

High-risk investments: Marketing speculative illiquid securities (including speculative mini-bonds) to retail investors

Policy Statement

PS20/15

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This relates to

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1 Summary

- 1.1** In June 2020, we consulted on making our temporary product intervention (TPI) for speculative illiquid securities (SIS) permanent. SISs are debentures or preference shares with a denomination of less than £100,000 where, subject to certain exemptions, the proceeds are lent to third parties, used to buy or acquire investments or used to buy or fund the construction of property.
- 1.2** We also consulted on extending the SIS definition, so the new rules would also apply to listed debentures with similar features to other SISs which are not regularly traded (referred to in this document as listed bonds). The proposed rules prevent SISs, including relevant listed bonds, from being mass-marketed to retail investors. They also improve disclosure of key risks and costs for the small number of retail investors who are still eligible to receive promotions for SISs. The proposals included a small number of changes to the temporary rules, mostly based on feedback we had received since publishing the TPI in November 2019.
- 1.3** This policy statement (PS) summarises the feedback we received on CP20/8 High-risk investments: Marketing speculative illiquid securities (including speculative mini-bonds) to retail investors (CP20/8). It sets out our final policy position and Handbook rules.
- 1.4** Having considered consultation feedback, we are confirming the rules as consulted on, subject to some minor changes and clarifications. These are to ensure the final rules give effect to the policy intention explained in CP20/8.
- 1.5** The made rules are provided in Appendix 1 and will have effect from 1 January 2021.
- 1.6** Annex 2 explains the considerations we have had regard to when developing and making the final rules, in accordance with Chapter 2 of the Product Intervention and Product Governance Sourcebook (PROD) in the FCA Handbook.

Who this affects

- 1.7** This document will be directly relevant to:
- issuers of SISs, including issuers of listed bonds with similar features to other SISs which are not regularly traded
 - investment-based crowdfunding (IBCF) platforms and other intermediaries offering or otherwise providing services in relation to SISs
 - authorised firms which approve financial promotions for unauthorised persons issuing SISs
 - trade bodies for the IBCF sector
 - issuers and distributors of non-mainstream pooled investments (NMPs), for the rules discussed in paragraphs 2.32 to 2.34

1.8 The final rules in this document will also interest:

- investment exchanges
- consumers and businesses investing or considering investing in SISs
- consumer organisations
- businesses which rely on funding from SISs in the form of on-lending or investment using the proceeds of the issue

Implications of EU withdrawal

1.9 The UK left the EU on 31 January 2020 with a Withdrawal Agreement. It has entered a transition period which is due to operate until 31 December 2020. When the transition period ends, EEA firms which currently passport into the UK and wish to continue operating here will be subject to the temporary permissions regime or the financial services contracts regime, which covers supervised run-off firms and contractual run-off firms. In accordance with our stated intention in CP20/8, our final rules apply to firms with a temporary permission and to supervised run-off firms in the financial services contracts regime (which are included in the Handbook definition of 'TP firm'). The rules also apply to certain contractual run-off firms in the financial services contracts regime and firms in the analogous regime for e-commerce firms because of secondary legislation which applies product intervention rules to those firms. We have added guidance in the rules to draw firms' attention to these provisions.

The wider context of this policy statement

1.10 The failure of several SIS issuers, including London Capital & Finance, Basset & Gold and Blackmore Bonds plc, show that retail investment in these products can lead to significant and unexpected financial losses for consumers. They are high risk, opaque, complex and not suitable for most retail investors. The risks of SISs are comparable to unauthorised collective investment schemes (UCIS), which, along with other types of NMPI, are subject to similar restrictions to the TPI.

1.11 A key driver of this harm was the mass-marketing of these products to consumers, particularly online. Retail investors were attracted to the advertised rates of return often without understanding the underlying investment products or the associated risks. This situation was made worse by misleading advertisements that downplayed risks and/or suggested the products were more secure than they were. We believe that SIS promotions should be limited to a very niche retail market.

1.12 Our TPI for SISs was published in November 2019 to prevent these products from being mass-marketed to retail investors. It came into effect on 1 January 2020 and expires after 12 months. The TPI also strengthens requirements for the disclosure of key risks and costs to the retail investors who are still eligible to receive promotions for SISs, ie certified high net worth, certified sophisticated and self-certified sophisticated retail investors. The TPI expires on 31 December 2020 and we needed to make any permanent rules before the end of 2020 if we concluded that the existing requirements should continue to apply.

1.13 Since the introduction of the TPI, we have seen evidence that some UK-based issuers of speculative mini-bonds have gained admission to listing for bonds which are not regularly traded and are promoting them to UK retail investors. These listed bonds are not in scope of the TPI but are similarly high-risk and complex, and we believe they are also not suitable for most retail investors.

Our consultation

1.14 On 18 June 2020, we published CP20/8 with proposals to:

- make the TPI rules permanent for debentures and preference shares, subject to a small number of changes and clarifications (see below)
- extend the scope of the permanent rules to listed bonds with similar features to other SISs which are not regularly traded
- exclude certain securities from the marketing restrictions where they relate to single-company investments
- make certain clarifications in the permanent rules, including to ensure the existing exemptions in the TPI operate as intended
- clarify how promotions are restricted for SISs and NMPIs

1.15 The consultation period closed on 1 October 2020.

Our Call for Input on the consumer investments market

1.16 In September 2020, we published a [Call for Input \(Cfi\)](#) on the consumer investments market to seek views on what changes can be made to improve regulatory protections and consumer outcomes.

1.17 The rules in this PS form part of our work to reduce harm in the consumer investment market, which was identified as a priority in our 2020/21 Business Plan. This PS is timely and important to ensure the continuity and effectiveness of the SIS marketing restrictions. However, the treatment of SISs and similar products will be kept under review as part of our wider work, which includes the Cfi, to ensure there is a consistent and effective approach across the consumer investments market.

1.18 The Cfi closes on 15 December 2020. We will analyse responses to help shape our work over the next 3 years and to inform any future regulatory changes in this area.

How it links to our objectives

1.19 These rules support our consumer protection and integrity objectives. The marketing restrictions will help to protect consumers from investing in unsuitable products, which could undermine confidence in UK financial markets and activities connected with those markets. We have also considered our competition objective and duty. We do not believe it is in consumers' interests for firms or businesses to compete in selling unsuitable investment products to retail investors.

What we are changing and outcomes we are seeking

- 1.20** The final rules will prevent the mass-marketing of SISs and improve disclosure of key risks and costs for retail investors who are still eligible to receive these promotions in the same way as the TPI, but subject to a small number of changes and clarifications. The final rules will extend to listed bonds with similar features to other SISs which are not regularly traded.
- 1.21** The rules are designed to restrict retail investors' access to financial promotions for SISs (including relevant listed bonds). This will help to prevent significant and unexpected losses by reducing the number of consumers who invest in these products. They will also help the limited number of retail investors who are still eligible to receive promotions for these products to make better-informed investment decisions about whether to invest, and how much they want to risk.
- 1.22** The rules will apply subject to any relevant exemptions in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (FPO). We recognise that the FPO exemptions mean that an unauthorised issuer can still communicate financial promotions for a SIS to certified high net worth individuals, and sophisticated and self-certified sophisticated retail investors, where the relevant criteria are met. However, we consider that these exemptions do not allow issuers to mass-market these promotions to the public, including online. We can and will act if we think firms are not correctly applying these exemptions in breach of s21 of the Financial Services and Markets Act 2000 (FSMA). These exemptions are discussed further in our Cfl and our Perimeter Report 2019/20.

