CHARTERED INSTITUTE FOR SECURITIES & INVESTMENT

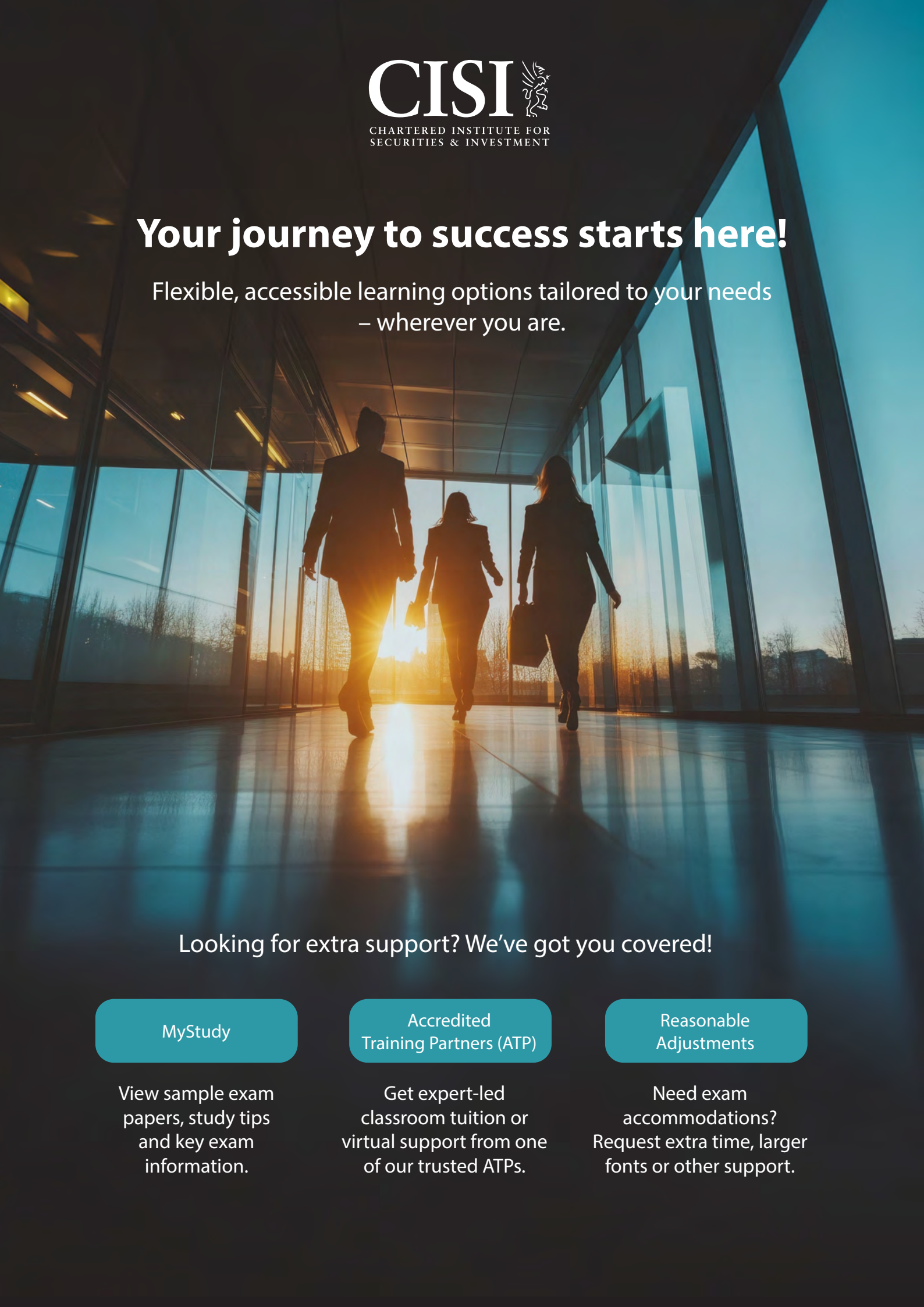
UK Financial Regulation

Edition 33, January 2026

CISI APPROVED WORKBOOK

20089900696
Printed on Carbon Captured paper

This learning manual relates to syllabus version 33.0 and will cover exams from 1 April 2026 to 31 March 2027



CISI
CHARTERED INSTITUTE FOR SECURITIES & INVESTMENT

Your journey to success starts here!

Flexible, accessible learning options tailored to your needs – wherever you are.

Looking for extra support? We've got you covered!

MyStudy

View sample exam papers, study tips and key exam information.

Accredited Training Partners (ATP)

Get expert-led classroom tuition or virtual support from one of our trusted ATPs.

Reasonable Adjustments

Need exam accommodations? Request extra time, larger fonts or other support.

Welcome to the Chartered Institute for Securities & Investment's UK Financial Regulation study material written to prepare you for the following CISI Level 3 exams:

- Capital Markets Programme – Certificate in Derivatives, Financial Derivatives and Securities
- Investment Operations Certificate (IOC) Programme
- Certificate Programme – Combating Financial Crime, Corporate Finance, Global Financial Compliance and Risk in Financial Services

Published by:
Chartered Institute for Securities & Investment
© Chartered Institute for Securities & Investment 2026
20 Fenchurch Street, London EC3M 3BY, United Kingdom

Tel: +44 20 7645 0600 Fax: +44 20 7645 0601
Email: customersupport@cisi.org www.cisi.org/qualifications

Author
Philip Read, Chartered FCSI

Reviewers
Natalie Schoon
Sue Ashton

This is an educational digital book only and the Chartered Institute for Securities & Investment accepts no responsibility for persons undertaking trading or investments in whatever form.

While every effort has been made to ensure its accuracy, no responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication can be accepted by the publisher or authors.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without the prior permission of the copyright owner.

Warning: any unauthorised act in relation to all or any part of the material in this publication may result in both a civil claim for damages and criminal prosecution.

Candidates should be aware that the laws mentioned in this digital book may not always apply to Scotland.

A learning map, which contains the full syllabus, appears at the end of this digital book. The syllabus can also be viewed on cisi.org and is also available by contacting the Customer Support Centre on +44 20 7645 0777. Please note that the examination is based upon the syllabus. Candidates are reminded to check the Candidate Update area details (cisi.org/candidateupdate) on a regular basis for updates as a result of industry change(s) that could affect their examination.

The questions contained in this digital book are designed as an aid to revision of different areas of the syllabus and to help you consolidate your learning chapter by chapter.

Please note that, as part of exam security, hand-held calculators are not allowed in CISI exam venues. Candidates must use the onscreen calculator for all CISI CBT exams in all languages in the UK and internationally.

Digital book version: 33.1 (January 2026)

Important –
Keep Informed on Changes to this Digital Book and Examination Dates

Changes in industry practice, economic conditions, legislation/regulations, technology and various other factors mean that practitioners must ensure that their knowledge is up to date. At the time of publication, the content of this digital book is approved as suitable for examinations taken during the period specified. However, changes affecting the industry may either prompt or postpone the publication of an updated version.

It should be noted that the current version of a digital book will always supersede the content of those issued previously. Keep informed on the publication of new digital books and any changes to examination dates by regularly checking the CISI's website: cisi.org/candidateupdate

Learning and Professional Development with the CISI

The Chartered Institute for Securities & Investment is the leading professional body for those who work in, or aspire to work in, the investment sector, and we are passionately committed to enhancing knowledge, skills and integrity – the three pillars of professionalism at the heart of our Chartered body.

CISI examinations are used extensively by firms to meet the requirements of government regulators. Besides the regulators in the UK, where the CISI head office is based, CISI examinations are recognised by a wide range of governments and their regulators, from Singapore to Dubai and the US.

Around 50,000 examinations are taken each year, and it is compulsory for candidates to use CISI learning digital books to prepare for CISI examinations so that they have the best chance of success. Our digital books are normally revised every year by experts who themselves work in the industry and also by our Accredited Training Partners, who offer training and elearning to help prepare candidates for the examinations. Information for candidates is also posted on a special area of our website: cisi.org/candidateupdate.

This digital book not only provides a thorough preparation for the examination it refers to, it is also a valuable desktop reference for practitioners, and studying from it counts towards your Continuing Professional Development (CPD). Mock examination papers, for most of our titles, will be made available on our website, as an additional revision tool.

CISI examination candidates are automatically registered, without additional charge, as student members for one year (should they not be members of the CISI already), and this enables you to use a vast range of online resources, including CISI TV, free of any additional charge. The CISI has more than 40,000 members, and nearly half of them have already completed relevant qualifications and transferred to a core membership grade. You will find more information about the next steps for this at the end of this digital book.

It is estimated that this digital book will require approximately 80 hours of study time.

What next?
See the back of this book for details of CISI membership.

Need more support to pass your exam?
See our section on Accredited Training Partners.

Want to leave feedback?
Please email your comments to learningresources@cisi.org

CISI
CHARTERED INSTITUTE FOR
SECURITIES & INVESTMENT
Stay ahead of the game
with CISI membership
Passing your exam is just the beginning – your next step is to become a CISI member.
Gain access to thousands of online resources, exclusive events and powerful networking opportunities that give your career a competitive edge.
Become a member today

CISI
CHARTERED INSTITUTE FOR SECURITIES & INVESTMENT

Supercharge your expertise with the CISI Learning Platform

Discover curated content collections, get personalised recommendations and stay ahead with the latest industry insights – all at your fingertips, anytime, anywhere.

Get started now – access videos, articles, modules and more on the Learning Platform today.

