

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.

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

Part 2: Comes into force on 1 February 2023

Amend the following definitions as shown.

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

~~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 4.14 4.12B</i> , <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 4.12.3R 4.12B</i> set out restrictions on the promotion of <i>non-mainstream-pooled investments</i> <i>non-mass market investments</i> to <i>retail clients</i> . See also <i>COBS 9.3.5G</i> and <i>COBS 9A.2.22G</i> (<i>Non-mainstream-pooled investments</i> <u><i>Investments subject to restrictions on retail distribution</i></u>).]
<i>self-certified sophisticated investor</i>	a <i>person</i> 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> <u><i>Financial Promotion Order</i></u> or in <i>COBS 4.12.8R</i> <u><i>4.12B.40R</i></u> .
<i>single company</i>	a <i>single company</i> that is not part of the same <i>group</i> as the <i>single-company holding vehicle</i> investing in it and which: <ul style="list-style-type: none"> (a) ... (b) does not undertake any of the activities in <i>COBS 4.14.20R(2)(a) to (e)</i> <u><i>4.12B.50R(2)(a) to (e)</i></u> subject to <i>COBS 4.14.22R 4.12B.52R</i> and <i>COBS 4.14.24R(1) 4.12B.54R(1)</i> (for these purposes, <i>COBS 4.14.20R(2)(a) to (e)</i> <u><i>4.12B.50R(2)(a) to (e)</i></u>, <i>COBS 4.14.22R 4.12B.52R</i> and <i>COBS 4.14.24R(1) 4.12B.54R(1)</i> must be read as though references to the <i>issuer</i> are to the <i>single company</i>).
<i>single- company holding vehicle</i>	a <i>single body corporate</i> which: <ul style="list-style-type: none"> (3) ensures that neither the <i>single company</i>, nor members of its <i>group</i>, will use any of the monies received from the <i>single-company holding vehicle</i> directly or indirectly for one or more of the purposes in <i>COBS 4.14.20R(2) 4.12B.50R(2)</i> as modified by limb (b) of the <i>single company Glossary</i> 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
	<p>Estimated reading time: 2 min</p> <p>Due to the potential for losses, the Financial Conduct Authority (FCA) considers this investment to be high risk.</p> <p>What are the key risks?</p> <p>1. You could lose all the money you invest</p> <ul style="list-style-type: none"> • Most investments are shares in start-up businesses or bonds issued by them. Investors in these shares or bonds often lose 100% of the money they invested, as most start-up businesses fail. • Certain of these investments can be held in an Innovative Finance ISA (IFISA). An IFISA does not reduce the risk of the investment or protect you from losses, so you can still lose all your money. It only means that any potential returns will be tax free. • Checks on the businesses you are investing in, such as how well they are expected to perform, may not have been carried out by the platform you are investing through. You should do your own research before investing.

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>
	<p>Estimated reading time: 2 min</p> <p>Due to the potential for losses, the Financial Conduct Authority (FCA) considers this investment to be high risk.</p> <p>What are the key risks?</p> <p>1. You could lose the money you invest</p> <ul style="list-style-type: none"> • 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. <p>2. You are unlikely to get your money back quickly</p> <ul style="list-style-type: none"> • 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. <p>3. Don't put all your eggs in one basket</p> <ul style="list-style-type: none"> • 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] <p>4. The P2P platform could fail</p> <ul style="list-style-type: none"> • 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.

	<p>5. You are unlikely to be protected if something goes wrong</p> <ul style="list-style-type: none"> • 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] <p>If you are interested in learning more about how to protect yourself, visit the FCA’s website here. [https://www.fca.org.uk/investsmart]</p> <p>For further information about peer-to-peer lending (loan-based crowdfunding), visit the FCA’s website here. [https://www.fca.org.uk/consumers/crowdfunding]</p>
3	Risk summary for <i>non-readily realisable securities</i> which are <i>shares</i>
	<p>Estimated reading time: 2 min</p> <p>Due to the potential for losses, the Financial Conduct Authority (FCA) considers this investment to be high risk.</p> <p>What are the key risks?</p> <p>1. You could lose all the money you invest</p> <ul style="list-style-type: none"> • If the business you invest in fails, you are likely to lose 100% of the money you invested. Most start-up businesses fail. <p>2. You are unlikely to be protected if something goes wrong</p> <ul style="list-style-type: none"> • [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 <p>[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/]]</p> <ul style="list-style-type: none"> • [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]

	<p>3. You won't get your money back quickly</p> <ul style="list-style-type: none"> • 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. <p>4. Don't put all your eggs in one basket</p> <ul style="list-style-type: none"> • 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] <p>5. The value of your investment can be reduced</p> <ul style="list-style-type: none"> • 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. <p>If you are interested in learning more about how to protect yourself, visit the FCA's website here. [https://www.fca.org.uk/investsmart]</p>
4	Risk summary for <i>non-readily realisable securities</i> which are <i>debentures</i>
	<p>Estimated reading time: 2 min</p> <p>Due to the potential for losses, the Financial Conduct Authority (FCA) considers this investment to be high risk.</p> <p>What are the key risks?</p> <p>1. You could lose all the money you invest</p> <ul style="list-style-type: none"> • 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.