Measuring success

- 1.23** We will evaluate the success of these rules through our supervisory and monitoring activities. We will look for:
- an absence of financial promotions for SISs which are publicly available online and in other places
 - a reduction in the number of complaints we receive about relevant non-compliant financial promotions compared to before we made the TPI
 - clear disclosure of key risks and costs to certified high net worth and certified and self-certified sophisticated retail investors in all financial promotions for SISs
- 1.24** We expect the rules to result in fewer consumers investing in SISs than before the TPI. Therefore, we expect fewer retail investors to be affected by any future failures.

Summary of feedback and our response

- 1.25** We received 13 responses from a range of stakeholders, including trade bodies, consumer representative organisations, consultancies, authorised firms, issuers and individuals.
- 1.26** Most respondents supported our consultation proposals, although there were some requests for clarifications and comments on specific aspects of the proposals. One respondent expressed concern about the impact of the mass-marketing restriction

for SISs on fundraising, particularly if the restriction is read as applying to businesses raising funds for their own commercial or industrial purposes. It was also noted that unauthorised persons could make use of the exemptions in the FPO to avoid our rules.

- 1.27** More detail on the feedback we received, and our response, is provided in Chapter 2. Appendix 1 sets out our final rules.

Equality and diversity considerations

- 1.28** We have considered the equality and diversity issues that may arise from these rules when consulting and in this PS.
- 1.29** In CP20/8, we explained that we did not consider that the proposals would materially impact any of the groups with protected characteristics under the Equality Act 2010. We did not receive any feedback on this from consultation respondents and remain of the same view. However, we will continue to consider the equality and diversity implications of our final rules when monitoring implementation and their effectiveness.

Next steps

- 1.30** The made rules in Appendix 1 will come into force on 1 January 2021. This ensures continuity of the marketing restrictions for SISs under the TPI and extends them to relevant listed bonds. Firms need to comply with these rules from this date.
- 1.31** We will monitor compliance with the rules and take supervisory and/or enforcement action where necessary.

2 Making the TPI rules permanent

2.1 This chapter summarises feedback on our proposals to:

- make the TPI rules permanent for debentures and preference shares, subject to a small number of changes and clarifications (see below)
- extend the scope of the permanent rules to listed bonds with similar features to other SISs which are not regularly traded
- exclude certain securities from the marketing restrictions where they relate to single-company investments
- make clarifications in the permanent rules to ensure the existing exemptions made as part of the TPI operate as intended
- clarify how promotions are restricted for SISs and NMPIs

2.2 Having considered consultation feedback on our proposals, we have made minor changes and clarifications to ensure the final rules give effect to the stated policy intention explained in CP20/8. These changes are mainly clarifications on the scope of the intervention. We have assessed the impact of those clarifications and believe that they have not changed the number of firms and consumers affected compared to our original analysis. We received no feedback on the Cost Benefit Analysis. We have considered the impacts of our intervention in light of the comments to the consultation and we consider that our initial estimates are still valid.

2.3 The rules come into force on 1 January 2021 and apply to authorised firms approving or communicating financial promotions for SISs including relevant listed bonds. This includes EEA firms currently passporting into the UK which enter the temporary permissions regime or the financial services contracts regime.

Feedback received

Making the TPI permanent

2.4 In CP20/8, we proposed to make permanent the marketing restrictions for debentures and preference shares subject to the TPI, subject to a small number of changes and clarifications addressed in Q3, Q4 and Q5 below.

Q1: *Do you agree with our proposal to make the TPI requirements permanent? If not, please give reasons.*

2.5 Most respondents supported the proposal to make the TPI requirements permanent.

2.6 Some respondents felt that the proposals should go further, with one suggesting that the marketing restrictions should be extended to all unlisted and non-regularly traded securities. Another respondent believed that rules relating to governance and disclosure for issuers of unlisted mini-bonds should be enhanced. A third respondent asked us to maintain a watching brief on new products which may be developed in this area to circumvent the rules.

- 2.7** One respondent believed that some of the characteristics we attributed to SISs and their marketing in CP20/8 were also relevant to other types of investment, and noted that these characteristics had not been used to define a SIS in the proposed rules. They also noted that there may be other characteristics of investments which could give rise to concerns when promoted to retail investors, and queried why we were focussing on on-lending, on-investing and property investments. This respondent suggested that there are already rules in place to deal with misleading promotions which could be used to address some of the concerns we had identified in relation to the marketing of SISs. They also recommended we should instead model our approach to SISs on the approach taken to the identification of risk for peer-to-peer (P2P) investments in the Conduct of Business Sourcebook (COBS) 18.12. They believed this would be a better way of addressing the issues we had identified, and suggested we make the mass-marketing ban permanent only for a limited period, while giving this approach further thought.
- 2.8** One respondent said that without improvements to the process for signing off financial promotions by an authorised firm, they believed that SISs should not be marketed to any retail investors.
- 2.9** Some respondents raised concerns that the marketing restrictions would drive issuers into using the FPO exemptions. Where certain conditions are met, these exemptions allow unauthorised persons to communicate SIS promotions to certified high net worth individuals, and sophisticated and self-certified sophisticated retail investors without needing to involve an authorised firm or being subject to the proposed rules.
- 2.10** One respondent, although in favour of the mass-marketing ban, noted that it could lead to the closure and liquidation of current issuers of SISs who are providing a return on those securities. This respondent felt that future issues of SISs should be required to be backed by insurance to protect investors and so that good companies can continue to trade.
- 2.11** One respondent queried whether the proposed rules would continue to apply to the widest possible definition of a 'debenture' or be confined to mini-bonds. They also asked for clarification on the definition of a 'preference share'.
- 2.12** One respondent noted the complexity of the SIS definition and suggested we should consider how to flag SIS status to distributors so they can be consistently identified. They also suggested that the prescribed risk warning should include the term 'speculative illiquid security'.
- 2.13** Three respondents noted that the proposed definition of a SIS would catch on-lending to charities, and one mentioned on-lending to local authorities, querying whether there should be exemptions for these types of security. Another respondent gave specific examples of situations where securities would fall within the definition of a SIS, where they believed that they should not.

Our response

We are proceeding to make the final rules in the form they were consulted on, subject to the amendments described in the remainder of this Chapter and shown in the instrument in Appendix 1.

The TPI was introduced to address a specific risk of harm, namely the widespread marketing of SISs to retail investors. SISs are high risk, complex, opaque, and difficult for most investors to understand. This means they are generally not suitable for retail investors, who cannot easily understand or assess the risks involved.

As explained in CP20/8, the risks associated with SISs are often similar to UCIS which are subject to similar marketing restrictions, as are other types of NMPIs. In both cases, the likelihood of investors receiving interest and capital repayment often depends on an issuer achieving returns from lending to, or investing in, third parties or property using the capital raised from investors. This usually involves a high degree of speculation and risk. We think it is appropriate to treat these types of investment consistently, so the TPI and our permanent rules define a SIS accordingly.

Although there are existing rules in COBS 4 in place to address some of the concerns we have identified with misleading promotions for SISs, the relevant rules don't address the central issue targeted by the proposed rules. We do not consider that the details of such investments should be openly mass-marketed to retail consumers prior to an assessment of whether they are sophisticated or high-net worth. We consider that SISs are generally not suitable for retail consumers, given the risks they pose. For this reason, we also do not consider that the approach taken for P2P investments in COBS 18.12 would address our concerns with these products.

In making the TPI rules permanent, we are ensuring the continuity of the marketing restrictions for SISs, imposed since 1 January 2020, and preventing consumer harm. We agree that some of the characteristics of SISs and their marketing that we describe are not unique to SISs (or NMPIs). SISs are where we have seen the most significant harm and, for the reasons described above, we consider them to be opaque and too complex for investors to understand.