Learn more

Access via the CISI App

GET IT ON Google Play

Download on the App Store

Contents

Chapter 1 The Regulatory Environment

Chapter 2 Conduct of Business and Client Assets

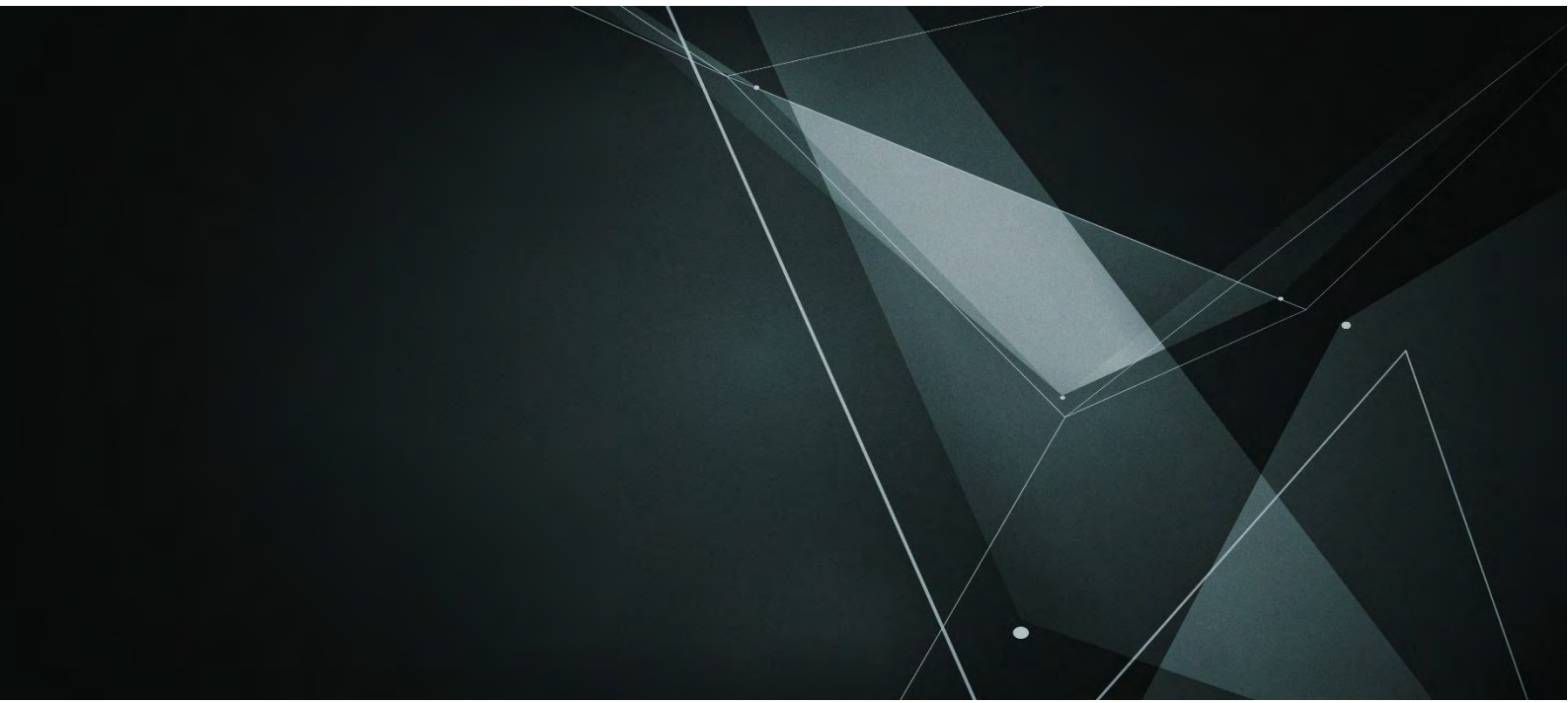
Chapter 3 Enhancing Market Integrity

Chapter 4 Complaints and Redress

Glossary

Multiple Choice Questions

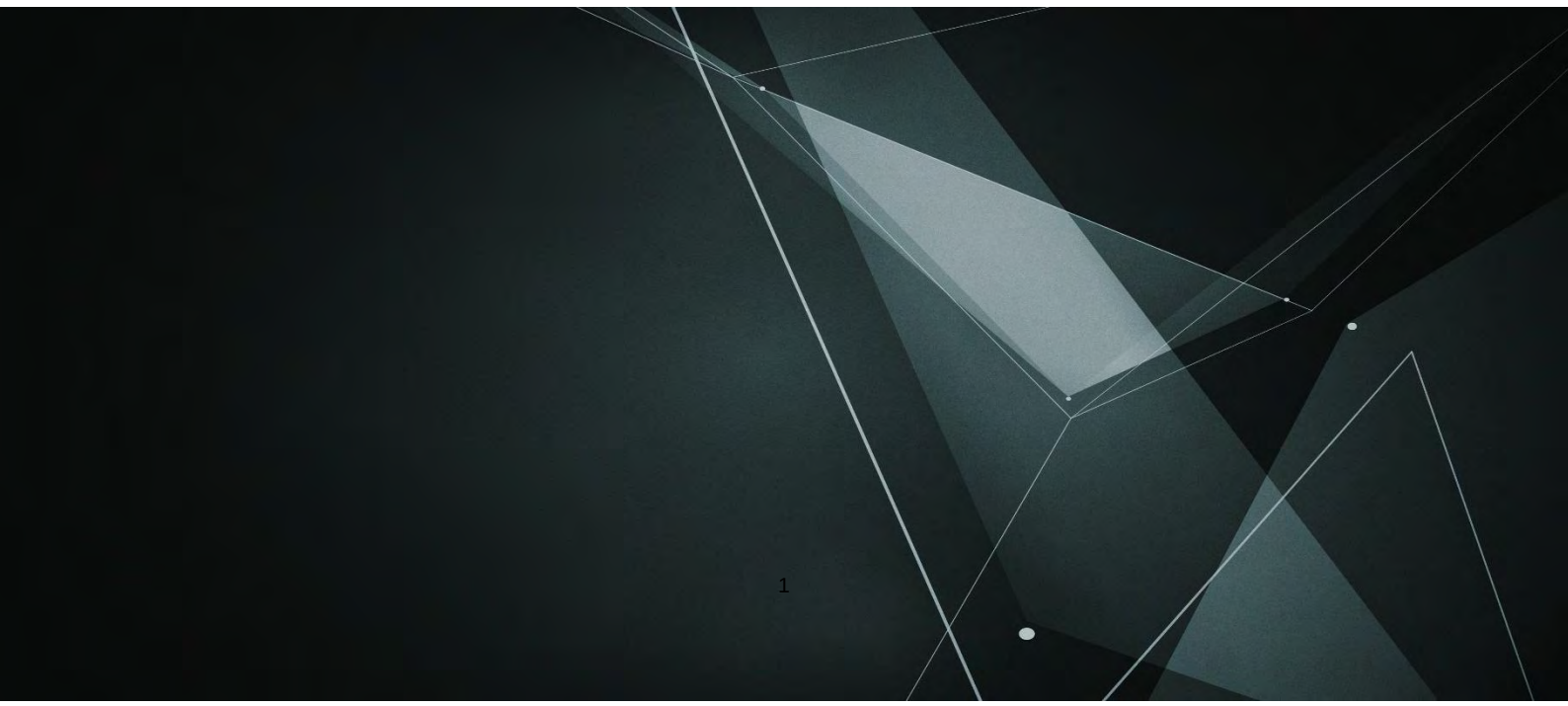
Syllabus Learning Map



Chapter One
The Regulatory Environment

Section 1	The Regulatory Environment
Section 2	Principles for Businesses
Section 3	Fitness and Propriety
Section 4	Prudential Standards
Section 5	The UK Regulatory Infrastructure
Section 6	Regulated and Prohibited Activities
Section 7	Training and Competence

This syllabus area will provide approximately 12 of the 75 examinations questions



1. The Regulatory Environment

1.1 The Role of the FCA and PRA

1.1.1 Know the role, activities and statutory objectives of the Financial Conduct Authority (FCA); Prudential Regulatory Authority (PRA); Key regulatory areas

---

–

1.1 The Financial Services and Markets Act (FSMA) 2000 and Financial Services Act 2012

The **Financial Services and Markets Act (FSMA)** came into effect in 2001. This is the primary legislation that regulates financial services in the UK.

The purpose of FSMA is to provide stronger protection for consumers of financial services and products than had been the case under the previous framework, where the industry was largely self-regulated. In the 2012 amendment, taking effect in April 2013, the single regulator the Financial Services Authority (FSA) was split into the **Financial Conduct Authority (FCA)**, the **Prudential Regulation Authority (PRA)** and the **Financial Policy Committee (FPC)** – which is part of the **Bank of England (BoE)**.

The PRA is responsible for the **prudential regulation** of banks, building societies, credit unions, insurers and major investment banks. The FCA is solely responsible for the **authorisation** and supervision of all financial institutions not regulated by the PRA, including intermediaries and investment exchanges. The FCA's role includes protecting consumers, keeping the industry stable, and promoting healthy competition among financial service providers.

The FCA has powers to investigate and prosecute **insider dealing** and market abuse and also has responsibility as the Listing Authority for the UK. It oversees the **Financial Ombudsman Service (FOS)** and (jointly with the PRA) the **Financial Services Compensation Scheme (FSCS)**. The FCA and the PRA are funded entirely from fees paid by the firms that they regulate, they set the fees payable by regulated firms and make rules in respect of the activities under their remit.

Following the 2016 Financial Services Act the PRA is part of the BoE and is directly accountable to them. This Act of Parliament brought micro-prudential regulation of financial institutions into the scope of the BoE through the establishment of a new Prudential Regulation Committee (PRC). The FCA, a private company, has been given special privilege allowing it not to use the word 'limited' as part of its name.

FSMA (as amended by the **Financial Services Act 2012**) gives the FCA and the PRA certain duties and objectives in relation to their roles as financial services regulators and established the legal powers that enable them to fulfil their roles.

The FCA is responsible for protecting consumers, keeping the industry stable and promoting healthy competition between financial services providers. The PRA's focus is on the prudential regulation of banks, building societies, credit unions, insurers and major investment firms. The PRA promotes the safety and soundness of these firms, which in turn reduces harm to the UK financial system.

The regulators' have powers over firms carrying out **regulated activities**, the financial exchanges that are used by many of those firms, and individuals carrying out particular functions for firms. In some cases, they also extend to those not currently authorised, such as, firms formerly authorised, or firms which ought to have had authorisation but have been doing business without it.

The FCA is accountable to the UK Government on how it carries out its functions, via HM Treasury. While the PRA, is not directly accountable to any other UK Government body, it is answerable to Parliament via the House of Commons Treasury Committee via the Bank of England.

The FPC is an official committee of the Bank of England. It focuses on the macroeconomic and financial issues that may threaten the long-term growth prospects of the UK economy.

This regulatory framework is known as the 'twin peaks' approach to regulation. Where two different supervisors undertake the supervision of deposit takers, insurers and investment banks, one focuses on prudential issues (PRA) and the other focuses on conduct and market-related issues (FCA). In addition, the FCA is also responsible for prudential regulation for all firms who are not regulated by the PRA (ie, solo-regulated firms such as asset managers and stockbrokers).

FSMA is legislation which applies to all persons within the UK and sets out the scope for the conduct of regulated activity. Persons in this context – and throughout this workbook – means natural persons and all other types of legal person, such as firms, incorporated bodies, partnerships, trusts, and other types of unincorporated associations. It is a criminal offence to conduct regulated activity by way of business in the UK unless a person is either authorised to do so, or is an **exempt person**. This is known as the general prohibition and it is set out in Section 19 of FSMA.

1.2 The Statutory Objectives of the FCA and the PRA

The FCA has a single strategic and three operational objectives within the Financial Services Act of 2012. These are:

- **Strategic objective** – ensuring that the relevant markets function well.
- **Operational objectives**:
    - **The consumer protection objective** – securing an appropriate degree of protection for consumers. This does not necessarily mean preventing all risk of loss to consumers. In considering what is the appropriate degree of protection, the FCA should have regard to the different degrees of risk involved in different kinds of investment, the differing levels of experience and expertise of consumers, the needs of the consumers for advice and accurate information, and the general principle that consumers should take some responsibility for their decisions.
    - **The integrity objective** – protecting and enhancing the integrity of the UK financial system. The integrity of the financial system includes the following:
        - soundness, stability and resilience
        - not being used for a purpose connected with financial crime
        - not being affected by behaviour that amounts to market abuse
        - the orderly operation of the financial markets
        - the reliability and transparency of the price formation process in those markets, and
        - the suitability of the listing rules.
    - **The competition objective** – promoting effective competition in the interests of consumers in the markets for regulated financial services or services provided by a recognised investment exchange (RIE) when carrying out regulated activities in respect of which it is exempt from the general prohibition. The FCA may have regard to matters including:
        - the needs of different consumers who use, or may use, those services, including their need for information that enables them to make informed choices
        - the ease with which consumers who obtain those services can change the person from whom they obtain them
        - the ease with which new entrants can enter the market, and
        - how far competition is encouraging innovation.

