ancillary services to clients* where it relates to fixed income, currency or commodity instruments;
- (i) research received from a research provider where the research provider is not engaged in execution services and is not part of a financial services group that includes an *investment firm* that offers execution or brokerage services;

- (j) written material that is made openly available from a third party to any firm wishing to receive it or to the general public. “Openly available” in this context means that there are no conditions or barriers to accessing the written material other than those which are necessary to comply with relevant regulatory obligations, for example requiring a log-in, sign-up or submission of user information by a firm or a member of the public in order to access that material; or
- (k) corporate access services which relate to listed or unlisted companies with a market capitalisation below £200m in accordance with COBS 2.3A.19R 5(g).

[**Note:** articles 24(7)(b) and 24(8) of *MiFID*; article 12(2) and (3) of the *MiFID Delegated Directive* and article 72(3) of the *MiFID Org Regulation*]

...

2.3A.22 G In relation to *COBS 2.3A.19R 5(h)*, since the particular features of the fixed
A income, currency and commodity markets, whereby portfolio managers and independent investment advisers transact with counterparties based on competitive pricing processes, the pricing of transactions in fixed income, currency and commodity instruments will typically not take into account research services.

...

Part 2: comes into force on 1 December 2021

11 Dealing and managing

...

11.2A Best execution – MiFID provisions

- 11.2A.1 R (1) Subject to (2) to (4), the following provisions apply to a *firm’s* business other than *MiFID business* as if they were *rules*:
- (a) provisions within this chapter marked “UK”; ~~and~~
 - (b) ~~COBS 11 Annex 1UK (Regulatory Technical Standard (RTS 28)). [deleted]~~
- (2) ~~The following provisions do not apply to *MiFID optional exemption firm’s business*:~~
- (a) ~~the part of the first sub-paragraph of article 65(6) to the *MiFID Org Regulation* (reproduced at *COBS 11.2A.34UK*) that reads:~~

~~“In particular, when the investment firm select other firms to provide order execution services, it shall summarise and make public, on an annual basis, for each class of financial instruments, the top five investment firms in terms of trading volumes where it transmitted or placed client orders for execution in the preceding year and information on the quality of execution obtained. The information shall be consistent with the information published in accordance with the Commission Delegated Regulation (EU) 2017/576 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution, or any technical standards made by the Financial Conduct Authority under paragraph 27(b) of Schedule 1 to Regulation (EU) 2014/600.”; and~~

(b) ~~COBS 11 Annex 1UK (Regulatory Technical Standard (RTS 28). [deleted]~~

- (3) This chapter does not apply (but COBS 11.2B applies) to *UCITS management companies* when carrying on *scheme management activity*.
- (4) This chapter does not apply (but COBS 11.2 applies) to *AIFMs* when carrying on *AIFM investment management functions* and *residual CIS operators*.

...

Execution policies

11.2A.25 UK ...

- (9) Where an investment firm executes orders for retail clients, it shall provide those clients with a summary of the relevant policy, focused on the total cost they incur. ~~The summary shall also provide a link to the most recent execution quality data published in accordance with [COBS 11.2C.1R, MAR 5.3.1AR(5), MAR 5A.4.2R(3) and MAR 6.3A.1R] and paragraph 4C of the Schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001 for each execution venue listed by the investment firm in its execution policy.~~

...

11.2A.29 G An *investment firm* executing orders should be able to include a single *execution venue* in their policy only where they are able to show that this allows them to obtain best execution for their *clients* on a consistent basis.

Investment firms should select a single *execution venue* only where they can reasonably expect that the selected *execution venue* will enable them to obtain results for *clients* that are at least as good as the results that they could reasonably expect from using alternative *execution venues*. This reasonable expectation must be supported by relevant data ~~published in accordance with:~~ or by other internal analyses conducted by *investment firms*.

- (1) ~~COBS 11.2A.38G;~~
- (2) ~~COBS 11.2A.39R;~~
- (3) ~~COBS 11.2C;~~ and
- (4) ~~by other internal analyses conducted by *investment firms*.~~ [deleted]

[**Note:** recital 108 to the *MiFID Org Regulation*]

...