However, we still have concerns about the marketing of other types of high-risk investments (HRIs) to retail investors. These are being considered as part of our wider work to reduce harm in the consumer investments market. This was identified as a priority in the FCA's 2020/21 Business Plan. As part of this commitment, we recently published the Consumer Investments Cfl to look across the whole market and consider whether there are systemic issues that need to be addressed. We are currently analysing responses and will use the feedback to shape our work over the next 3 years and, where appropriate, will share insights with the Government. For more information on HRIs, please see Chapter 4 of the [Cfl](#).

As part of our wider work on HRIs, we have also been working with HM Treasury in connection with their recent [consultation](#) on establishing a regulatory gateway which a firm would have to pass through before it can approve the financial promotions of unauthorised firms. If implemented, this means that we would have to give consent to firms before they can do this, ensuring only suitable firms with relevant expertise engage in

this activity. It also means we could target our supervisory activity more effectively. We continue to work with HM Treasury on these proposals.

As noted in CP20/8 and in paragraph 1.22 of this PS, our rules take effect subject to any relevant exemptions in the FPO. This means that an unauthorised issuer can communicate financial promotions for SISs to certified high net worth individuals, and sophisticated and self-certified sophisticated retail investors without being subject to our rules where the criteria in the exemption are met. However, we consider that these exemptions do not allow issuers to mass-market these promotions to the public, including online. These exemptions are discussed further in our Cfl and our [Perimeter Report 2019/20](#).

We recognised in CP20/8 that the mass-marketing ban could exacerbate the risk of an issuer which is already in financial difficulty being unable to make future payments, even if this is ultimately caused by weakness in the investment proposition. For example, if an issuer is heavily reliant on raising new capital to repay existing investors, it may suggest the product or business model was already unsustainable and likely to lead to losses.

We consider that on balance the overall consumer benefits of the measure outweigh the short-term risk that losses are brought forward for some investors. Our rules should significantly restrict future levels of retail investment in SISs by consumers for whom they are unlikely to be suitable. They should also make it less likely that unsustainable issuers can raise more capital over time. This should prevent future losses for consumers. We also recognised that our proposals could affect better performing issuers of SISs, and businesses seeking new funding as a result of coronavirus (Covid-19). However, even where SISs have been better performing in the past, they remain complex and high risk and still pose a risk of future losses for investors. We do not think there is an alternative approach which would provide appropriate investor protection. We do not consider that insurance necessarily addresses our concerns about SISs by making the product less complex or more suitable for a retail investor.

Our cost benefit analysis in CP20/8 recognised the indirect cost to issuers of a reduced ability to raise funds (although it was not reasonably practicable to estimate this cost). However, as consumers will be able to invest in more appropriate products going forward, we considered this indirect cost to be a transfer to consumers.

In response to the request for clarifications, we can confirm that the rules will apply to any security falling within the Handbook definition of a 'debenture' or a 'preference share'. There is no legal definition of a 'mini-bond'. 'Preference share' is defined in the FCA Handbook as 'a share conferring preference as to income or return of capital which does not form part of the equity shares capital of a company', so would include all shares which carry a right to participate only to a specified amount in a distribution of dividends and capital.

We have not included the term 'speculative illiquid security' in the prescribed risk warning in COBS 4.14.9R. We don't think that this would

help eligible retail investors to make better-informed decisions and may even confuse them. We have tested the risk warning as explained in CP20/8 and believe it is effective in its current form.

We also have not included a requirement for products to be labelled as SISs. This is not an approach we have taken with other types of investment, for example NMPIs. It is incumbent on authorised firms distributing products to comply with the Product Intervention and Product Governance Sourcebook (PROD) or, where applicable, The Responsibilities of Providers and Distributors for the Fair Treatment of Customers Regulatory Guide (RPPD). This includes the requirement in PROD 3.3.1R that a distributor must understand the financial instruments which it distributes to clients. PROD 3.3.11G explains that a distributor must consider the nature of the financial instruments to be offered or recommended and how they fit with end clients' needs and risk appetite when identifying the target market. PROD 3.3.18R requires distributors to have procedures and measures to make sure all applicable rules are complied with when deciding the range of financial instruments and investment services to be distributed and the target market, which would include COBS 4. In addition, COBS 4.5.4G and 4.5A.5G should be considered.

We are not proposing to include a blanket exemption for on-lending to charities (or local authorities). While raising funds for charity is likely to be well intentioned, investments in these products are not donations and can still be high risk. We are also concerned that any blanket exemption might be misused. We consider the same applies to blanket exemptions for other situations. However, and as explained in CP20/8, authorised firms communicating or approving a financial promotion can apply for a waiver if they think complying with our rules would be unduly burdensome or would not achieve their purpose, and it would not adversely affect the advancement of any of our operational objectives (s138A of FSMA). Any application for a waiver would need to be considered on a case-by-case basis in accordance with the relevant statutory tests.

As noted in paragraph 1.9, we have added guidance in the rules relating to their application to certain contractual run-off firms in the financial services contracts regime and firms in the analogous regime for e-commerce firms.

Expanding scope to listed bonds which are not regularly traded

2.14 In CP20/8, we proposed to extend the TPI marketing restrictions to listed bonds with similar features to other SISs which are not regularly traded.

Q2: *Do you agree with our proposal to expand the scope of the TPI rules to listed bonds with similar features to SISs which are not regularly traded? If not, please give reasons.*

2.15 Most respondents who answered this question either supported the proposal or requested clarification on how it would apply. Some respondents asked for a definition or guidance on what is meant by 'regularly traded', and some noted that listed bonds are not traded as frequently as listed equity shares. One respondent asked for clarity

on what the words 'not regularly traded on or under the rules of' a relevant exchange meant in proposed COBS 4.14.19R. Specifically, whether regular trading was to be determined by the rules of the exchange, or simply that the regular trading (if any) had to take place on or under the exchange's rules. Another respondent asked for confirmation that the rules are targeting only listed securities with a minimum denomination under £100,000 where the proceeds are not earmarked for general commercial purposes.

- 2.16** Two respondents disagreed with the proposal. One felt that bonds listed on a recognised investment exchange have already been through a sufficient level of scrutiny and should be excluded from the marketing restrictions. These respondents suggested that whether a listed bond is regularly traded should not be a relevant consideration where there is a registered market maker available to provide liquidity.
- 2.17** Two respondents noted that the proposed extension to listed bonds could capture debt securities issued by investment trusts. They believed they should not be caught, and one noted that if they are caught, this would be inconsistent with the treatment of securities issued by an investment trust under the NMPI rules in COBS 4.12. Such securities are excluded securities for the purposes of the NMPI rules.
- 2.18** One respondent suggested that we should exempt securities with a minimum investment value of €100,000 (the threshold under the TPI being £100,000 or less). This, they noted, would bring the threshold in line with the minimum denomination for an issue of debt securities to be regarded as a wholesale issue for the purposes of the Prospectus Regulation.
- 2.19** One respondent noted that our wording in proposed COBS 4.14.19R related only to securities admitted to official listing on a UK or EEA exchange, and not to securities which were not listed but otherwise admitted to trading on such an exchange.
- 2.20** One respondent believed that the failure of the listed market to address retail demand for bonds has caused the move to mini-bonds which lack verifications and provide poor documentation.
- 2.21** Some respondents noted a drafting error in proposed COBS 4.14.19R (3)(b), namely a missing 'not'.

Our response

We will proceed to make the final rules in the form they were consulted on, subject to the amendments described below.