This PRA has been given a single general objective of '*promoting the safety and soundness of PRA authorised persons*'.

This general objective is to be advanced primarily by:

- seeking to ensure that the business of PRA-authorised persons is carried on in a way which avoids any adverse effect on the stability of the UK financial system, and
- seeking to minimise the adverse effect that the failure of a PRA-authorised person could be expected to have on the stability of the UK financial system.

The PRA has also been given an insurance objective that only relates to the effecting, or carrying out of **contracts of insurance** as principal to the extent that it is a PRA-regulated activity. The objective is contributing to the securing of an appropriate degree of protection for those who are or may become policyholders.

Following the coming into effect of the **Financial Services and Markets Act 2023**, the PRA and the FCA now have a secondary objective to:

'facilitate the international competitiveness of the UK economy and its medium to long-term growth (subject to international standards)'.

In particular, the FCA have stated that the new objective will only apply when the FCA is advancing its existing operational objectives (consumer protection, market stability and effective competition).

The term 'international standards' means that the FCA will not take action or develop rules that would harm the UK's reputation or standing in the international financial community.

The FCA's objectives also provide for a degree of accountability:

- **Annual report** – the FCA's annual report to the Treasury (as mentioned in section 1.3) contains an assessment of how well, or otherwise, the FCA has met its statutory objectives. The report is scrutinised by various Parliamentary committees.
- **Rules** – the FCA has to show how the rules it makes relate to its statutory objectives.
- **Judicial review** – if the FCA fails to consider the objectives, or incorrectly interprets the objectives, it can be challenged in the courts.
- **Regulatory failure** – the FCA and PRA will be held accountable if breaches of the objectives occur, or are made worse, because of a serious failure on the part of the regulator.

Under FSMA, the relevant regulator (the FCA and/or the PRA) is required to maintain arrangements to supervise compliance with the requirements imposed on authorised persons. The supervisory approach has to work to ensure the statutory objectives are met.

The FCA's supervisory efforts focus on the conduct of both FCA-authorised and PRA-authorised firms, plus the prudential regulation for those authorised firms that are not directly authorised by the PRA. The PRA supervises the prudential aspects of those firms that it directly authorises.

Underpinning the supervisory approach is the greater scrutiny of the competence of senior management of authorised firms. The FCA seeks to assess both technical competence and the ability of individuals to contribute to effective governance. As with other aspects of this new approach, this requires the FCA to make judgements that, at times, will be at variance with those of the firms.

A final aspect of the supervisory approach is the aim to deliver credible deterrence, including a consistent and more transparent framework for calculating financial penalties.

The PRA's approach to supervision follows three principles – judgement based, forward-looking and focused on key risks. However, it is worth remembering that the PRA is a prudential regulator for banks, depositor takers and insurance companies - so it has different objectives and outcomes compared to the FCA.

The PRA have acknowledged that their approach relies significantly on judgement, where supervisors reach judgements on the risks that a firm is running, the risks that it poses to their objectives and whether the firm is likely to continue to meet the '**Threshold Conditions**', and how to address any problems or shortcomings.

To minimise such outcomes, the PRA's strategies and judgements are subject to regular review by individuals who are independent from supervising firms, major judgements and decisions involving senior and experienced staff and directors.

With regard to the forward looking principle, the PRA assesses firms not just against current risk but also future risks that could arise which have been identified by their horizon-scanning work.

The PRA takes a structured approach when forming judgements, using a risk element framework. This framework assesses the risk posed by firms to the PRA's objectives, assessing gross risk and mitigating factors.

The starting point is to assess the gross risk by measuring the potential impact a firm has on the stability of the UK financial system and the external context and business model risk which a firm is exposed to. This is then overlaid with mitigating factors which are the actions a firm takes to offset the gross risk. When added together, the PRA is able to make an assessment of the net risk that any given firm poses to their objectives.

1.2.1 Delivering Effective, On-the-Ground, Intensive Supervision and Credible Deterrence

After the FCA assumed responsibility for conduct regulation, it radically changed its regulatory philosophy and the operating model which enables its delivery.

The underlying principle of the previous regulator was that it would not intervene until something went wrong. This was well supported by society and the financial services sector at the time and was considered the 'light touch' approach to regulation. However, under the revised model of supervision, the FCA is required to intervene in a proactive way when it believes that the results of a firm's actions will pose a risk to its statutory

objectives. This, therefore, requires the FCA to adopt a more intrusive, confrontational and direct regulatory style than before and to make judgements that are undoubtedly more difficult, which may be disputed by authorised firms (and, in some cases, found to be wrong).

The outcomes-focused intensive supervisory model has two key features:

- Firstly, a **significant enhanced analysis and risk identification capacity** which focuses on business model risk and interacts with macro-prudential analysis. For this, the FCA requires greater numbers and better-quality people and more sophisticated systems and analysis. A comprehensive conduct business model analysis is undertaken by FCA supervisors, supported by sector teams and conduct specialists, who also contribute wider market knowledge and horizon risk scanning. This is combined with mystery shopping and on-site visits, to increase the probability of identifying issues before they crystallise and gain an industry-wide hold.
- Secondly, a greater focus on **outcome testing**, rather than ensuring that firms have the appropriate systems and controls. This approach also requires earlier and more direct regulatory intervention.

1.2.2 Risk-Based Approach and Changes in Supervisory Approach

The risk-based approach discussed above means that the FCA assesses firms for the risk each one presents to its objectives. This then helps it to determine the degree and level of supervisory attention which is required for each authorised firm.

The FCA has stated that the global financial crisis of 2007–08 identified various issues with culture and business practices in many areas of the financial services sector. As a result, it needed to ensure that firms consider both consumers and market integrity throughout their operations and services.

The FCA looks closely at the culture and practices of firms from a variety of aspects, focusing on a market-level understanding of conduct on a sector and subsector basis and mitigating risks accordingly. The FCA has, over time, further enhanced its approach to supervision and in 2019 it published the '*FCA Mission: Approach to Supervision*', outlining eight supervisory principles.

The FCA's supervisory model is based on three types of work:

1. **Proactive** – pre-emptive identification of harm through review and assessment of firms and portfolios. This includes business model analysis and reviewing the drivers of culture.
2. **Reactive** – dealing with issues that are emerging or have happened to prevent harm growing.
3. **Thematic** – wider diagnostic or remedy work where there is actual or potential harm across a number of firms.

1.2.3 Conduct Risk

What is Conduct Risk?

The FCA does not provide a precise definition of 'conduct risk'. There are, however, a number of different ways in which the term can be viewed. Broadly speaking, conduct risk is considered to describe the risks posed to customers and the wider integrity of the financial markets by the way in which authorised firms and their staff conduct themselves and the risks that firms' behaviours may result in poor outcomes for the consumer.

The concept of treating customers fairly (TCF), and its '6 principles', were introduced as an initiative in 2006.

The six TCF principles continue to be a key element of the regulatory architecture and focus primarily on how products are developed and sold to customers and what actions are taken by firms post-sale. Conduct Risk expands this focus by requiring firms to consider whether the way it does business causes poor outcomes for customers or harms market integrity.

TCF has since been renamed to be called the 'Fair Treatment of Customers' (FTOC), setting out consumer outcomes that the FCA considers to be core to what they expect of firms. This is explained in further detail in section 2, chapter 1.

1.3 Rule-Making Powers

Part 9A of FSMA empowers the FCA to make rules that are legally binding on authorised firms concerning regulated activity and also activity that is not regulated. Such rules are necessary or expedient to the FCA for the purpose of advancing one or more of its operational objectives.

The PRA has similar rule-making powers; however, the powers only extend to PRA-authorised persons. In addition to rule-making powers, the FSMA empowers either regulator to:

- grant authorisation to persons applying for **Part 4A permission**, vary a firm's permission, and cancel authorisation
- supervise authorised persons on an ongoing basis to ensure that they continue to meet the regulators' authorisation requirements and that they comply with the Handbook rules and other regulatory obligations
- employ a range of disciplinary measures and sanctions, to punish or limit the activities of firms and senior management that fail to comply, and
- enforce the regulatory framework – the general approach is one of credible deterrence, using enforcement strategy as a tool to change behaviour in the industry.

2. Principles for Business

1.2 Principles for Businesses

1.2.1 Understand key features of the FCA's Principles for Businesses

2.7 Retail Clients

2.7.1 Understand the four elements of Consumer Duty

2.7.2 Know the obligations related to Fair Treatment of Customers (FTOC) for firms outside of the scope of the Consumer Duty

---

–

2.1 The FCA's Principles for Businesses

If a firm breaches any of the **Principles for Businesses**, it will be liable to disciplinary sanctions as they are legally binding on all authorised firms.

The 12 Principles for Businesses are:

1. **Integrity** – a firm must conduct its business with integrity.
2. **Skill, care and diligence** – a firm must conduct its business with due skill, care and diligence.
3. **Management and control** – a firm must take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems.
4. **Financial prudence** – a firm must maintain adequate financial resources.
5. **Market conduct** – a firm must observe proper standards of market conduct.
6. **Customers' interests** – a firm must pay due regard to the interests of its customers and treat them fairly.
7. **Communications with clients** – a firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading.
8. **Conflicts of interest** – a firm must manage conflicts of interest fairly between itself and its customers and between customers and other clients.
9. **Customers: relationships of trust** – a firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.
10. **Clients' assets** – a firm must arrange adequate protection for clients' assets when it is responsible for them.
11. **Relations with regulators** – a firm must deal with its regulators in an open and cooperative way and must disclose to the PRA/FCA appropriately anything relating to the firm of which the PRA/FCA would reasonably expect notice.

12. **Consumer Duty** - a firm must act to deliver good outcomes for retail customers. Firms need to consider the characteristics and objectives of their customers. As well as acting to deliver good customer outcomes, firms will need to understand and provide evidence whether those outcomes are being met.

Further details on the scope, application and what this means for firms are included in this chapter.

2.2 Consumer Duty

The **Consumer Duty** initiative comprises of a Principle (Principle 12), rules, expected outcomes and formal guidance.

2.2.1 Aims and Purpose of the Consumer Duty

The FCA's 'Consumer Duty' sets higher and clearer standards of consumer protection across financial services and requires firms to put their customers' needs first.

In addition, there are cross-cutting rules that provide greater clarity and rules relating to the outcomes that the FCA expects to see under the Consumer Duty – which are explained in more detail below.

Implementation Date

The rules came into effect in 2023 for new and existing products or services, and from 31 July 2024 for closed products and services (ie, products and services only available to existing customers without the ability to make new investments or where the services and products are being wound down).

Scope

The Consumer Duty applies to products and services offered to retail customers – the definition includes the following:

- Consumer credit (Claims Management: Conduct of Business sourcebook (CMCOB) & Funeral Plan: Conduct of Business sourcebook (FPCOB).
- Deposit-taking activities (BCOBS).
    - Consumers, micro-enterprises, charities with a turnover of less than £1 million and natural persons acting in a capacity of a **trustee** if acting for purposes outside their trade, business or profession.
- Insurance (ICOBS).
    - But not reinsurance.
- Investments (COBS).
    - Apply to business conducted with a customer who is not a professional client.