	<ul style="list-style-type: none"> • 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. <p>2. You are unlikely to be protected if something goes wrong</p> <ul style="list-style-type: none"> • [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 <p>[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/]]</p> <ul style="list-style-type: none"> • [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] <p>3. You are unlikely to get your money back quickly</p> <ul style="list-style-type: none"> • 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. <p>4. Don't put all your eggs in one basket</p> <ul style="list-style-type: none"> • 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] <p>If you are interested in learning more about how to protect yourself, visit the FCA's website here. [https://www.fca.org.uk/investsmart]</p>
5	Risk summary for <i>speculative illiquid securities</i>
	<p>Estimated reading time: 2 min</p> <p>Due to the potential for losses, the Financial Conduct Authority (FCA) considers this investment to be very complex and high risk.</p>

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

	<p>invests it in, other businesses or property. This makes it difficult for the investor to know where their money is going.</p> <ul style="list-style-type: none"> • 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. <p>5. Don't put all your eggs in one basket</p> <ul style="list-style-type: none"> • 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] <p>If you are interested in learning more about how to protect yourself, visit the FCA's website here. [https://www.fca.org.uk/investsmart]</p> <p>For further information about minibonds, visit the FCA's website here. [https://www.fca.org.uk/consumers/mini-bonds]</p>
6	<p>Risk summary for <i>non-mainstream pooled investments</i></p>
	<p>Estimated reading time: 2 min</p> <p>Due to the potential for losses, the Financial Conduct Authority (FCA) considers this investment to be very complex and high risk.</p> <p>What are the key risks?</p> <p>1. You could lose all the money you invest</p> <ul style="list-style-type: none"> • 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. <p>2. You are unlikely to be protected if something goes wrong</p> <ul style="list-style-type: none"> • [The business offering this investment is not regulated by the FCA. Protection from the Financial Services Compensation Scheme (FSCS) only considers claims against failed regulated firms. Learn more about FSCS protection here. [https://www.fscs.org.uk/what-we-cover/investments/]] or

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

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

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

3. You are unlikely to get your money back quickly

- This type of business could face cash-flow problems that delay payments to investors. It could also fail altogether and be unable to repay any of the money owed to you.
- You are unlikely to be able to cash in your investment early by selling your investment. In the rare circumstances where it is possible to sell your investment in a ‘secondary market’, you may not find a buyer at the price you are willing to sell.
- You may have to pay exit fees or additional charges to take any money out of your investment early.

4. This is a complex investment

- This kind of investment has a complex structure based on other risky investments, which makes it difficult for the investor to know where their money is going.
- This makes it difficult to predict how risky the investment is, but it will most likely be high.
- You may wish to get financial advice before deciding to invest.

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

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

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

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

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*.

- (e) ~~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]

<p>“RESTRICTED INVESTOR STATEMENT</p> <p>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:</p>	
(a)	<p>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</p>
(b)	<p>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.</p>
<p>Net assets for these purposes do not include:</p>	
(a)	<p>the property which is my primary residence or any money raised through a loan secured on that property;</p>
(b)	<p>any rights of mine under a qualifying contract of insurance; or</p>
(c)	<p>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</p>
(d)	<p>any withdrawals from my pension savings (except where the withdrawals are used directly for income in retirement).</p>
<p>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.</p> <p>Signature:</p> <p>Date:”</p>	

- 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</i> must not <i>communicate</i> or <i>approve</i> <i>financial promotions</i> in relation to <i>non-mass market investments</i> to <i>retail clients</i>	All <i>non-mass market investments</i> other than <i>units</i> in <i>unregulated collective investment schemes</i>	At all times.
<i>COBS</i> 4.12B.7R(1)(b)	<i>Firms</i> must carry out a preliminary assessment of suitability	All <i>non-mass market investments</i>	Before the <i>financial promotion</i> is <i>communicated</i> 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</i> must ensure that a personalised risk warning and summary of the risks is made available to the <i>client</i> and a period of at least 24 hours (the ‘cooling off period’) is applied before the <i>financial promotion</i> is <i>communicated</i>	All <i>non-mass market investments</i> except for (1) <i>units</i> in <i>long-term asset funds</i> ; and (2) in relation to the personalised risk warning and summary of risks, <i>securities</i> in a <i>closed-ended investment</i>	Before 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</i> 4.12B.7R(5)