As explained in our response to Q1 above, we consider SISs are high risk, complex, opaque, and difficult for most investors to understand. They are generally not suitable for retail investors, who cannot easily understand or assess the risks involved. As explained in CP20/8, we consider that relevant listed bonds pose similar (and in some cases, possibly greater) risks to unlisted SISs and have seen evidence of this. On this basis, we do not consider that admission to listing is enough to mitigate those risks. However, as noted in our response to Q1 above, authorised firms can approach us to apply for a waiver if they think complying with our rules would be unduly burdensome or not achieve

their purpose, and it would not adversely affect the advancement of any of our operational objectives (s138A of FSMA). Any application for a waiver would need to be considered on a case-by-case basis in accordance with the relevant statutory tests.

The marketing restriction only applies to listed bonds which meet the definition of a SIS in the final rules, and which are not regularly traded. This is only bonds with a denomination of less than £100,000 and where the proceeds from the issue are lent to third parties, used to buy or acquire investments or used to buy or fund the construction of property are intended to be caught (subject to certain exemptions).

'Regularly traded' is an existing term used in the Handbook definition of a 'readily realisable security'. It has previously been used to determine whether a non-listed but exchange traded security is a non-readily realisable security, and more recently a SIS. This change brings the treatment of listed SISs in line with the treatment of those types of securities. Whether a security is or is likely to be regularly traded requires judgement on a case-by-case basis, taking account of the facts, including the type of security. Whether there is a registered market maker is a relevant consideration, however, the presence of one does not necessarily mean that a listed bond is regularly traded. Where a security is not yet admitted to listing, if there is no reasonable basis on which to expect regular trading beyond point of issuance, eg because the size of offer, the number and type of investors with whom the offer is likely to be placed (eg absence of institutional investor participation), the nature of the venue it will be listed on, the prospect of market makers actively making prices in the security and the issuer's assessment of material risks mean regular trading is unlikely, we would expect such bonds to be considered SISs and subject to the marketing restrictions at the point of their primary issuance / placement. Whether something is regularly traded on or under the rules of an exchange is not determined by the rules of the relevant exchange on which any trading takes place, it is a matter of judgement as explained above.

We think that a definition based on a fixed number of trades is arbitrary and not workable in practice given periodic fluctuations in trading. This means, for example, that a listed bond could fall in and out of the SIS definition on an ongoing basis.

For these reasons, we will not be issuing a definition or specific guidance at this time but will keep the situation under review to see whether our rules are capturing all the types of bonds we intended to.

In CP20/8 we explained that the intention of this proposed extension was to capture a specific type of bond posing particular risks to retail investors and that if we received responses that other types of bond might be inadvertently caught we would adjust the proposals accordingly. It was not our intention to capture debt securities issued by an investment trust, consistent with the exclusion of these types of security from the NMPI rules. We have therefore included a similar exclusion for securities issued by an investment trust in the final rules for SISs.

As the rules for SISs are domestic rules, we are not explicitly exempting securities with a denomination or minimum investment value of €100,000. The threshold is £100,000, which means issues with a minimum investment value of less than £100,000 are potentially in scope. Where SISs are issued in other currencies, the minimum investment value should be appropriately converted to determine whether the rules in COBS 4.14 apply. We have included a rule at COBS 4.14.21R on conversion in the final rules to make the position clear. Although this is a different threshold from the Prospectus Regulation, these are two different regimes with their own rules and firms will need to consider how each regime applies to an issue of SISs.

COBS 4.14.23R, formerly proposed COBS 4.14.19R, addresses the position of listed securities which are not regularly traded. As noted in [CP20/8](#), securities admitted to trading (but not listed) on a UK or EEA exchange which are not regularly traded are already caught by the TPI. This is because they already do not fall within the definition of a 'readily realisable security' and so are not within the exemption for a readily realisable security in COBS 4.14.24R (3)(d). They will continue to fall within scope of the final rules.

Retail access to bond markets was something we considered in [DP17/2](#). We may revisit this later.

We are grateful for respondents' feedback on the drafting error in proposed COBS 4.14.19R (3)(b) which has been rectified in the final rules at COBS 4.14.23R (3)(b).

In line with what we said in CP20/8, the final rules adopt the Handbook definition of 'readily realisable security' which will apply from the end of the EU withdrawal transition period which retains a reference to 'EEA state'.

Excluding SPV structures for single-company investments

2.22 In CP20/8, we proposed a specific exclusion for structures that are comparable to investing directly in a single company carrying on commercial or industrial business. Securities which fall within this exemption would continue to be subject to the requirements applicable to the promotion of non-readily realisable securities (NRRSs).

Q3: *Do you agree with our proposal to introduce an exclusion for SPV structures for single-company investments? If not, please give reasons.*

2.23 Most respondents who responded to this question agreed with the proposal to exclude SPV structures for single-company investments from the marketing restrictions, subject to the points noted below.

2.24 One respondent didn't think that there was a need for a single-company investment exemption as, in their view, those structures are not any less risky, and the exemption could increase the risk of arbitrage.

- 2.25** One respondent queried the helpfulness of the single-company investment exemption as currently drafted. They added that in their experience SPV structures set up to hold single companies are not common. More often an SPV would hold investments in multiple underlying companies, albeit with ring-fencing in place to protect retail investors from exposure to more than one company.
- 2.26** One respondent told us that they agreed with the single-company exemption on the basis that appropriate safeguards will be mandated. Another respondent noted their support was conditional on clarity that this was a narrow exemption for the purposes of an NRRS type investment, where the relevant rules for NRRSs have been complied with, and not a way to mask UCIS or similar pooled investment vehicles where the rules for collective investment schemes have not been followed.

Our response

We are proceeding with this exemption in the final rules as consulted on, subject to minor changes and clarifications to the definitions of 'single-company holding vehicle' and 'single company' as shown in Appendix 1. These changes and clarifications are to ensure the final rules give effect to the stated policy intention in CP20/8 that the exemption should apply to investments giving an investor a 'look-through' exposure to an underlying company carrying on a commercial or industrial business.

As explained in CP20/8, we consider this to be appropriate as these structures, subject to certain conditions set out in our rules, are comparable to investing directly in the same underlying company. We think it is reasonable to treat financial promotions for them in the same way as promotions for NRRSs. Given this similarity and the narrowness of the exemption (see below), we do not consider at this time that we need to apply additional requirements for financial promotions relating to these types of structure over and above those which apply to financial promotions for NRRSs. We will keep this under review, including as part of our wider work on the consumer investments market.

The exemption is deliberately narrow. The conditions for the exemption to apply are clear that the issuer can only make an investment in a single underlying company. The exemption will not apply if the issuer makes multiple investments in underlying companies. This is not just the case where the SIS gives the retail investor exposure to all those underlying companies. This is also where there is ringfencing so that the retail investor is meant to only be exposed to one underlying company. We consider that this structure introduces additional complexity and considerations when a consumer is investing in an issuer, which a retail investor may not understand. This means it is no longer equivalent to investing directly in the underlying company. We are therefore not making this exemption any wider.

Clarifications to the TPI rules

- 2.27** Based on feedback we received on the TPI, CP20/8 proposed several clarifications to the exemptions to the SIS definition and other technical aspects in the permanent rules.