    - The Duty will not apply to customers who elect to be treated as 'professional clients' – but the Duty will apply to the process that a firm uses to determine a client's status.
- Mortgages (MCOB).
    - Regulated mortgages are in scope.
    - Unregulated buy-to-let contracts or commercial lending is not in scope.

The Consumer Duty does not only apply to existing customers, but also to prospective customers.

The FCA has also published 'Finalised Guidance' which provides some clarity that unless there are regulatory obligations or legal contracts that exist, a firm is only responsible for their own activities and actions. They are not responsible for and do not have to oversee the actions of other firms in a distribution chain.

Products or services that have not been designed for retail customers are not in scope of the Consumer Duty provided they:

- are only marketed and approved for distribution to non-retail customers, and
- are not provided to another firm under an arrangement (ie, distribution agreement) between them as part of a distribution chain for a retail product or service.

Attempts by firms to incorrectly classify a product or service as non-retail with the aim of avoiding the Consumer Duty, and distribute the product to retail customers.

Firms acting under the 'agent as client' rules, will need to ascertain if retail customers are at the end of the chain and if they can determine or materially influence the outcomes for these retail customers.

The Consumer Duty applies to wholesale firms where they have the potential to impact retail customers when they are involved in a distribution chain and their actions (when creating products) could determine or materially influence retail customer outcomes.

For example, when a wholesale firm could influence or determine material aspects of the following:

- The design or operation of retail products or services, including their price and value.
- The distribution of retail products or services.
- Preparing and approving communications that are to be issued to retail customers.
- Engaging in customer support for retail customers.

Where the Consumer Duty applies, it is applied on a proportionate basis based on the firm's influence over retail customer outcomes. This means that a firm that is remote from retail customers, with no direct client relationship, will have limited obligations.

The following wholesale activities are excluded from the Consumer Duty:

- Manufacture of products or services only for wholesale purposes, where they meet the conditions in the 'retail market business' definition – including financial instruments which are intended to be traded in a regulated market/trading venue.
- Activities relating to non-retail financial instruments – minimum denomination/investment of £50,000.
- Market activities for certain financial instruments meeting the criteria in the 'retail market business' definition.
- Activities relating to insurance contracts of large risks for commercial customers or where the risk is located outside the UK.
- Activities connected to the distribution of group insurance policies or the extension of these policies to new members.
- The regulated activity of administering a benchmark, any ancillary activity to that activity and any activities undertaken by a benchmark administrator for the purpose of complying with the Benchmarks Regulation.

The Consumer Duty will only apply to firms conducting regulated activity in the UK.

The Consumer Principle

Principle 12 will apply to firms who are in scope of the Consumer Duty.

When Principle 12 applies, Principle 6 (Customers interests) and 7 (Communication with clients) will no longer apply to firms in respect of the service and products that they are providing to retail customers.

Firms not subject to the Consumer Duty, will continue to ensure adherence to Principles 6 & 7 but will not have to comply with Principle 12.

Where a firm's activities and business model mean that they engage with clients that are both in and out of scope of the Consumer Duty, then they must comply with the relevant requirements for the services and products which they are providing to the different types of customers/clients.

This presents operational challenges for firms that provide products and services to retail customers and non-retail customers (ie, professional clients).

It is up to firms to determine whether to apply the Consumer Duty standards to their business activities that are not in scope. The decision would be based on differences in operating standards, procedures, and policies for the products and services that they provide to all customers.

Cross-Cutting Rules

The FCA cross-cutting rules require firms to:

- **Act in good faith towards retail customers**:
  - Standard of conduct characterised by honesty, fair and open dealings.
  - Acting consistently with the reasonable expectations of retail customers.
  - Firms should consider this rule at the product or service design stage.
- **Avoid foreseeable harm to retail customers**:
  - Firms must ensure that retail customers understand and accept the inherent risk in products.
  - Firms do not have a responsibility to protect customers from all foreseeable harm.
  - Firms must be clear and transparent.
- **Enable and support retail customers to pursue their financial objectives**:
  - Conclusion reached by firms will depend on the products or services requested/purchased by retail customers.
  - Firms are not responsible for customers making their own decisions and choices – firms must be clear and transparent when providing material and information.

For each of the cross-cutting rules, firms need to assess and take into account the target market's financial understanding (knowledge and awareness) and provide clear and transparent support where necessary.

The 'Good' Outcomes the FCA expects to see

Products and Services Outcome

- The FCA expects all products and services for customers to be designed to meet the needs and objectives of the target group.
- The Consumer Duty interacts with the requirements in **PROD (Product Intervention and Product Governance Sourcebook)** with regards to manufacturers and distributors of products.

Product providers are:

- responsible for ensuring that a product and/or service is designed to meet a specific need or objective of an identified target market audience, and
- required to carry out regular reviews of how a product performed.

Product distributors would be:

- responsible for distributing and/or marketing a product in a way that focuses on and reflects its identified target market audience, and
- responsible for taking all reasonable steps to prevent a product being offered to customers outside the intended target market audience.

Where multiple firms are involved in the distribution chain, each firm is required to take responsibility for the outcome in a manner that reflects its ability to influence choices about product design, operation and distribution and the potential to materially affect retail customers receiving good outcomes.

Price and Value Outcome

- While the FCA does not regulate pricing, it expects firms to offer products and services that represent fair value.
- The FCA has been very clear that fair value does not mean that all retail consumers will achieve the same outcomes. Those that shop around will have greater confidence to do so knowing that products and services will meet their needs and will represent better value than an existing provider.
- Firms do not have to price products the same for new and existing retail customers but they will need to be able to demonstrate that any discounts for new retail customers must be communicated clearly to both groups of customers to ensure that both could receive fair value.
- The price of products represents a 'fair' value for customers in the target market/group.
- Value is not just the price paid by the customer for a product or service sold by a firm:
    - The firm must ensure that there is a relationship between the price paid and the benefit that the customer receives from it.

Consumer Understanding Outcome

- Firms must communicate with customers in a consistent manner, so that they are able to make informed decisions about purchasing financial products or services.
- The FCA expects firms to provide the required information at the right time and presented in a way that is clear and easily understood, enabling customers to be able to understand and assess:
    - the features of products and services
    - the likely costs, associated risks and the benefits from specific products or services, and
    - whether products and services will meet their financial needs and objectives.
- Firms need to consider who the target market audience is and use this to design their marketing material and information:
    - firms should put themselves in the shoes of the retail customers and sense check that the information that they are providing is aimed at the right level in terms of details/information and understanding.

Consumer Support Outcome

- Firms are expected to provide an appropriate level of service that meets customers' needs throughout their relationship.
- Firms must ensure that communications are fair, clear and not misleading, so that customers can make informed decisions about products and services.

- Firms must present information in a manner that will be understood by customers:
    - Firms need to understand the 'financial awareness' of the target market audience.

2.2.2 Accountability

As part of the Consumer Duty, the FCA introduced a new Conduct Rule (SM&CR) for firms in scope of the Duty:

'You must act to deliver good outcomes for retail customers'.

Where a firm is not in scope of the Consumer Duty, Conduct Rule 6 will not apply .

The FCA have identified in the COCON rules that:

- acting in good faith is a standard of conduct characterised by honesty, fair and open dealing and acting consistently with the reasonable expectations of retail customers
- firms and their individuals must avoid foreseeable harm to retail customers, and
- firms and their individuals must enable and support retail customers to pursue their financial objective.

The FCA will hold senior managers accountable for the implementation and ongoing compliance with their regulatory obligations under the Consumer Duty, ensuring that it is embedded within the firm via the SM&CR. Therefore, firms must make sure that senior managers are clear about what they are accountable and responsible for and how they ensure the firm complies with the requirements of the Consumer Duty on an ongoing basis.

2.3 Fair Treatment of Customers ('FTOC')

The following applies to firms out of scope of the Consumer Duty requirements, either because they do not deal directly with retail customers and are not able to materially impact the good outcomes for retail customers; or because their products and/or services fall into one of the exemptions from the Consumer Duty.

The concept of fair treatment is at the heart of the regulatory system. It is expressed in Principle 6, and also in an important conduct of business rule:

'*A firm must act honestly, fairly and professionally in accordance with the best interests of its client.*'

This rule is known as the client's best interests rule.

An important part of the FCA's supervision of firms involves assessing how they are able to demonstrate fair treatment of clients. The firm's management culture should have the client's best interests at the heart of the firm. In addition, firms need to ensure they

gather sufficient management information to help monitor how well they adhere to these obligations, and to help identify where they might be failing.

All firms regulated by the FCA, and not in scope of the Consumer Duty, have to adhere to Principle 6 of the FCA's Principles for Businesses, which provides that firms 'must pay due regard to the interests of its customers and treat them fairly'.

The FTOC initiative raises standards in the way firms carry on their business. Specifically, FTOC:

- Helps customers fully understand the features, benefits, risks and costs of the financial products they buy.
- Minimises the sale of unsuitable products by encouraging best practice before, during and after a sale.

The FTOC initiative defines the following six outcomes:

1. Consumers can be confident that they are dealing with firms where the fair treatment of customers is central to the corporate culture.
2. Products and services marketed and sold in the retail market are designed to meet the needs of identified consumer groups and are targeted accordingly.
3. Consumers are provided with clear information and are kept appropriately informed before, during and after the point of sale.
4. Where consumers receive advice, the advice is suitable and takes account of their circumstances.
5. Consumers are provided with products that perform as firms have led them to expect, and the associated service is of an acceptable standard and is they have been led to expect.
6. Consumers do not face unreasonable post-sale barriers imposed by firms to change product, switch provider, submit a claim or make a complaint.

2.4 PRA Fundamental Rules

The PRA's Fundamental Rules set out the PRA's high-level expectations relating to the safety and soundness of regulated firms. They are a clearer expression of the PRA's expectations and more closely reflect the PRA's underlying detailed rules.

The Fundamental Rules apply proportionately to all PRA firms, taking into account the difference between sectors and between sizes of firms. They apply with respect to a firm's activities wherever they are carried on. The majority of the PRA's Fundamental rules are similar to the FCA's Principles for Businesses.

The Fundamental Rules require that firms must:

1. conduct its business with integrity
2. conduct its business with due skill, care and diligence
3. act in a prudent manner
4. maintain adequate financial resources at all times

5. have effective risk strategies and risk management systems
6. organise and control its affairs responsibly and effectively
7. deal with its regulators in an open and cooperative way and must disclose to the PRA appropriately anything relating to the firm of which the PRA would reasonably expect notice, and
8. prepare for resolution so, if the need arises, it can be resolved in an orderly manner with a minimum disruption to critical services.

3. Fitness and Propriety

1.3 Fitness and Propriety

1.3.1 Know the requirements of: the Senior Managers & Certification Regime (SM&CR); Fit and Proper Test (FIT)

1.7 Regulated Activities

1.7.4 Understand: the PRA and FCA individual accountability requirements for all firms; the requirements for individuals to be registered and be subject to the Senior Managers & Certification Regime and what this means; who is subject to the Conduct Rules

---

3.1 Background

In response to the 2007–08 banking crisis and significant conduct failings, such as the manipulation of LIBOR, the UK Government set up the Parliamentary Commission for Banking Standards (PCBS) to make recommendations on how to improve standards in the banking sector. The PCBS recommended a new accountability framework, which focused primarily on the accountability of senior management. The PCBS also recommended that firms take more responsibility for employees being **fit and proper**, and that there be better standards of conduct at all levels in banking firms.