		<i>fund</i> applying for, or with, a <i>premium listing</i> and which complies with the requirements of <i>LR 15</i>	
<i>COBS</i> 4.12B.17R	Restrictions on monetary and non-monetary benefits being included within the <i>financial promotions</i>	All <i>non-mass market investments</i> except for <i>units</i> in <i>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</i> 4.12B.7R(5)
<i>COBS</i> 4.12B.20R, <i>COBS</i> 4.12B.21R, <i>COBS</i> 4.12B.24R, and <i>COBS</i> 4.12B.26R	<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</i> in <i>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 <i>LR 15</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</i> 4.12B.7R(5)
<i>COBS</i> 4.12B.32R, <i>COBS</i> 4.12B.33R, and <i>COBS</i> 4.12B.35R	<i>Firms</i> must ensure that statements disclosing all costs, charges and commission	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

	are provided to the <i>client</i>		certified sophisticated investor, in reliance on the relevant exemption in <i>COBS</i> 4.12B.7R(5)
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- (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. Replacem ent 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	A <i>person</i> who is eligible to participate or	Any <i>non-mainstream pooled investment</i> which is such an arrangement.

charitable funds	<p>invest in an arrangement constituted under:</p> <p>(1) the Church Funds Investment Measure 1958 (available at www.legislation.gov.uk/ukcm/Eli/2/6-7/1/2014-01-01);</p> <p>(2) section 96 or 100 of the Charities Act 2011 (available at www.legislation.gov.uk/ukpga/2011/25/2014-01-01);</p> <p>(3) section 25 of the Charities Act (Northern Ireland) 1964 (available at www.legislation.gov.uk/apni/1964/33/section/25/2014-01-01);</p> <p>(4) the Regulation on European Venture Capital Funds ('EuVECA') or the <i>RVECA Regulation</i> ('RVECA'); or</p> <p>(5) the Regulation on European Social Entrepreneurship Funds</p>	
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	(‘EuSEFs’) or the <i>SEF Regulation</i> (‘SEFs’).	
3. Eligible employees	<p>An eligible <i>employee</i>, that is, a <i>person</i> who is:</p> <p>(1) an officer;</p> <p>(2) an <i>employee</i>;</p> <p>(3) a former officer or <i>employee</i>; or</p> <p>(4) a member of the immediate family of any of (1) – (3), of an employer which is (or is in the same <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.</p>	<p>1. A <i>non-mainstream pooled investment</i>, the instrument constituting which:</p> <p>A. restricts the property of the <i>non-mainstream pooled investment</i>, apart from cash and near cash, to:</p> <p>(1) (where the employer is a company) <i>shares</i> in and <i>debentures</i> of the <i>company</i> or any other connected <i>company</i>; [See Note 2.]</p> <p>(2) (in any case), any property, provided that the <i>non-mainstream pooled investment</i> takes the form of:</p> <p>(i) a limited <i>partnership</i>, under the terms of which the employer (or connected <i>company</i>) will be the unlimited partner and the eligible employees will be some or all of the limited partners; or</p> <p>(ii) a trust which the <i>firm</i> reasonably believes not to contain any risk that any eligible employee may be liable to make any further payments (other than charges) for <i>investment</i> transactions earlier entered into, which the eligible <i>employee</i> was not aware of at the time he entered into them; and</p> <p>B. (in a case falling within A(1) above) restricts participation in the <i>non-mainstream pooled investment</i> to eligible <i>employees</i>, the employer and any connected <i>company</i>.</p> <p>2. Any <i>non-mainstream pooled investment</i>, provided that the participation of eligible employees is to facilitate their co-investment:</p> <p>(i) with one or more <i>companies</i> in the same <i>group</i> as their employer (which may include the employer);</p> <p>or</p> <p>(ii) with one or more <i>clients</i> of such a <i>company</i>.</p>

4. Members of the Society of Lloyd's	A <i>person</i> admitted to membership of the Society of Lloyd's or any <i>person</i> by law entitled or bound to administer his affairs.	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.
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</i>

		<p><i>recommendation on a non-mainstream pooled investment;</i></p> <p>(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</p> <p>(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.]</p>
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	Any <i>non-mass market investment</i> .