Q4: *Do you agree with our proposed clarifications to the TPI rules? If not, please give reasons.*

- 2.28** Respondents who replied to this question generally supported our proposals, subject to the points raised below. One respondent disagreed with all the proposed clarifications.
- 2.29** We proposed to clarify that the marketing restriction does not apply where the proceeds of an issue are used to buy assets which are used by the issuer or a member of its group for a general commercial or industrial purpose which it carries on. One respondent considered that the caveat to the exemption in proposed COBS 4.14.20R (2) brought commercial and industrial businesses back into scope of the marketing restrictions, contrary to our stated intention in CP20/8. This was on the basis that the proposed caveat, which restricts the availability of the general industrial and commercial use exemption, could apply to businesses whose income, and therefore ability to repay investors, is generated by reference to the assets being acquired as part of their commercial business, eg a retailer who raises funds to buy inventory. This led this respondent to express concerns about the potential far reaching consequences of our proposals on UK fundraising, and that the restrictions might apply more widely than most people realised.
- 2.30** In CP20/8, we clarified that an 'income generating property' for the single-property holding vehicle exemption in proposed COBS 4.14.20R (4)(a)(i) must already exist, and that the exemption does therefore not apply to property development. One respondent sought clarity on whether existing income generating properties, which are subject to further development or changes to use, would qualify for the exemption.
- 2.31** The proposed COBS 4.14.18R (2)(b) means that the marketing restrictions apply where the proceeds of an issue are invested in specified investments. One respondent queried whether it would capture situations where an issuer holds the proceeds in a specified investment pending deployment of the proceeds for a commercial or industrial purpose. This is on the basis that 'specified investment' includes, among other things, deposits and government/public sector securities.

Our response

We will proceed with our proposals in the final rules subject to the changes described below.

As stated in CP20/8, our intention was to exclude fundraising by companies that issue securities to fund ordinary business activity that is not highly speculative, which will remain subject to the rules for marketing NRRSs. While we consider that the caveat in proposed COBS 4.14.20R (2), now COBS 4.14.24R (2), sets a high bar, we accept that it may lead to some confusion as to whether some securities, which we did not intend to catch, may be subject to the SIS restrictions.

To address this, we have removed the caveat in COBS 4.14.24R (2) from applying where the proceeds of an issue are being used to buy assets which are used by the issuer or a member of its group for a general commercial or industrial purpose which it carries on. There are, however, limits on what can be a general commercial or industrial purpose in

COBS 4.14.25R (2). It excludes investment to generate a pooled return, property development or construction services, and hiring, leasing or rental services. We have included additional guidance in COBS 4.14.26G on what is and is not intended to be caught by the rules in the final Handbook text.

The caveat in COBS 4.14.24R (2) will continue to apply to the commercial or industrial purpose exemption for issues where the proceeds are used to buy or fund the construction of real property (see COBS 4.14.20R (2) (d) and (e)). In this situation, we still consider that the investor would be overly exposed to speculative activities which are intended to be caught by the restrictions.

As we explained in CP20/8, the single-property holding vehicle exemption is not intended to apply to property development. In addition to the conditions that must be satisfied for a property to be an 'income generating property', limb (5) of the definition of 'property holding vehicle' limits the activities that an issuer can undertake. This means that the exemption applies where the issuer is only engaged with the holding of income generating property and associated activities, eg the collection of rent. We consider that this already stops an issuer from using this exemption where it plans future development of an existing income generating property. However, we have made some additional amendments to the definition of property holding vehicle to make this even clearer.

Where an issuer raises funds for a general commercial or industrial purpose which would not otherwise be caught by the rules, we do not intend that ordinary cash management activities or treasury functions should bring the issuance within the scope of the rules. We have clarified this in the final rules.

Clarifying how promotions are restricted for SISs and NMPIs

2.32 Following publication of the TPI, we received some calls for clarification on the TPI marketing restriction and how promotions can be 'made to' consumers. This issue is also relevant to our similar rules for NMPIs. In CP20/8, we recognised that the language used in COBS 4.12.4R, COBS 4.14.3R and supporting guidance could be clearer and proposed changes.

Q5: *Do you agree with our proposal to clarify how promotions are restricted for SISs and NMPIs? If not, please give reasons.*

2.33 Respondents who directly addressed this question generally agreed that the proposed changes made the position clearer. However, some respondents asked for further clarity on what information can be provided to retail investors before being assessed as eligible to receive a promotion for a SIS. One respondent considered the proposed clarifications were unnecessary. One respondent considered that, depending on what information can be provided to investors before being assessed as eligible, the restriction might be too onerous.

- 2.34** One respondent asked for further detail about the preliminary suitability assessment that must be carried out before a financial promotion for an NMPI or SIS can be made in some cases. They also noted the potential for conflicts of interest where the firm undertaking the assessment is, for example, remunerated on a commission basis.

Our response

We are proceeding with the amendments in the final rules as consulted on as we believe they make the position clearer.

The marketing restriction applies to the communication or approval of financial promotions relating to SISs. Chapter 8 of the Perimeter Guidance Manual (PERG) provides guidance on whether a communication is a financial promotion. Note that PERG is guidance only and represents the FCA's views. It does not bind the courts, which are the ultimate arbiter of how legislation and our rules should be interpreted, although it may have persuasive effect. PERG 8.4 contains guidance on the 'invitation' or 'inducement' limb of the definition of a financial promotion, which is provided for in FSMA. PERG 8.2.3 notes that chapter 8 of PERG may be relevant where an authorised person needs to know whether the financial promotion rules, including COBS 4, apply to a particular communication. Firms should have regard to PERG 8 in determining whether a particular communication is a financial promotion and therefore subject to the restriction in COBS 4.12.3R (1) or 4.14.5R (1).

COBS 4.12.5G (2)(c) and 4.14.7G (3) explain what a preliminary suitability assessment involves. An assessment must be undertaken before a financial promotion is made to or directed at the recipient, where the requirement applies. Preliminary suitability assessments have been required for NMPI promotions for some time, and are not a new requirement. Firms undertaking preliminary assessments of suitability will be subject to the relevant requirements of our Handbook on conflicts of interest, depending on the role they are performing.

Annex 1

List of non-confidential respondents

Adam Samuel

Allia C&C

Andrew Lockley

Association of Investment Companies (AIC)

Charles Stanley & Co. Limited

Financial Services Consumer Panel

International Capital Market Association (ICMA)

John Cole

John B. Corey Jr.

UK Crowdfunding Association (UKCFA)

Annex 2

Considerations for the use of the product intervention rule-making power

1. This Annex explains the considerations we have taken into account both prior to consulting on, and when making, the permanent rules set out in Appendix 1, in accordance with Chapter 2 of the Product Intervention and Product Governance Sourcebook (PROD). The Compatibility Statement in Annex 3 to CP18/20 also addresses compliance with a number of other requirements, including the regulatory principles set out in section 3B of FSMA.

Intended outcomes and links to FCA's objectives

2. As explained in CP20/8 and in Chapter 1 of this PS, the final rules are intended to restrict promotions of SISs and listed bonds with similar features to other SISs which are not regularly traded to a subset of retail investors. They require an investor's eligibility to be assessed before they can receive any financial promotions for these products. This is designed to prevent the mass-marketing of these products. They also mandate certain disclosures to improve the content of marketing to eligible retail investors.
3. The intended outcome is to reduce the number of retail investors who invest in these products, which are high-risk, complex and unsuitable for most retail investors, and prevent significant and unexpected losses for consumers. They also seek to ensure that the limited number of retail investors who are still eligible to receive promotions for these products can make better-informed investment decisions about whether to invest, and if so, how much they want to risk.
4. The rules will apply subject to any relevant exemptions in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (FPO) as discussed in paragraph 1.22 above.
5. The links to our objectives are described in paragraph 1.19 above and in Chapter 2 of, and Annex 3 (Compatibility statement) to, CP20/8.

Appropriate and effective means of addressing actual or potential consumer harm associated with a particular product or group of products

6. The reasons why we think the final rules are an appropriate and effective means of addressing the harm associated with SISs are summarised in paragraphs 1.10 to 1.13 and 1.20 to 1.22 above and described in detail in CP20/8.