Following on from these recommendations, Parliament passed legislation which led to the FCA and PRA introducing the **Senior Managers & Certification Regime (SM&CR)** to the banking sector in 2016. Also in 2016, Parliament introduced further changes to the legislation, requiring the regulators to extend the SM&CR to all FSMA authorised firms. The SM&CR applies to all FSMA-authorised firms, except **Appointed Representatives** and Benchmark Administrators.

The SM&CR comprises:

- **Senior Managers Regime (SMR)**
- **Certification Regime (CR)**, and
- **Conduct Rules**.

When the FCA applied the SM&CR to 'solo-regulated' firms it implemented a proportionate regime, introducing three types of firms with different levels of application:

1. **Core scope** – SM&CR firms (the majority) – these are subject to 'baseline' SM&CR requirements.
2. **Limited scope** – SM&CR firms – these are subject to fewer requirements.
3. **Enhanced scope** – SM&CR firms who are subject to significantly greater requirements.

Senior managers continue to have an obligation to prevent regulatory breaches, but a senior manager will only be guilty of misconduct if the FCA is able to demonstrate (ie, proves and it is accepted) that the senior manager failed to take reasonable steps to prevent a regulatory breach from occurring. Although the burden of proof rests with the FCA, senior managers are expected to be able to provide the FCA with evidence of any reasonable steps they took when made aware of the breach.

A set of Conduct Rules apply to all relevant employees based in the UK, or who deal with customers in the UK. This means that the Conduct Rules cover all employees who are in a position to affect the FCA's objectives. The Conduct Rules are, in effect, designed to raise overall conduct standards in the financial services industry.

Provided below is further detail about each component of the SM&CR.

3.2 Senior Managers Regime (SMR)

The SMR captures certain individuals performing defined senior management functions (SMFs). These individuals typically comprise members of a firm's senior management team, such as the chief executive officer, the chief risk officer and the chief finance officer – generally the individuals who manage the direction and implement the strategy of the firm. However, other individuals will also be in scope, who may not necessarily perform executive-level functions, such as the head of compliance, the **money laundering reporting officer (MLRO)** and the head of internal audit. Individuals performing an SMF require regulatory approval.

Certain individuals holding an SMF may also be apportioned specific 'prescribed responsibilities' identified by the PRA and FCA. A prescribed responsibility should, in theory, correlate to a SMF-holder's area(s) of responsibility and business area(s)/responsibilities for which they could be held accountable. Individuals performing an SMF are subject to annual fitness and propriety assessments.

In line with the PRA's approach detailed in Supervisory statement 28/15 on Strengthening Individual Accountability in Banking, persons holding SMFs include the Chair and non-executive directors. They can be explicitly held to account for boardroom decisions, and deemed potentially culpable for poor decisions in the same fashion as executive directors.

Persons approved to hold an SMF need to show and demonstrate an increased understanding of the key business and strategic activities of the entities for which they are responsible, and their associated risks.

An individual may only perform a Senior Management Function after the regulator has granted them **approved person** status. The candidate completes Form A, which is submitted to the regulator by the firm. The form includes a comprehensive list of questions to establish a person's employment history and fitness and propriety. It provides the regulator with the information it needs to conduct the assessment of fitness and propriety.

In certain circumstances an abbreviated form may be completed, for example if the person is already an approved person executing a similar function.

Prior to 'Form A' being submitted to the regulators a firm must, under the SM&CR, take all reasonable steps to obtain a regulatory reference from the candidate's current employer and anyone who has been a candidate's previous employers, within the past six years.

As part of the application process, firms need to include a statement of responsibilities setting out the aspects of the firm's affairs the person will be responsible for managing when performing the function. The regulators expect that each responsibility will be allocated to a single senior manager. Where a responsibility is shared between more than one senior manager regulators expect the division of responsibility and accountability for that responsibility to be clearly articulated.

FSMA imposes a statutory obligation on the FCA and PRA to reach a determination on a person's fitness and propriety within 90 days of receiving 'Form A'. However, the amount of time the regulators take in determining an application varies and is dependent on any additional checks required.

If the regulators consider that they need further information from a firm in order to reach a fitness and propriety determination, they stop the statutory 'clock' until such time as the information requested is received.

A number of differing requirements and classifications exist in the SM&CR:

- **Prescribed Responsibilities** – must be allocated to the most senior individuals of those performing SMFs. Captured individuals' key duties will be recorded as part of the individual statement of responsibilities describing the most senior executives' roles and demonstrated through day-to-day management, adding to the scope and accountability of current roles, control and information arrangements.
- A **Management Responsibilities Map** – documents a firm's management and governance arrangements, including how the prescribed responsibilities have been allocated. The purpose of the Management Responsibilities Map is to provide enhanced transparency of individual accountability and increase the reporting line and quality and specificity of management information requirements of those affected.

- A **Duty of Responsibility** requires SMF holders, especially those to whom prescribed responsibilities have been apportioned, to take reasonable steps to:
    - fulfil any prescribed responsibilities apportioned to them, and
    - prevent, stop or remedy breaches.

3.2.1 Application to Banks and Deposit Takers

SMF for UK Banks

SMF	Description	FCA function	PRA function
1	Chief Executive function		✓
2	Chief Finance function		✓
3	Executive Director function	✓	
4	Chief Risk function		✓
5	Head of Internal Audit function		✓
6	Head of Key Business Area functions		✓
7	Group Entity Senior Manager function		✓
8	Credit Union SMF (small credit unions only)		✓
9	Chairman functions		✓
10	Chair of the Risk Committee function		✓
11	Chair of the Audit Committee function		✓
12	Chair of the Remuneration Committee function		✓
13	Chair of the Nominations Committee function	✓	
14	Senior Independent Director function		✓
16	Compliance Oversight function	✓	
17	Money Laundering Reporting function	✓	
18	Other Overall Responsibility function	✓	

SMFs functions 9 to 14 should be held by approved NEDs (Non-Executive Directors) rather than executives.

SMF 15 only applies to insurance companies.

3.2.2 Application to FCA Solo-Regulated Firms

The SM&CR also applies to FCA firms in a different manner to how it applies to banks and deposit takers, due to the limited nature and impact that these firms could have on UK financial markets.

It is a light touch, intended to be a more appropriate and proportionate approach by the FCA for these firms. The degree of application depends upon the 'type' of firm – as noted below:

Firm type	Description
Limited Scope Firm	Firms that have fewer requirements than core firms. This covers all firms that would have had a limited application under the Approved Persons Regime (APER), including: • limited permission consumer credit firms • all sole traders • authorised professional firms whose only regulated activities are non- mainstream regulated activities • oil market participants • service companies • energy market participants • subsidiaries of local authorities or registered social landlords • insurance intermediaries whose principal business is not insurance intermediation and who only have permission to carry on insurance mediation activity in relation to non-investment insurance contracts • authorised internally managed Alternative Investment Funds (AIFs).
Core Firm	Firms that have a 'baseline' of SM&CR requirements applied.
Enhanced Firm	A small proportion of solo-regulated firms that apply extra rules.

Application of SMFs to Firms

Firm type	Senior Management Functions
Limited Permission Consumer Credit firms that would have had an CF8 under APER	**SMF29** – Limited Scope Function (this is the same as the Apportionment and Oversight Function under the APER)
Sole traders with no employees	**SMF16** – Compliance Oversight
Authorised professional firms whose only regulated activities are non-mainstream regulated activities	**SMF16** – Compliance Oversight **SMF17** – Money Laundering Reporting Officer SMF29 – Limited Scope Function
Oil market participants, service companies, energy market participants, subsidiaries of local authorities or registered social landlords	**SMF16** – Compliance Oversight **SMF17** – Money Laundering Reporting Officer SMF29 – Limited Scope Function
Insurance intermediaries whose principal business is not insurance intermediation and who only have permission to carry on insurance mediation activity in relation to non-investment insurance contracts	**SMF29** – Limited Scope Function
Core and Enhanced Firms	**SMF1** – Chief Executive. **SMF3** – Executive Director. **SMF9** – Chair. **SMF16** – Compliance Oversight. **SMF17** – Money Laundering Reporting Officer (MLRO). **SMF 18** – Other Overall responsibility (Enhanced Firms only). **SMF27** – Partner.

As noted in section 2 ('Principles for Businesses') of this chapter, following the implementation of the Consumer Duty, Senior Managers have been tasked with the following where the Consumer Duty applies:

- The Consumer Duty should be reflected in firm's strategies, governance, leadership and people policies.
- Senior managers must ensure that their firm has appropriate oversight of customer outcomes through their systems and controls:
    - risk functions should pay attention to consumer risks and be a key focus for internal audit.
- Senior managers will be held accountable for delivering 'good consumer outcomes' within their area of responsibility within the firm.

The requirement to appoint a consumer Duty 'champion' was removed by the FCA in February 2025.

3.3 The Certification Regime (CR)

Individuals subject to the Certification Regime are not approved by the regulators; rather firms make an assessment that they are deemed 'fit and proper' to perform their role and provide them with an annual certificate that they can perform their role.

The CR requires firms to assess, both at the recruitment stage and on an annual basis thereafter, the fitness and propriety of certain employees within the firm who could pose a risk of significant harm to the firm or any of its customers. A firm's senior management must attest on an annual basis that those individuals captured by the Certification Regime remain fit and proper through arrangements designed and managed by the firm. This introduces an administrative and evidential burden on firms rather than the regulators.

There are different approaches taken by the PRA and the FCA due to their statutory objectives. The PRA approach limits the scope to 'material risk takers' (MRTs) as defined in the Capital Requirements Regulation (CRR) (ie, individuals who are subject to the Remuneration Code – 'Code staff') while the FCA approach includes individuals performing their function from within the UK or dealing with a client in the UK who:

- would previously have been performing a significant influence function (SIF) role under APER, but who now are outside the SMR – as they are not an SMF

    - eg, CASS oversight, benchmark submitter, or administrators, proprietary traders and previous CF29 significant manager function-holders)

- are performing a significant harm function, including those who are:

    - engaged in wholesale activities on the basis of dealing as principle or agent
    - traders, including Algorithm traders, and
    - bringing about deals in investments (sales staff)

- are in cutomer-facing roles which are subject to qualification requirements
- supervise or manage a Certified Person, where they are not an SMF
- is an individual is employed by a UK bank, and/or the UK branch of a third country bank
- is an individual employed by a third country bank, and carries out branch activity as defined by the FCA.

The PRA and the FCA require the responsibility for assessing the fitness and propriety of staff who perform and/or carry out significant harm functions to firms.

Significant-harm functions include:

- CASS oversight
- benchmark submission and administration
- proprietary trader
- significant management
- functions requiring qualifications
- managers of certification employees
- material risk takers.

The term 'material risk taker' is defined in the PRA Remuneration Rulebook as an individual whose activities, carried out on behalf of the firm, could have a material impact on the firm's risk profile.

Firms must provide a 'certificate' to individuals annually which states that they (the firm) are satisfied that the individual is 'fit and proper' to perform the function, it will also set out their role and responsibilities.

Where individuals are performing multiple certification functions – fitness and propriety must be assessed for each certification function, however a single certificate can cover the multiple functions being performed.