11.2A.31 R (1) A *firm* must monitor the effectiveness of its order execution arrangements and execution policy to identify and, where appropriate, correct any deficiencies. In particular it must assess, on a regular basis, whether the *execution venues* included in the order execution policy provide for the best possible result for the *client* or whether it needs to make changes to its execution arrangements taking into account ~~the information published in accordance with:~~ relevant data or other internal analyses conducted by *investment firms*.

- (a) ~~COBS 11.2A.38G;~~
- (b) ~~COBS 11.2A.39R;~~ and
- (c) ~~COBS 11.2C.~~ [deleted]

(2) The *firm* must notify *clients* of any material changes to its order execution arrangements or execution policy.

[**Note:** article 27(7) of *MiFID*]

...

11.2A.33 G In order to obtain the best execution for a client, a *firm* should compare and analyse relevant data, ~~including that made public in accordance with COBS 11.2A.38G, COBS 11.2C and article 27(3) of *MiFID* and respective implementing measures.~~

[**Note:** recital 107 to the *MiFID Org Regulation*]

Duty of portfolio managers, receivers and transmitters to act in client's best interest

11.2A.34 UK 65 (1) ...

...

(6) Investment firms shall provide information to their clients on the policy established in accordance with paragraph 5 and paragraphs 2 to 9 of Article 66. Investment firms shall provide clients with appropriate information about the firm and its services and the entities chosen for execution. ~~In particular, when the investment firm select other firms to provide order execution services, it shall summarise and make public, on an annual basis, for each class of financial instruments, the top five investment firms in terms of trading volumes where it transmitted or placed client orders for execution in the preceding year and information on the quality of execution obtained. The information shall be consistent with the information published in accordance with the Commission Delegated Regulation (EU) 2017/576 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution, or any technical standards made by the Financial Conduct Authority under paragraph 20(b) of Schedule 3 to Regulation (EU) 600/2014.~~

Upon reasonable request from a client, investment firms shall provide its clients or potential clients with information about entities where the orders are transmitted or placed for execution.

(7) ...

...

(8) This Article shall not apply where the investment firm that provides the service of portfolio management or reception and transmission of orders also executes the orders received or the decisions to deal on behalf of its client's portfolio. In those cases, Articles 64 and 66 of this Regulation, ~~technical standards made under Article 27(10) of Directive 2014/65/EC~~ and rules in [COBS] which were relied on immediately before exit to implement Article 27 of Directive 2014/65/EU shall apply.

...

11.2A.36 G

A *firm* transmitting or placing orders with other entities for execution may select a single entity for execution only where the *firm* is able to show that this provides the best possible result for their *clients* on a consistent basis and where they can reasonably expect that the selected entity will enable them to obtain results for *clients* that are at least as good as the results that could reasonably be expected from using alternative entities for execution. This reasonable expectation should be supported by relevant data or by other internal analyses conducted by investment firms. ~~published in accordance with:~~

(1) ~~COBS 11.2A.38G;~~

- (2) ~~COBS 11.2A.39R;~~
- (3) ~~COBS 11.2C; and~~
- (4) ~~by internal analysis conducted by investment firms. [deleted]~~

[Note: recital 100 to the *MiFID Org Regulation*]

...

~~Publishing information on execution quality~~

11.2A.38 G ~~*Execution venues* (other than market makers and other liquidity providers to which *COBS 11.2C* applies) are reminded of the need to comply with the following provisions:~~

- (1) ~~MAR 5.3.1A R(5);~~
- (2) ~~MAR 5A.4.2R(3);~~
- (3) ~~MAR 6.3A.1R; and~~
- (4) ~~paragraph 4C of the Schedule to the *Recognition Requirements Regulations*.~~

[Note: article 27(3) of *MiFID* and *MiFID-RTS 27*] [deleted]

11.2A.39 R ~~In accordance with the requirements of *COBS 11 Annex 1EU*, a *firm* which executes *client* orders must summarise and make public on an annual basis, for each class of *financial instruments*, the top five *execution venues* in terms of trading volumes, where they executed *client* orders in the preceding year, together with information on the quality of execution obtained.~~

[Note: article 27(6) of *MiFID* and *MiFID-RTS 28*] [deleted]

...