A proportionate and deliverable means of addressing actual or potential harm

7. This is addressed in Annex 2 (Cost benefit analysis) and Annex 3 (Compatibility statement) to CP20/8. Paragraphs 2.30 to 2.35 of CP20/8 are also relevant.

Compatible with the FCA's duty to promote effective competition in the interests of consumers

8. This is discussed in paragraph 1.19 above and in paragraphs 2.26 to 2.27 of, and paragraphs 30 to 33 of Annex 3 (Compatibility statement) to, CP20/8.

Supported by sufficient and appropriate evidence

9. The evidence on which we have based our intervention is described in CP20/8, including at paragraphs 2.4 to 2.9, 2.11 to 2.12, 3.6 to 3.11, 3.16 to 3.17, 3.22 to 3.24 and in Annex 2 (Cost benefit analysis).

Transparent in aim and operation

10. We have consulted on the permanent rules, publishing CP20/8 explaining the justification of and reasoning for the final rules, along with how they should operate. This is now further supplemented by this PS. This follows earlier publication of the TPI in November 2019.

Likely to be beneficial for consumers, when taken as a whole

11. This is discussed in paragraphs 1.10 to 1.13 and 1.20 to 1.22 above. The benefits for consumers are also described in Annex 2 (Cost benefit analysis) of CP20/8.

The impact on protected groups in the Equality Act and whether the rule promotes equality and good relations

12. This is discussed in paragraphs 2.37 to 2.40 of CP20/8, paragraph 1.28 to 1.29 above and in paragraphs 34 to 35 of Annex 3 (Compatibility statement) to CP20/8.

EU considerations

13. Some SISs and listed bonds with similar features to SISs may be financial instruments under the Markets in Financial Instruments Directive II (MiFID II), in addition to being specified investments in UK law under the Regulated Activities Order (RAO).

However, our final rules only address financial promotions for these products. We do not consider that this interferes with the scope of MiFID II under EU law on the basis that approving and communicating financial promotions are not MiFID II investment services. For this reason, we are making the final rules using our domestic rule making powers in FSMA, rather than under Article 42 of the Markets in Financial Instruments Regulation. Our approach is consistent with our previous view when making rules imposing marketing restrictions for NMPIs and NRRSs.

14. Implications of EU withdrawal on the final rules are described in paragraph 1.9 above.

Contextual considerations

15. We have considered the broader market and social context as follows:

- **The potential scale of the detriment in the market:** see paragraph 2.12 of, and Annex 2 (Cost benefit analysis) to, CP20/8.
- **The potential scale of detriment to individual customers:** see paragraph 2.6 of, and Annex 2 (Cost benefit analysis) to, CP20/8.
- **The social context:** see paragraphs 2.11 to 2.12 of CP20/8.
- **The market context:** See paragraphs 1.10 to 1.13 and 1.20 to 1.22 above.
- **Possible unintended consequences:** See paragraphs 2.30 to 2.35 of CP20/8.

Annex 3

Abbreviations used in this paper

Cfi	Call for Input on the Consumer Investments Market
COBS	Conduct of Business Sourcebook
CP	Consultation Paper
FPO	Financial Promotion Order (Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (SI 2005/1529))
FSMA	Financial Services and Markets Act 2000
HRI	High-Risk Investment
IBCF	Investment-Based Crowdfunding
NMPI	Non-Mainstream Pooled Investment
NRRS	Non-Readily Realisable Security
PERG	Perimeter Guidance Manual
PROD	Product Intervention and Product Governance Sourcebook
PS	Policy Statement
P2P	Peer-to-Peer
RPPD	The Responsibilities of Providers and Distributors for the Fair Treatment of Customers Regulatory Guide
SIS	Speculative Illiquid Security
SPV	Special Purpose Vehicle
TPI	Temporary Product Intervention
UCIS	Unregulated Collective Investment Scheme



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Appendix 1

Made rules (legal instrument)

**CONDUCT OF BUSINESS (SPECULATIVE ILLIQUID SECURITIES)
INSTRUMENT 2020**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137D (FCA general rules: product intervention);
 - (3) section 137R (Financial promotion rules);
 - (4) section 137T (General supplementary powers);
 - (5) section 139A (Power of the FCA to give guidance); and
 - (6) section 238(5) (Restrictions on Promotion).
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. Annex A to this instrument comes into force on 11 December 2020.
- D. Annexes B and C to this instrument come into force on 1 January 2021.

Amendments to the Handbook

- E. The Glossary of definitions is amended in accordance with Annex B to this instrument.
- F. The Conduct of Business sourcebook (COBS) is amended in accordance with Annex C to this instrument.

Notes

- G. In Annexes A and C to this instrument, the “notes” (indicated by “*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 Conduct of Business (Speculative Illiquid Securities) Instrument 2020.

By order of the Board
7 December 2020

Annex A**Instrument coversheet**

[*Editor's note: Following consultation in CP20/8 High-risk investments: Marketing speculative illiquid securities (including speculative mini-bonds) to retail investors, the change below is being made to make clear the time of day at which the rules made by the Conduct of Business (Speculative Illiquid Securities) Instrument 2019 (FCA 2019/99) expire.*]

Amend the commencement date of the following instrument as shown. Underlining indicates new text.

Conduct of Business (Speculative Illiquid Securities) Instrument 2019 (FCA 2019/99)**Commencement**

- D. Part 2 of Annex A and Part 2 of Annex B to this instrument come into force at the end of the day on 31 December 2020.

Annex B

Amendments to the Glossary of definitions

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

Insert the following new definitions into the appropriate alphabetical positions. The text is not underlined.

- income generating property* a single property or multiple properties within a single development which:
- (1) is actually used, or is available for use, for residential or commercial purposes;
 - (2) is located in the *United Kingdom*;
 - (3) is available for occupancy or occupied by one or more *persons* who have no relationship with the *directors* of the relevant *property holding vehicle* and who pay rent at a commercial rate or a rate reflecting regulated market practice for social and affordable housing; and
 - (4) has been valued by an independent valuer:
 - (a) who is a member of the Royal Institute for Chartered Surveyors; and/or
 - (b) in accordance with the RICS Valuation Standards (The Red Book).
- property holding vehicle* a single *body corporate* which:
- (1) is the sole legal or beneficial owner of a single *income generating property*;
 - (2) issues *debentures* which have a fixed maturity date or *preference shares*;
 - (3) issues *debentures* or *preference shares* in a sum which does not exceed the value of the *income generating property* owned;
 - (4) issues only one tranche of *debentures* or *preference shares*;
 - (5) does not and will not carry on any activities other than the holding of the *income generating property* referred to in (1) and associated activities, which may include the collection of rent or other income from the *income generating property* and

appointing a manager to maintain the *income generating property*, but must not include the development of the *income generating property* that goes beyond maintaining it in a suitable condition; and

- (6) does not enter into any loan agreement whether as the borrower or lender.

single-company holding vehicle

a *single body corporate* which:

- (1) is only able to carry on the following activities:
- (a) issuing *debentures* or *preference shares* for the purpose of investing the proceeds in *shares* or *debentures* issued by a *single company* (without prejudice to the *single-company holding vehicle's* ability to constitute itself);
 - (b) investing the total proceeds of the *debentures* or *preference shares* it issues in *shares* or *debentures* issued by a *single company* and no other *company* and having no discretion in relation to the proceeds of the issue;
 - (c) paying returns to holders of the *debentures* or *preference shares* in sums equal to any income it receives from the *shares* or *debentures* it owns (issued by the *single company*), including income from any sale of the *shares* or *debentures*, on a pro rata basis, less any reasonable fees (without prejudice to relevant legislation governing companies and taxation); and
- (2) has adequate arrangements in place to ensure that:
- (a) the proceeds of the issue are protected and not used for any purpose outside of (1)(b) above; and
 - (b) either:
 - (i) income from the *single company* is held by the *single-company holding vehicle* on trust for holders of the *debentures* or *preference shares* on terms that ensure that those investors receive the full amount they are entitled to according to (1)(c) above; or
 - (ii) the holders of the *debentures* or *preference shares* have security over the income from the *single company* on terms that ensure that those investors receive the full amount they are entitled to according to (1)(c) above; and