In the event a certificate is not issued to an individual, because they are deemed not to meet the fitness and propriety criteria, the firm must give written notice explaining what steps (if any) they propose to take, as well as notifying the FCA of the circumstances.

The Certification Regime could impact overseas employees of UK firms. Firstly, to individuals deemed to be 'material risk takers' (or 'Code' staff) for the firm due to their role, no matter where they are located, and secondly, where an individual overseas is dealing with, or has contact with, UK clients. Where an individual is based overseas and does not deal with UK clients and is performing another of the Certification functions (other than material risk takers) then they will not be a certified person.

The term 'code staff' refers to employees whose activities have a material impact on the firm's risk profile.

3.4 The Conduct Rules

The conduct rules are a framework of behavioural standards against which individual conduct is judged and are applicable to all individuals except for ancillary staff, such as cleaners and catering staff. The regulator must be notified of breaches and any formal disciplinary action taken.

There are five individual Conduct Rules which all relevant employees are required to adhere to. Senior managers are required to adhere to a further four Conduct Rules.

The Conduct Rules and Senior Manager Conduct Rules are outlined below:

Conduct Rules – for All Staff (Individuals)

Rule 1	You must act with integrity.
Rule 2	You must act with due skill, care and diligence.
Rule 3	You must be open and cooperative with the FCA, the PRA and other regulators.
Rule 4	You must pay due regard to the interests of customers and treat them fairly.
Rule 5	You must observe proper standards of market conduct.
Rule 6	You must act to deliver good outcomes for retail customers.

Following implementation of the Consumer Duty, individuals working for a firm who are subject to the 'Consumer Duty' requirements will have a new conduct rule (Rule 6) for FCA only firms – as noted above.

However, this means that Rule 4 ('*You must pay due regards to the interests of customers and treat them fairly*') will cease to apply to individuals where the new rule (Rule 6) applies.

Rule 6 will not apply for firms deemed to be out of scope of the Consumer Duty requirements, therefore, 'Rule 4' will continue to apply for those firms. Therefore, only five individual conduct rules will apply to individuals.

The FCA has identified in the COCON rules the following:

- Acting in good faith is a standard of conduct characterised by honesty, fair and open dealing and acting consistently with the reasonable expectations of retail customers.
- Firms and their employees must avoid foreseeable harm to retail customers.
- Firms and their employees must enable and support retail customers to pursue their financial objective.

Conduct Rules for Senior Managers (SC)

SC1	You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively.
SC2	You must take reasonable steps to ensure that the business of the firm for which you are responsible complies with the relevant requirements and standards of the regulatory system.
SC3	You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively.
SC4	You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice.

Further details on the SM&CR, including details on the list of the Senior Manager Regime applicable functions and prescribed responsibilities are located in the FCA's SYSC (Senior Management Arrangement, Systems and Controls) sourcebook:

- **SYSC 23** – Senior managers and certifications: Introduction and classification
- **SYSC 24** – Senior managers and certification regime: Allocation of prescribed responsibilities
- **SYSC 25** – Senior managers and certification regime: Management responsibilities maps and handover procedures and material
- **SYSC 26** – Senior managers and certification regime: Overall and local responsibility
- **SYSC 27** – Senior managers and certification regime: Certification regime.

Source of information: *FCA website (www.fca.gov.uk)*

3.5 The Fit and Proper Test (FIT)

Individuals performing SMFs within authorised firms are required to be approved by the regulator as fit and proper before taking on that function.

The PRA and FCA may grant an application for a person to be approved to hold and perform a SMF if they are satisfied that the person for whom approval has been sought (the candidate) is a fit and proper person to perform the function applied for. The responsibility lies with the firm making the application to satisfy the regulator(s) that the candidate is fit and proper.

During the application process, the regulator may discuss assessing the candidate's fitness and propriety with the firm and may retain notes of such discussions. In making its assessment, the regulator will consider the SMF applied for; the activities of the firm; and the Part 4A permission granted to the firm. If any information comes to light that suggests that the individual is not fit and proper, the regulator will take into account how relevant and important this information is.

In assessing the fitness and propriety of a person the regulator(s) will look at a number of factors against a set of criteria, of which the most important are the person's:

- honesty, integrity and reputation
- competence and capability, and
- financial soundness.

The following criteria are among those which will be considered when assessing an individual's fitness and propriety. These are examples of the type of information that the regulator will want. It does not, however, constitute a definitive list of the matters which might be relevant.

3.5.1 Honesty, Integrity and Reputation

The FCA will have regard to whether a person has been:

- convicted of a criminal offence; particular consideration will be given to offences of fraud, dishonesty and financial crime
- the subject of an adverse finding or settlement in a civil case, again with particular consideration given to cases involving financial businesses and fraud
- the subject of previous investigation or disciplinary proceedings by the FCA or PRA or another regulatory authority, including previous regulators
- the subject of a justified complaint in relation to regulated activities
- refused a licence to trade, or had a licence or registration revoked
- involved in an insolvent business, or
- disqualified as a director, or dismissed from a position of trust.

The person must be able to demonstrate a readiness and willingness to comply with the requirements
and standards of the regulatory system. Each application will be treated on its merits, considering the seriousness and circumstances of any matters arising, as well as (in some cases) the length of time which has elapsed since the matter arose.

3.5.2 Competence and Capability

In assessing an applicant's competence and capability, the FCA will have particular regard to whether the person:

- satisfies the relevant requirements laid down in the Training and Competence Sourcebook
- has demonstrated the experience and training needed for them to fulfil the SMF applied for, and
- has adequate time to perform the controlled function and meet the responsibilities associated with that function.

The regulator will consider previous convictions or dismissals/suspensions from employment for drug or alcohol abuse or other abusive acts only if they relate to the continuing ability of the person to perform the SMF for which they are being assessed.

3.5.3 Financial Soundness

In assessing an applicant's financial soundness, the regulator will have particular regard to whether the person:

- has been subject to any judgement to repay a debt or pay another award that remains outstanding or was not satisfied within a reasonable period, or
- has filed for bankruptcy, been adjudged bankrupt, had their assets sequestrated or made arrangements with their creditors.

The FCA will not normally require a statement of a person's assets and liabilities. The fact that a person may be of limited financial means will not in itself affect their suitability to perform an SMF.

4. Prudential Standards

1.4 Prudential Standards

1.4.1 Know the purpose of the Capital Adequacy Requirements for certain types of investment firms

---

–

4.1 Capital Adequacy Requirements

Principle 4 of the fca'S Principles for Businesses establishes that: *'a firm must maintain adequate financial resources'*. Financial resources include both capital resources and liquidity resources, so that the firm can meet its liabilities as they fall due. The standards differ according to the activities undertaken by the firm and whether the firm's activities also fall within the scope of MiFID.

The standards for investment firms are set out in three modules of the **FCA Handbook** as follows:

- **The General Prudential Sourcebook (GENPRU)** – high-level standards, principles and capital adequacy requirements for firms which are subject to the **UK Capital Requirements Directive (UK CRD)**.
- **The Prudential Sourcebook for UK MiFID Investment Firms (MIFIDPRU)** – prudential requirements which came into effect on 1 January 2022 and apply to UK-regulated firms which are subject to MiFID (ie, they are not banks/credit institutions).
- **Interim Prudential Sourcebook for Investment Businesses (IPRU-INV)** – capital adequacy rules for investment firms which are not subject to the CRD/CRR, or subject to the 'MIFIDPRU' sourcebook.

The Capital Requirements Directive (CRD) and the Capital Requirements Regulations (CRR) apply to credit institutions (banks/deposit taking institutions), is managed by the PRA and the body of text previously developed whilst the UK was in the EU was retained following Brexit.

The CRD and the CRR created an common framework for financial resources and risk management to minimise the risk of a firm's financial failure.

The CRD framework is based on the concept of three pillars:

- **Pillar 1** – minimum capital requirements for credit, market and operational risks.
- **Pillar 2** – firms and supervisors decide whether additional capital should be held to cover risks not covered in Pillar 1.
- **Pillar 3** – disclosure of information about risks, capital and risk management to improve market discipline.

Firms are required to provide detailed reports to the relevant regulator on their capital adequacy provisions; the frequency of reporting depends on the size of the firm and whether it is subject to the UK CRD requirements or not. Additionally, if at any time a firm knows that its capital resources have fallen below the prescribed minimum, it must notify its regulator (PRA) immediately.

Firms subject to the UK CRD requirements must also comply with provisions relating to the quality of capital that is held. A firm must therefore consider the loss absorbency of instruments it wishes to use to meet its capital resource requirements. Capital is broadly split into three types (tiers) for this purpose:

- **Core Tier One capital** – for example, permanent share capital, reserves, externally verified interim profits.
- **Tier Two capital** – for example, long-term subordinated debt and revaluations reserves.
- **Tier Three capital** – for example, short-term subordinated debt and interim trading book profit and loss.

With the exception of MiFID investment firms who are subject to MIFIDPRU, firms that are not subject to the CRD requirements must adhere to the rules in the 'IPRU-INV' Sourcebook. Such firms include:

- authorised professional firms
- certain types of securities and **futures** firms not directly subject to MiFID
- Lloyd's underwriting agents and members' advisers
- fund managers, including operators of personal pension schemes and self-invested personal pension (SIPP) operators
- exempt Capital Adequacy Directive (CAD) firms or local firms which conduct a limited type of business under MiFID or are exercising **passporting** rights
- service companies

- personal investment firms which are operating under a MiFID exemption, eg, financial advisory firms, and
- credit unions which provide junior individual savings accounts (ISAs).

The way in which IPRU-INV applies depends on the activity which is conducted by the firm; consequently, if an investment firm's activity changes, this may mean that the firm must comply with different aspects of IPRU-INV. Each type of firm has prescribed capital adequacy requirements, and all firms must comply with two overarching requirements, which are as follows:

- Firms must at all times have available the amount and type of financial resources required by the regulator's rules.
- Firms must notify the relevant regulator immediately if the firm becomes aware that it is in breach of, or expects to be in breach of, the relevant financial resources rule.

The aim of the prudential regime (Investment Firms Prudential Regime (IFPR)) is to simplify the requirements for FCA solo regulated MiFID investment firms by refocusing prudential requirements and expectations away from the risks that firms face, consider and look to mitigate the potential for harm, the firm can pose to consumers and markets.

The UK IFPR follows the EU's Investment Firms Directive and Regulations, which came into effect in 2021, but the UK Government undertook some slight adjustments when implementing the requirements to ensure that it is fit for purpose for the UK market. The UK regime came into effect in 2022 as is contained in the FCA's MIFIDPRU Sourcebook.

The approach under the IFPR (as contained in MIFDPRU) is to consider the harm a MiFID investment firm can cause to others based on the activities that they carry out and that the amount of capital and liquid assets they hold is sufficient to undertake an orderly wind down.

The FCA identified the following outcomes:

- A prudential regime that is aligned to the way that investment firms run their business:
    - taking into account the different business models of FCA investment firms
    - to better protect consumers and markets from the harm these firms may pose.
- FCA investment firms are subject to meaningful and consistent prudential requirements.
- FCA investment firms spend less time on complex capital requirement calculations that do little to help them to manage risk:
    - allowing a firm's management more time to focus on running the business while managing and mitigating any harm and risk.
- Prudential rules that are understandable and accessible, with most rules brought into a new single prudential sourcebook (MIFIDPRU).