11.2B Best execution for UCITS management companies

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Obligation to execute orders on terms most favourable to the scheme

...

- 11.2B.22 G (1) A *management company* may specify a single *execution venue*, or a single entity with which it places orders for execution, in its execution policy where it:
- (a) is able to show that this allows it to obtain best execution, or, when placing orders for execution, the best possible

result, for the *schemes* it manages on a consistent basis;
and

- (b) can reasonably expect that the selected *execution venue* or entity will enable it to obtain results for each *scheme* that are at least as good as the results that it could reasonably expect from using alternative *execution venues* or entities.
- (2) The reasonable expectation in (1)(b) should be supported by: relevant data or by other internal analyses conducted by the management company.
- (a) ~~relevant data published in accordance with COBS 11.2A.39R, COBS 11.2B.36R, COBS 11.2C and the provisions referred to in COBS 11.2B.30G; or~~
 - (b) ~~other internal analyses conducted by the management company. [deleted]~~

...

Monitoring and review of the order execution arrangements including the order execution policy

- 11.2B.27 R
- (1) A *management company* must monitor the effectiveness of its order execution arrangements and policy on a regular basis to identify and, where appropriate, correct any deficiencies.
 - (2) A *management company* that places orders with other entities for execution must in particular monitor the execution quality of those entities on a regular basis to identify and, where appropriate, correct any deficiencies.
 - (3) A *management company* must assess, on a regular basis:
 - (a) whether the *execution venues* included in the order execution policy provide for the best possible result for the *schemes* it manages; and
 - (b) whether it needs to make changes to its execution arrangements taking into account ~~the information published in accordance with COBS 11.2A.39R, COBS 11.2B.36R, COBS 11.2C and the provisions referred to in COBS 11.2B.30G~~ relevant data or other internal analyses conducted by the management company.

[**Note:** article 25(4) first sentence, and article 26(3) first paragraph of the *UCITS implementing Directive*]

...

11.2B.30 G ~~A management company should compare and analyse relevant data, including that made public in accordance with: to monitor and review their order execution arrangements.~~

- ~~(1) MAR 5.3.1AR(5) (Functioning of an MTF);~~
- ~~(2) (Functioning of an OTF);~~
- ~~(3) MAR 6.3A.1R (Quality of execution); and~~
- ~~(4) paragraph 4C of the Schedule to the *Recognition Requirements Regulations*. [deleted]~~

Information requirements

...

11.2B.36 R ~~(1) Where a management company executes *scheme* orders or selects other *firms* to provide order execution services, it must summarise and make public, on an annual basis, for each type of *financial instrument*:~~

- ~~(a) the top five *execution venues* or investment firms where it transmitted or placed orders for execution in terms of trading volumes in the preceding year; and~~
- ~~(b) information on the quality of execution obtained.~~

~~(2) The information must be consistent with the information published in accordance with COBS 11 Annex 1UK (Regulatory technical standard 28) (which applies as *rules* in accordance with COBS 18.5B.2R). [deleted]~~

...

11.2C Quality of execution

11.2C.1 R ~~A *market maker* or other liquidity provider must make available the data detailed in COBS 11.2C.2R to the public in the following manner:~~

- ~~(1) at least on an annual basis; and~~
- ~~(2) without any charges. [deleted]~~

11.2C.2 R ~~COBS 11.2C.1R applies to data relating to the quality of execution of transactions by that *market maker* or other liquidity provider, including details about price, costs, speed and likelihood of execution for individual *financial instruments*.~~

~~[Note: article 27(3) of MiFID and MiFID RTS 27] [deleted]~~

...

COBS 11 Annex 1UK Regulatory Technical Standard 28 (RTS 28) is deleted in its entirety. The deleted text is not shown but the annex is marked [deleted] as shown below.