- (3) ensures that neither the *single company*, nor members of its *group*, will use any of the monies received from the *single-company holding vehicle* directly or indirectly for one or more of the purposes in COBS 4.14.20R(2) as modified by limb (b) of the *single company Glossary* definition.

single company a *single company* that is not part of the same *group* as the *single-company holding vehicle* investing in it and which:

(a) uses the funds received from the *single-company holding vehicle* solely for the purpose of its own commercial operations or those of its *subsidiaries* carrying out the same commercial operations as the *single company*; and

(b) does not undertake any of the activities in COBS 4.14.20R(2)(a) to (e) subject to COBS 4.14.22R and COBS 4.14.24R(1) (for these purposes, COBS 4.14.20R(2)(a) to (e), COBS 4.14.22R and COBS 4.14.24R(1) must be read as though references to the *issuer* are to the *single company*).

speculative illiquid security has the meaning in COBS 4.14.20R.

Amend the following definitions as shown.

investment trust ...

(a) ...

(b) (for the purposes of COBS 4.14 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:

...

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

(f) *credit union subordinated debt*; or

(g) a speculative illiquid security.

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

- (a) ...

- (b) ...
 - (i) ...

...

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

...

...

...

Annex C

Amendments to the Conduct of Business sourcebook (COBS)

[*Editor's note:* All provisions in the Handbook marked “[deleted]” as a result of Conduct of Business (Speculative Illiquid Securities) Instrument 2019 (FCA 2019/99) are replaced by the content in this instrument and the words “[deleted]” are to be deleted.]

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

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*, 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 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) to the extent that the rule does not already apply to such a Gibraltar-based firm as a result of GEN 2.3.1R).

...

4 Communicating with clients, including financial promotions

...

4.7 Direct offer financial promotions

...

4.7.11 G ...

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.

...

4.12 Restrictions on the promotion of non-mainstream pooled investments

Restrictions on the promotion of non-mainstream pooled investments

4.12.3 R ...

(3) References to a firm in this section include a TP firm to the extent that this section does not already apply to those TP firms as a result of GEN 2.2.26R.

(4) References to a firm in this section include a 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 as a result of GEN 2.3.1R.

Exemptions from the restrictions on the promotion of non-mainstream pooled investments

4.12.4 R (1) The restriction in COBS 4.12.3R does not apply if the promotion falls within an exemption in the table in (5) below in accordance with (3).

(2) A ~~firm~~ 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 (5) below in accordance with (3).

(3) ~~Where the middle column in the table in (5) refers to promotion to a category of person, this means that the invitation or inducement~~ A promotion falls within an exemption in the table in (5) below if:

(a) ~~is made only to recipients who the firm has taken reasonable steps to establish are persons in that category~~ it is made to or directed at only those recipients whom the firm has taken reasonable steps to establish are persons in the middle

column of the table; or and

- (b) ~~is directed at recipients in a way that may reasonably be regarded as designed to reduce, so far as possible, the risk of participation in, acquisition or underwriting of the non-mainstream pooled investment by persons who are not in that category where the third column of the table refers to the need for a preliminary assessment of suitability, that assessment is undertaken before the promotion is made to or directed at the recipient.~~

...

...

Advice and preliminary assessment of suitability

4.12.5 G (1) ...

- (2) (a) ~~The effect of COBS 4.12.4R(3)(b) is that where A a firm which wishes to rely on exemptions 2 (certified high net worth investors) or 9 (self-certified sophisticated investors), as provided under by COBS 4.12.4R(5), should note that these exemptions require a~~ the preliminary assessment of suitability must be undertaken before promotion of the non-mainstream pooled investment is made to or directed at clients (in addition to other requirements).

...

...

Insert the following new section, COBS 4.14, after COBS 4.13 (UCITS). The text is not underlined.

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

Application and purpose

4.14.1 R This section applies to:

- (1) *firms*;
- (2) *TP firms*; and
- (3) Gibraltar-based firms,

when approving or communicating financial promotions in relation to speculative illiquid securities.

- 4.14.2 G In addition to the *persons* listed in COBS 4.14.1R, *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.
- 4.14.3 R Throughout this section:
- (1) References to *firm* include references to a Gibraltar-based firm.
 - (2) Gibraltar-based firm has the same meaning as in the *Gibraltar Order*.
- 4.14.4 G
- (1) The *rules* in this section are intended to ensure that *financial promotions* relating to *speculative illiquid securities* are not *communicated* to ordinary retail investors.
 - (2) The *rules* in this section therefore restrict *firms* and *TP firms* *approving* or *communicating financial promotions* in relation to *speculative illiquid securities* 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.
 - (3) The *rules* also ensure *financial promotions* contain prominent information on key risks, costs and charges related to the *speculative illiquid security*.
 - (4) The *rules* reflect the often complex and high-risk nature of *speculative illiquid securities*.
 - (5) The definition of *speculative illiquid security* can be found in COBS 4.14.20R.

Restriction on the promotion of speculative illiquid securities to retail clients

- 4.14.5 R
- (1) A *firm* or a *TP firm* must not *communicate* or *approve a financial promotion* in relation to a *speculative illiquid security* 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 4.14.6R.

Exemptions from the restriction on the promotion of speculative illiquid securities

- 4.14.6 R (1) The restriction in *COBS* 4.14.5R(1) does not apply if the *financial promotion*:
- (a) falls within an exemption in the first column in the table in (3) below; and
 - (b) is made to or directed at only those recipients whom the *firm* or *TP firm* has taken reasonable steps to establish are *persons* in the middle column of the table; and
 - (c) 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.
- (2) A *firm* or a *TP firm* may rely on more than one exemption in relation to the same *financial promotion*.
- (3)

Title of exemption	Promotion to:	Promotion of speculative illiquid security which is:
1. Certified high net worth investor	An individual who meets the requirements set out in <i>COBS</i> 4.14.17R or a <i>person</i> (or <i>persons</i>) legally empowered to make investment decisions on behalf of such an individual.	Any <i>speculative illiquid security</i> the <i>firm</i> or <i>TP 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> 4.14.7G]
2. Certified sophisticated investor	An individual who meets the requirements set out in <i>COBS</i> 4.14.18R, 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</i> or the <i>TP firm's client</i> .	Any <i>speculative illiquid security</i> .
3. Self-certified sophisticated	An individual who meets the requirements set out in <i>COBS</i> 4.14.19R including an individual	Any <i>speculative illiquid security</i> the <i>firm</i> or <i>TP firm</i>

investor	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> or <i>TP firm's client</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 4.14.7G</i>].
4. Excluded communications	Any <i>person</i> .	Any <i>speculative illiquid security</i> , provided the <i>financial promotion</i> is an <i>excluded communication</i> .