5. The UK Regulatory Infrastructure

1.5 The Regulatory Infrastructure

1.5.1 Know the role of: The Competition and Markets Authority (CMA); HM Revenue & Customs (HMRC); The Financial Policy Committee (FPC); The Bank of England (BoE); HM Treasury (HMT)

–

In addition to the FCA and the PRA, there are other bodies that have an impact of financial services forms, working with the FCA and the PRA, these include:

5.1 Competition and Markets Authority (CMA

The CMA promotes competition for the benefit of consumers, both within and outside the UK. Its aim is to make markets work well for consumers, business and the economy. Although it covers financial services and works closely with the FCA, the CMA is not a financial services body.

The CMA's objective is to ensure that consumers get a good deal when buying goods and services, and businesses operate within the law. They undertake this in a number of ways:

- investigating mergers that could restrict competition
- conducting market studies and investigations in markets where there may be competition and consumer problems
- investigating where there may be breaches of UK prohibitions against anti-competitive agreements and abuses of dominant positions
- bringing criminal proceedings against individuals who commit the cartel offence
- enforcing consumer protection legislation to tackle practices and market conditions that make it difficult for consumers to exercise choice
- cooperating with sector regulators and encouraging them to use their competition powers, considering regulatory references and appeals
- providing information and advice to individuals and businesses about rights and obligations under competition and consumer law
- providing advice, reporting and monitoring in relation to government subsidies.

The outcomes that the CMA is looking to seek and assure for the UK (business and individuals) are:

- people can be confident that they are getting great choices and fair deals
- competitive, fair-dealing businesses can innovate and thrive, and
- the UK economy can grow productively and sustainably.

5.2 HM Revenue & Customs (HMRC)

In addition to being the primary revenue raising agency in the UK, the FCA, the PRA and **HM Revenue & Customs (HMRC)** have agreed that they will share information and expertise.

The agreement is aimed at enhancing their '*understanding of banks and their behavioural responses to regulatory, tax and other changes*' as well as helping them identify any significant issues undermining their objectives and enabling them to take necessary action to '*address such issues more quickly and on a more coordinated basis'*.

5.3 The Financial Policy Committee (FPC)

A stable financial system is a key ingredient for a healthy and successful economy. People need to have confidence that the system is safe and stable, and functions properly to provide critical services to the wider economy. It is important that problems in particular areas do not lead to disruption across the financial system. Since 2009, the Bank of England has had a statutory objective to *'contribute to protecting and enhancing the stability of the financial systems of the UK'*.

From April 2013, the BoE took on further responsibilities that saw the creation of an independent Financial Policy Committee (FPC) at the BoE. The FPC is charged with identifying, monitoring and taking action to remove or reduce systemic risks with a view to protecting and enhancing the resilience of the UK financial system.

The FPC meets at least four times a year and publishes a record of its formal meetings. It is also responsible for the BoE's biannual Financial Stability Report (FSR), which covers the Committee's assessment of the outlook for the stability and resilience of the financial sector, and the policy actions it advises to reduce and mitigate risks to economic stability.

5.4 The Bank of England (BoE)

The BoE performs all the functions of a central bank. The most important of these are maintaining price stability and supporting the economic policies of the Government, thus promoting economic growth.

There are two main areas which are tackled by the BoE to ensure it carries out these functions efficiently.

Monetary Stability

Stable prices and confidence in the currency are the two main criteria for monetary stability. Stable prices are maintained by making sure price increases meet the Government's inflation target. The BoE aims to meet this target by adjusting the bank interest base rate which is agreed decided by the Bank's Monetary Policy Committee, which meets eight times a year (roughly every six weeks).

Financial Stability
Maintaining financial stability involves protecting against threats to the whole financial system. The BoE's surveillance and market intelligence functions detect such threats to the financial system. The threats are then dealt with through financial, and other, operations, both at home and abroad. In exceptional circumstances, the BoE may act as the lender of last resort by extending credit to banks, and other financial institutions, when no other financial institutions will.

The BoE works together with other institutions to secure both monetary and financial stability, including:

- HM Treasury, the Government department responsible for financial and economic policy, and
- other central banks and international organisations, with the aim of improving the international financial system.

5.5 HM Treasury (HMT)

HM Treasury (HMT), sometimes referred to as the Treasury, is the department responsible for developing and executing the British Government's public finance and economic policy.

HMT has overall responsibility for the financial services sector in the UK. The FCA reports directly to HMT. The Chancellor of the Exchequer appoints the FCA's CEO and chair.

5.6 Occupational Pension Schemes

1.5 The Regulatory Infrastructure

1.5.2 Know the Pension regulator's rules with respect to occupational pension schemes

---

–

The **Pensions Regulator (TPR)** protects the UK's workplace pension and ensures scheme members' rights are safeguarded through regulation that monitors employers, trustees, pension specialists and business advisers. There are two primary occupational pension schemes in the UK, ie, contributory, where part of an employee's salary is added to the employer's contribution and non-contributory, where employers solely make the payments. Depending on the set up of the pension scheme, they can also be classified as defined contribution (DC) schemes, where a set amount of payment is made to the scheme and there is no guarantee of the final value of the pot. In contrast, there are also defined benefit (DB) schemes, eg, final salary schemes, where scheme members are guaranteed to receive x% amount of the final salary. Details may vary per DB scheme.

The main aim of the Pensions Act 2008 was to introduce 'automatic enrolment' for workplace pensions, requiring employers to automatically enrol eligible employees into a

pension scheme and contribute towards it. The Act identifies eligible workers as those over 22 and under State Pension age, earning over a certain threshold.

The Pensions Act 2008 requires all UK employers to put certain staff into a workplace pension scheme and contribute towards it. Any employer with at least one employee has a legal duty to comply with automatic enrolment. TPR can take enforcement actions such as compliance notices, penalty notices, and fines if an employer does not comply with its legal responsibilities.

For example:

'If you comply late, we expect you to pay back any missed contributions to put staff in the position they would have been in if you had complied on time; this would include backdating contributions to the day that your staff member first met the age and earnings criteria to be put into a scheme.

When backdating contributions, you must pay all the unpaid employer contributions and your staff member must pay theirs, unless you choose to pay it for them. As part of any enforcement action we may require that you pay your staff member's contributions as well as your own.

If you do not pay your fine, we can recover the debt through the courts'.

Source: *https://www.thepensionsregulator.gov.uk/en/employers/what-happens-if-i-dont-comply*

5.7 Impact to UK Financial Services by legislation Derived from Overseas

1.5 The Regulatory Environment

1.5.3 Understand how UK financial services may be impacted by overseas: directives; regulations; law; guidance; international intergovernmental bodies (eg, FATF)

–

Following Brexit, the UK government introduced legislation that converted existing direct EU legislation (Regulations) into UK law, and preserves existing UK laws which implement EU obligations. The European Union (Withdrawal) Act 2018 gave the government powers to amend current legislation to ensure that it functions when the UK is no longer an EU member state. This allowed the same rules and laws to apply on the day after the exit as on the day before, as far as possible.

In addition to EU laws and Regulations, the FCA noted at the time that any EU Guidelines and Guidance published by ESMA (European Securities and Markets Authority) and the EBA (European Banking Authority) still apply until otherwise by the FCA and the PRA.

UK firms are no longer able to passport their products or services throughout the EU without the appropriate authorisation, and the same is true for EU firms wishing to provide financial services and products in the UK. This means that they are limited in their ability to provide financial services to EU clients until they have obtained authorisation from the local regulator. Likewise for EU-based firms providing services to UK clients.

UK firms may look to exemptions in local law in each member state for access to service existing clients.

To explain what this means to existing EU regulations:

- With respect to MIFID, from 1 January 2021, the onshored 'UK MiFIR' (**Markets in Financial Instruments Regulation (MiFIR)**) legislation applies to all UK regulated firms.
- UK MiFIR means the Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 as it forms part of domestic law of the UK by virtue of the European Union (Withdrawal) Act 2018.
- UK MiFIR, together with the **Markets in Financial Instruments Directive (MiFID)** 2014/65/EU, as implemented in the UK by the Financial Conduct Authority in its FCA rules (UK MiFID) ensure UK firms are complying with the same legislation as EU firms.

Over time, the UK and the EU regulatory regimes will diverge, but for now the UK complies with a range of EU legislation that it was instrumental in developing. Therefore, until the UK replaces and/or remodels EU-retained laws (now referred to as 'assimilated law'), the 'UK version' of EU laws/regulations will continue to apply in the UK.

HM Treasury – 'Wholesale Markets Review'

In 2021, HMT published a review of the wholesale markets in the UK. The purpose of the review was to determine how much of the existing (retained) EU Regulation needed adapting to reflect the UK approach to financial regulation, whilst looking ahead to future challenges.

Although the UK played a significant role in designing the MiFID II framework, the UK government believed that the EU approach to regulation meant that some regulation was not calibrated for the uniqueness of the UK markets.

The UK government saw the departure from the EU as an important opportunity to ensure regulation is appropriate and proportionate for the UK. The government believed that this was best achieved by amending the regime for secondary markets to ensure that it reflected the UK's position as a global capital market. The report flagged that some rules had not delivered their intended benefits, led to duplication and administrative burdens for firms, and in some instances stifled innovation.

The UK government has on more than one occasion stated that it will not make changes for the sake of change, as the purpose of the review is to make sure that regulation is fit for purpose.

The proposed reforms to the UK's wholesale market have been guided by the following objectives and principles:

- upholding high regulatory standards
- promoting openness and competitiveness
- delivering fair and proportionate regulation, and
- supporting economic growth.

The regulatory framework underpinning secondary markets policy sits across both primary and secondary legislation (which is the government's responsibility), and rules and guidance by regulators (primarily the FCA).

Financial Services and Markets Act 2023

In 2022, the UK government published the Financial Services and Markets Bill which, among other things, would provide the powers and legislative structure for HM Treasury, the PRA and the FCA to be able to proceed with the aim and objectives of the Wholesale Markets Review and implement the outcome of the Future Regulatory Framework review.

The Bill received Royal Assent in June 2023, and is now referred to as the '*Financial Services and Markets Act 2023*'. Some of the provisions came into effect in August 2023, with the remaining provisions coming into effect on 1 January 2024.

The Act gives certain powers to HM Treasury, the PRA and the FCA to carry out an overhaul of the UK regulatory regime over the next couple of years.

The Act will start the process of revoking retained EU law relating to financial services and enable HM Treasury, the PRA and the FCA to replace it with legislation designed specifically for UK markets in a way that builds on the UK's existing approach to financial services regulation.

In addition, the Act enhances the UK's existing regulatory regime by updating the objectives of the PRA and the FCA to ensure a greater focus on long-term growth and international competitiveness, which is the new secondary objective.

Both the government and HM Treasury have acknowledged that the revoking of EU retained laws and rules will be a lengthy process and will be undertaken in a phased implementation approach by the PRA and the FCA.

5.7.1 Why Does Overseas Legislation Impact UK Financial Services?

In short, this is because many firms operate globally, offering products and services which have similar but different local rules that impact how firms undertake operational activities.

An example of this is Dodd-Frank and EMIR – both have extraterritorial requirements that are based on who the client is and where they are domiciled. For instance, a branch of a UK bank would have a UK EMIR reporting obligation no matter where a derivative transaction was executed and no matter the domicile of the other client.