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

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

<input type="checkbox"/> Yes If yes, what is the name of the authorised firm? _____ OR This does not apply to me. <input type="checkbox"/> Yes
<p>I accept that being a sophisticated investor will expose me to promotions for investment where there is a significant risk of losing all the money I invest. I am aware that it is open to me seek professional advice before making any investment in a high-risk investment.</p> <p>Signature:</p> <p>Date:</p>

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

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
<p>Please confirm whether you qualify as a self-certified sophisticated investor on the basis that A, B, C or D apply to you.</p> <p>In the last two years have you:</p> <p>A) worked in private equity or in the provision of finance for small and medium enterprises?</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p style="padding-left: 40px;">If yes, what is/was the name of the business or organisation? _____</p> <p>B) been the director of a company with an annual turnover of at least £1 million?</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p style="padding-left: 40px;">If yes, what is/was the name of the company? _____</p> <p>C) made two or more investments in an unlisted company?</p> <p><input type="checkbox"/> No</p>

<p style="text-align: center;"><input type="checkbox"/> Yes</p> <p style="text-align: center;">If yes, how many investments in unlisted companies have you made in the last two years? _____</p> <p>D) been a member of a network or syndicate of business angels for more than six months?</p> <p style="text-align: center;"><input type="checkbox"/> No</p> <p style="text-align: center;"><input type="checkbox"/> Yes</p> <p style="text-align: center;">If yes, what is the name of the network or syndicate? _____</p> <p>OR</p> <p>E) None of these apply to me.</p> <p style="text-align: center;"><input type="checkbox"/> Yes</p>
<p>I accept that being a self-certified sophisticated investor will expose me to promotions for investments where there is a significant risk of losing all the money I invest. I am aware that it is open to me seek advice from someone who specialises in advising on [type of investment] [Note 1].</p> <p>Signature: _____</p> <p>Date: _____</p>

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

4 Annex R Restricted investor statement
5

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

RESTRICTED INVESTOR STATEMENT
<p>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.</p> <p>You should not invest more than 10% of your net assets in high-risk investments. Doing so could expose you to significant losses.</p> <p>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.</p> <p>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).</p>

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*;

(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]~~

- (1) ~~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 Annex 1 G Assessing appropriateness: non-readily realisable securities

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 Annex 2 G Assessing appropriateness: P2P agreements and P2P portfolios

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
<i>Certified high net worth investor</i>	(a) An individual who meets the requirements	The <i>firm</i> must consider that the <i>mutual society share</i> is likely to be suitable for that

<u>Certified high net worth investor</u>	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.	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>).
<i>Certified sophisticated investor</i> <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 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 COBS 4.12.8R <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.	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
<p>Certified high net worth investor <u>Certified high net worth investor</u></p>	<p>(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.</p>	<p>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 COBS 4.12.5G(2)) <u>COBS 4.12B.9G(2)</u>).</p>
<p>Certified sophisticated investor <u>Certified sophisticated investor</u></p>	<p>(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 others) to make investment decisions on behalf of another person who is the <i>firm’s</i> client.</p>	<p>Not applicable.</p>

<p>Self-certified sophisticated investor Self-certified sophisticated investor</p>	<p>(a) An individual who meets the requirements set out in COBS 4.12.8R <u>COBS 4.12B.40R</u>; or</p> <p>(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.</p>	<p>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 COBS 4.12.5G(2) <u>COBS 4.12B.9G(2)</u>).</p>
<p>...</p>		

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
	...				
	<i>COBS 4.11.1R(1)</i>	<i>Financial promotion</i>	<i>A financial promotion communicated₂</i>	<i>When communicated₂</i>	See <i>COBS 4.11.1R(3)</i>

		or approved or in relation to which the firm has confirmed compliance (subject to exemptions)	or approved or confirmed	
...				
COBS 4.11.1R(2A) [deleted]	Non-mainstream pooled investments: certification of compliance	Certification by the person allocated the compliance oversight 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 4.12.3R, 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.	Date of certification Date the invitation or inducement is communicated or approved	

<u>COBS</u> 4.11.1R(2B)	<u>Financial promotion: competence and expertise</u>	Evidence of how the <i>firm</i> has satisfied the competence and expertise requirement in <u>COBS 4.10.9AR</u>	When relevant <u>financial promotion communicated or approved, or compliance confirmed</u>	See <u>COBS 4.11.1R(3)</u>
<u>COBS</u> 4.11.2G	Compliance of <i>financial promotions</i>	<i>Firms</i> encouraged to consider recording why a <i>financial promotion</i> is considered compliant.	Date of assessment of compliance	
<u>COBS</u> 4.11.4R	<u>Non-mass market investments: certification of compliance</u>	<u>Certification by the person allocated the compliance oversight 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,</u>	<u>Date of certification</u> <u>Date the financial promotion is communicated or approved</u>	<u>5 years</u>

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

<p>Conduct of Business sourcebook (COBS)</p>	<p>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).</p>
<p>...</p>	

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 4.14 4.12B</i> 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.

...