Preliminary assessment of suitability

- 4.14.7 G (1) The effect of *COBS 4.14.6R(1)(c)* is that where a *firm* or *TP firm* wishes to rely on exemptions 1 (certified high net worth investors) or 3 (self-certified sophisticated investors), the preliminary assessment of suitability must be undertaken before the *financial promotion* of the *speculative illiquid security* is made to or directed at *clients* (in addition to other requirements).
- (2) There is no duty to communicate the preliminary assessment of suitability to the *client*. If the *firm* or the *TP 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.
- (3) 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 *speculative illiquid security* being promoted, in which case the requirements in *COBS 9* or *9A* apply (as applicable). However, it requires that the *firm* or *TP firm* takes reasonable steps to acquaint itself with the *client's* profile and objectives to ascertain whether the *speculative illiquid security* under contemplation is likely to be suitable for that *client*. The *firm* or *TP firm* should not promote the *speculative illiquid security* to the *client* if it does not consider it likely to be suitable for that *client* following such preliminary assessment.

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;
- (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.
- 4.14.9 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:
- 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:
- (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:

- (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.
- 4.14.12 R For the purposes of *COBS* 4.14.8R(3) 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.
- 4.14.13 G (1) There is an illustration of how a *firm* or *TP firm* should comply with *COBS* 4.14.12R(2) in (2) below.
- (2) Where a *firm* or *TP 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."
- 4.14.14 R The statements providing the percentage figure in *COBS* 4.14.12R(1) and the cash sum in *COBS* 4.14.12R(2) must be:
- (1) prominent;
- (2) 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) published so that they are clearly legible against a neutral background.
- 4.14.15 G The statement providing the breakdown of expenditure in *COBS* 4.14.12R(3) should be included in the *financial promotion* in a clear and prominent way.
- 4.14.16 G The purpose of the statements required by *COBS* 4.14.12R is to enable an investor to consider the proportion of capital raised by an issue of *speculative illiquid securities* 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.

Definitions of certified high net worth and sophisticated investors

- 4.14.17 R A certified high net worth investor is an individual who has signed, within the period of twelve *months* ending on the *day* on which the communication is made, a statement in the following terms:

“HIGH NET WORTH INVESTOR STATEMENT

I make this statement so that I can receive promotional communications which are exempt from the restriction on promotion of speculative illiquid securities. The exemption relates to high net worth investors and I declare that I qualify as such because at least one of the following applies to me:

I had, throughout the financial year immediately preceding the date below, an annual **income** to the value of **£100,000 or more**. Annual income for these purposes does not include money withdrawn from my pension savings (except where the withdrawals are used directly for income in retirement).

I held throughout the financial year immediately preceding the date below, **net assets** to the value of **£250,000 or more**. Net assets for these purposes do **not** include:

- (a) the property which is my primary residence or any money raised through a loan secured on that property; or
- (b) any rights of mine under a qualifying contract of insurance; or
- (c) any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependants are), or may be, entitled; or
- (d) any withdrawals from my pension savings (except where the withdrawals are used directly for income in retirement).

I accept that the investments to which the promotions will relate may expose me to a significant risk of losing all of the money or other property invested. I am aware that it is open to me to seek advice from an authorised person who specialises in advising on speculative illiquid securities.

Signature:

Date:

- 4.14.18 R A certified sophisticated investor is an individual who:

- (1) has a written certificate signed within the last 36 *months* by a *firm* or *TP firm* confirming they have been assessed by that *firm* or *TP firm* as sufficiently knowledgeable to understand the risks associated with engaging in investment activity in *speculative illiquid securities*; and
- (2) has signed, within the period of twelve *months* ending with the *day* on which the communication is made, a statement in the following terms:

“SOPHISTICATED INVESTOR STATEMENT

I make this statement so that I can receive promotional communications which are exempt from the restriction on promotion of speculative illiquid securities. The exemption relates to certified sophisticated investors and I declare that I qualify as such.

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 speculative illiquid securities.

Signature:

Date: ”

- 4.14.19 R 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 following terms:

“I declare that I am a self-certified sophisticated investor for the purposes of the restriction on promotion of speculative illiquid securities. I understand that this means:

- (i) I can receive promotional communications made by a person who is authorised by the Financial Conduct Authority which relate to investment activity in speculative illiquid securities;
- (ii) the investments to which the promotions will relate may expose me to a significant risk of losing all of the property invested.

I am a self-certified sophisticated investor because at least one of the following applies:

- (a) I am a member of a network or syndicate of business angels and have been so for at least the last six months prior to the date below;
- (b) I have made more than one investment in an unlisted company in the two years prior to the date below;
- (c) I am working, or have worked in the two years prior to the date below, in a professional capacity in the private equity sector, or in

the provision of finance for small and medium enterprises;

(d) I am currently, or have been in the two years prior to the date below, a director of a company with an annual turnover of at least £1 million.

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 someone who specialises in advising on speculative illiquid securities.

Signature:

Date: ”

Definition of speculative illiquid security

- 4.14.20 R For the purposes of this section, and subject to *COBS* 4.14.22R to *COBS* 4.14.24R, 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* 4.14.21R); 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.
- 4.14.21 R For the purposes of *COBS* 4.14.20R(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*.

- 4.14.22 R A *debenture* or *preference share* that does not otherwise fall within COBS 4.14.20R 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 4.14.24R(1).
- 4.14.23 R For the purposes of COBS 4.14.20R, and notwithstanding the exemption for *readily realisable securities* in COBS 4.14.24R(3)(d), a *debenture* is also a *speculative illiquid security* if:
- (1) it meets the conditions set out in COBS 4.14.20R; 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.
- 4.14.24 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 4.14.20R(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 4.14.20R(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* 4.14.20R(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* 4.14.23R; 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* 4.7.7R to *COBS* 4.7.12G 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.

- 4.14.25 R (1) For the purposes of *COBS* 4.14.24R(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* 4.14.24R(1)(b), a general commercial or industrial purpose does not include:
- (a) investment to generate a pooled return;

- (b) property development or construction services;
- (c) hiring, leasing or rental services.

Guidance on general commercial or industrial purpose

- 4.14.26 G (1) *COBS 4.14.20R* 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 4.14.24R(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 4.14.25R*.
- (4) The effect of the exemption in *COBS 4.14.24R(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 4.14.20R(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* 4.14.25R(2)(a);
 - (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* 4.14.25R(2)(c).
- (6) In relation to *COBS* 4.14.20R(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* 4.14.25R(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* 4.14.24R(2) applies). That is because it will use the property for its own commercial or industrial activities (generating electricity). However, *firms* and *TP firms* should also consider *COBS* 4.14.24R(2) and the guidance in (7) below.
- (7) *COBS* 4.14.24R(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 4.14.20R(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 4.14.24R(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 4.14.24R* applies.

Amend the following 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) ...

(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*).

...

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) ...

(d) *contingent convertible instruments* and *CoCo funds* are subject to a restriction on sales and promotions (see *COBS 22.3*);

(e) *speculative illiquid securities* are subject to a restriction on *financial promotions* (see *COBS 4.14*).

...

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 *arranges* or *deals* in relation to a *non-readily realisable security*, *speculative illiquid security*, *derivative* or a *warrant* with or for a *retail client*, other than in the course of *MiFID* or *equivalent third country business*, or 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:

(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) to the extent that the rule does not already apply to such a Gibraltar-based firm as a result of GEN 2.3.1R).

14 Providing product information to clients

...

14.3 Information about designated investments (non-MiFID provisions)

14.3.1 R ...

...

(2) ...

- (c) *arranging* (bringing about) or *executing a deal* in a warrant, *non-readily realisable security*, *speculative illiquid security*, or *derivative*; or

...

(3) Where a rule in this chapter applies to a firm which is *arranging* (bringing about) or *executing a deal* in a *speculative illiquid security*, 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*) to the extent that the rule does not already apply to such a Gibraltar-based firm as a result of GEN 2.3.1R).