11 Annex UK Regulatory Technical Standard 28 (RTS 28) [deleted]
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Annex B

Amendments to the Market Conduct sourcebook (MAR)

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

5 Multilateral trading facilities (MTFs)

...

5.3 Trading process requirements

...

Functioning of an MTF

5.3.1A R A *firm* must:

(1) ...

...

(5) ~~make available data relating to the quality of execution of transactions on that venue, including details about price, costs, speed and likelihood of execution for individual *financial instruments* to the public in the following manner:~~

(a) ~~at least on an annual basis; and~~

(b) ~~without any charges; and~~

~~[Note: article 27(3) of MiFID] [deleted]~~

...

...

5A Organised trading facilities (OTFs)

...

5A.4 Trading process requirements

...

Functioning of an OTF

5A.4.2 R A *firm* must:

(1) ...

...

- (3) ~~make available data relating to the quality of execution of transactions on that venue, including details about price, costs, speed and likelihood of execution for individual *financial instruments* to the public in the following manner:~~

(a) ~~at least on an annual basis; and~~

(b) ~~without any charges.~~

~~[Note: article 27(3) of MiFID] [deleted]~~

...

6 Systematic internalisers

...

6.3A Quality of execution

- 6.3A.1 R ~~A systematic internaliser must make available the data in MAR 6.3A.2R to the public in the following manner:~~

(1) ~~at least on an annual basis; and~~

(2) ~~without any charges. [deleted]~~

- 6.3A.2 R ~~MAR 6.3A.1R applies to data relating to the quality of execution of transactions on that venue, including details about price, costs, speed and likelihood of execution for individual *financial instruments*.~~

~~[Note: article 27(3) of MiFID, MiFID RTS 27 and MiFID RTS 28]
[deleted]~~

Annex C

Amendments to the Recognised Investments Exchanges sourcebook (REC)

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

2 Recognition requirements

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2.6 General safeguards for investors, suspension and removal of financial instruments from trading and order execution on regulated markets

...

2.6.2A UK Schedule to the Recognition Requirements Regulations, Paragraph 4C

(1)	The [UK RIE] must make available to the public, without any charges, data relating to the quality of execution of transactions on the trading venues operated by the [UK RIE] on at least an annual basis. [deleted]
(2)	Reports must include details about price, costs, speed and likelihood of execution for individual financial instruments. [deleted]

...

2.16A Operation of a multilateral trading facility (MTF) or an organised trading facility (OTF)

2.16A.1 UK Schedule to the Recognition Requirements Regulations, Paragraph 9A-9H

...	
(2)	An exchange operating a multilateral trading facility or an organised trading facility must comply with those requirements of-
(a)	any provisions of the law of the United Kingdom relied on by the United Kingdom before IP completion day to implement Chapter 1 of Title II of the markets in financial instruments directive—
(i)	as they have effect on IP completion day <u>1 December 2021</u> , in the case of rules made by the FCA under the Act; and

	(ii)	as amended from time to time, in all other cases;
	(b)	...
...		
Paragraph 9F – Specific requirements for organised trading facilities: execution of orders		
...		
(4)		The discretion which the [UK RIE] must exercise in executing a client order may only be the discretion mentioned in sub-paragraph (5) or in sub-paragraph (6) or both.
(5)		The first discretion is whether to place or retract an order on the organised trading facility.
(6)		The second discretion is whether to match a specific client order with other orders available on the organised trading facility at a given time, provided the exercise of such discretion is in compliance with specific instructions received from the client and in accordance with the [UK RIE's] obligations under—
	(a)	section 11.2A of the Conduct of Business sourcebook;
	(b)	Articles 64 to 66 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive;
	(c)	Commission Delegated Regulation (EU) 2017/575 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards concerning the data to be published by execution venues on the quality of execution of transactions; and [deleted]
	(d)	Commission Delegated Regulation (EU) 2017/576 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution. [deleted]
...		
(9)		The [UK RIE] must comply with rules made by the FCA as they have effect on IP completion day <u>1 December 2021</u> as

		to how Articles 24, 25, 27 and 28 of the markets in financial instruments directive apply to its operation of an organised trading facility.
...		

...