An another example would be requirements based on where an issuer is listing their shares or bonds – having to comply with local listing, disclosure and reporting obligations.

5.7.2 International Intergovernmental Bodies

The following intergovernmental (supernational) bodies do not make rules that directly apply in the UK, but their recommendations shape the structure and future of UK financial services regulation, as it does for the EU – in that legislation talks into account recommendations and best market practice operated internationally.

The Financial Action Task Force (FATF)

The FATF is a global anti-money laundering and terrorist financing body which sets international standards with the aim to prevent these illegal activities and the harm they cause to society. As a policy-making body, the FATF works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.

The FATF has developed 40 Recommendations, which ensure a coordinated global response to prevent organised crime, corruption and terrorism. They help authorities go after the money of criminals dealing in illegal drugs, human trafficking and other crimes. The FATF also works to stop funding for weapons of mass destruction. More than 200 countries have committed to implementing the Recommendations.

The FATF reviews **money laundering** and terrorist financing techniques and continuously strengthens its standards to address new risks, such as the regulation of virtual assets, which have spread as cryptocurrencies gaining popularity. The FATF monitors countries to ensure they implement the FATF Standards fully and effectively, and holds countries to account that do not comply.

Bank for International Settlements (BIS)

The Bank for International Settlements (BIS) is an international financial institution that serves as a bank for central banks, fostering international monetary and financial cooperation and promoting financial stability.

It was established in 1930, it acts as a hub for central bankers and financial regulators to share knowledge, conduct economic research, and support global financial standards.

The BIS is owned and governed by central banks.

The Board of Directors is responsible for determining the strategic and policy direction of the BIS, it is made up of 18 members, including six 'ex-officio' Directors, comprising the Central Bank Governors of Belgium, France, Germany, Italy, the UK and the USA.

Sixty-three central banks and monetary authorities are currently members of the BIS and have rights of voting and representation at General Meetings.

The Governor of the Bank of England represents the UK.

International Organisation of Securities Commissions (IOSCO)

IOSCO is the global body that sets international standards for securities regulation. It is a cooperative forum for securities regulatory agencies from over 130 jurisdictions that aim to protect investors, maintain fair, efficient, and transparent markets, and reduce systemic risk.

IOSCO develops and promotes adherence to internationally recognised standards through its core documents, such as the IOSCO Principles, and works with other international bodies on global financial stability.

The IOSCO Board comprises 34 securities regulator, the CEO of the FCA represents the UK on the IOSCO Board.

5.8 Oversight and other Influencing Bodies

1.5 The Regulatory Infrastructure

1.5.4 Know the role played by oversight, influencing bodies and relevant codes of conduct: internal audit; external audit; trustees; compliance; industry bodies, professional bodies and trade associations

---

5.8.1 Internal Audit

The internal audit function plays a crucial role in the ongoing maintenance and assessment of a firm's internal control, risk management, and governance systems and processes – areas in which supervisory authorities have a keen interest. Furthermore, both internal auditors and supervisors use risk-based approaches to determine their respective work plans and actions. While internal auditors and supervisors each have a different mandate and are responsible for their own judgments and assessments, they may identify the same or similar/related risks.

The internal audit function is expected to develop an independent and informed view of the risks faced by a firm based on their access to all records and data, their enquiries, and their professional competence. The internal audit function should be able to discuss their views, findings, and conclusions directly with the audit committee and the board of directors, thereby helping the board to oversee senior management.

5.8.2 External Audit

A firm's external auditors also play a crucial role in the assessment of a firm's risk and control infrastructure. The external auditor of a firm should:

- have relevant industry knowledge and competence sufficient to respond appropriately to the risks of material misstatement in the firm's financial statements and to properly meet any additional regulatory requirements that may be part of the statutory audit
- be objective and independent in both fact and appearance with respect to the firm
- ensure that reporting is conducted directly from the auditor to the supervisor, unless not permitted, in which case reporting should be conducted indirectly through the firm
- exercise professional scepticism when planning and performing the audit of a firm, having due regard to the specific challenges in auditing the firm
- comply with the applicable standards on quality control
- identify and assess the risks of material misstatement in financial statements, taking into consideration the complexities of the firm's activities and the effectiveness of its internal control environment, and
- respond appropriately to the significant risks of material misstatement in the bank's financial statements.

5.8.3 Trustees

A trust is a type of legal arrangement that allows a suitable third party (ie, a trustee) to hold and manage the asset on behalf of an organisation/beneficiary. There are various types of trustees, including administrative, investment, pension scheme, and charity trustees. Within this workbook, we are referring to general trustees who have overall responsibility for the investment of funds. They can delegate the management of their investments to those with relevant professional experience, whether internal or external, and pass oversight of portfolios to a finance or investment committee. This committee must report to and advise the trustee board, but trustees should be aware that they are ultimately responsible for any decisions made.

The committee could be formed of the whole board of trustees. However, in the interests of efficiency and to ensure that relevant knowledge and experience is brought to bear, many firms with trustees decide to form a separate investment sub-committee to advise the trustees and to oversee an agreed investment policy.

The added advantage of this approach is that other appropriate internal appointments can be made, such as staff dealing with finance and budgets, on a more frequent basis. In addition, external advisers can be included to offer specific investment or legal experience, which may come from involvement with other firms, bringing an informed yet independent perspective.

5.8.4 Compliance

Compliance starts at the top. It is most effective in a corporate culture that emphasises standards of honesty and integrity and in which the board of directors and senior management lead by example. It concerns everyone within a firm and should be viewed as an integral part of the business activities. A firm should hold itself to high standards when carrying on business, and at all times strive to observe the spirit as well as the letter of the law or rules. Failure to consider the impact of its actions on its shareholders, customers, employees and the markets may result in significant adverse publicity and reputational damage, even if no law has been broken.

Compliance should be part of the culture of the organisation. It is not just the responsibility of specialist compliance staff. All employees of a firm should be aware of the importance of compliance, and well versed in pertinent risks of non-compliance.

Regardless of how the compliance function is organised within a firm, it should be independent and sufficiently resourced, its responsibilities should be clearly specified, and its activities should be subject to periodic and independent review by the internal audit function.

The Bank for International Standards (BIS) issued a set of ten principles for banks and supporting guidance setting out sound practices related to the principles. The principles should be applicable to all firms (not just banks), although it is for individual firms to determine how best they should be implemented on a proportionate basis.

The way in which the principles are implemented will depend on factors such as the firm's size, nature, scale and complexity as well as geographical extent of its business, and the legal and regulatory framework within which it operates.

In smaller firms, for example, it may not be practicable to implement in full some of the specific measures recommended, yet firms may be able to take other measures that achieve the same result.

The principles note that the compliance function should be independent from the business units/ areas that is oversees and monitors. The function should have adequate resources to carry out its responsibilities effectively. The responsibilities of the bank's compliance function should be to assist senior management in managing effectively the compliance risks faced by the firm.

ESMA (European Securities and Markets Authority) produced guidelines on certain aspects of the MiFID II Compliance function requirements for firms. Following Brexit, the FCA acknowledged that it will continue to comply with and expect firms to comply with all Level 3 measures (ie, Guidelines, Q&A and opinions published and adopted by the EU supervisory bodies (ESMA, EIOPA and the EBA) when the UK was part of the EU. However, subsequent changes and amendments made by ESMA will not apply in the UK. As the FCA moves retained (assimilated) EU laws into its Handbook, it will replace the EU supervisory bodies Guidelines and Q&As with its own guidance.

5.8.5 Industry Bodies

Industry bodies are similar to trade associations (see section 5.8.7) in that they have members and that they work for their members. But, they tend not to be product specific and more generalist in nature.

In financial services, they 'champion' and support the success of the UK based financial and professional service regulatory architecture.

An example of an industry body is 'The CityUK', which represents the broad spectrum of sectors across the financial and related professional services industry in order to sustain London's reputation as a global capital of finance. Their website states that their remit '*would cover the promotion of the UK as a world leading international financial centre at home and overseas'*.

Whilst some trade associations will have a narrow view where they are product specific, industry bodies tend to have a wider and greater outlook and purpose.

Membership can be at the individual level (ie, senior individuals within regulated firms, acting in a personal capacity) or at the firm level (individuals acting on behalf of their firm). Members of industry bodies will be subject to a 'code of conduct', which is expected to be adhered to over and above any code of conduct that individual members employers have in place – although in most instances they will go together.

An example of this would be the 'FX Global Code', which is a set of principles that apply to both firms and individuals with the aim to provide a common set of guidelines to promote the integrity and effective running of the wholesale foreign exchange market.

5.8.6 Professional Bodies

Membership of a professional body brings important benefits, both to the individuals concerned and to the public interest.

In banking and finance in the UK – with the exception of the accountancy and actuarial sectors – no professional body has statutory regulatory powers, and membership is voluntary.

Members of professional bodies are bound by the codes of conduct and are upheld vigorously. Members are expected to comply with these codes of conduct, which take precedent over their firm's internal code of conduct – which could create an ethical dilemma.

Professional bodies are responsible for the development and management of professional examinations that are useful and relevant for individuals working in the financial industry (ie, the Chartered Institute for Securities & Investment and the Chartered Banker Institute). Membership is normally at the individual level, where they are required to attain a level of knowledge and skills as required by their employer for their role and/or due to regulatory requirements.

One of their aims is to raise levels of competence, knowledge and understanding and to promote ethical behaviours in the financial services sector.

The CISI website states that its objective is to 'set standards of professional excellence and integrity for securities, investment, wealth and financial planning professionals, providing qualifications and promoting the highest level of competence to our members, individuals and firms'.

The CISI expects members to comply with its 'code of conduct' over and above any code that would apply to individuals set by their employer.

5.8.7 Trade Associations

Trade associations provide representative and other collective services to firms, generally in a specific sector, with common interests.

Trade associations in the financial sector work with their members in the development of markets and rules, by advocating for stable, competitive, sustainable markets, rules and regulations.

They will undertake advocacy on behalf of their members with legislators (ie, HM Treasury) and regulators (PRA/FCA) to assist in the development of rules (to ensure that they are proportionate) and guidance for firms.

There are two types of trade associations, those that are product specific (ie, ISLA for securities lending, ICMA for bonds and repos, ISDA for OTC derivatives and the FIA for exchange traded derivatives) and those that are generalist – meaning that they cover application for firms across a range of products, services and issues (ie, AFME, UK Finance, ABI, the Association of Foreign Banks)

Therefore, firms can be members of a number of trade associations based on the products and services that they offer to clients. Trade associations can, and frequently do, work together when assessing the impact of new regulations. They would jointly respond to consultations, call for evidence and discussion papers published.

6. Regulated and Prohibited Activities

1.6 Regulated and Prohibited Activities

1.6.1 Know the regulated and prohibited activities: authorised persons [PERG 2.2.3]; exempt persons and FSMA; offences under the Act; enforceability of agreements entered into with an unauthorised business; defences available under the Act; prohibition orders; actions for damages

1.7 Regulated Activities

1.7.2 Know the investments specified in Part III of the Regulated Activities Order

---

6.1 The General Prohibition

FSMA is subdivided into 30 parts. Part II, Regulated and Prohibited Activities, includes the general prohibition, which simply states that no person can carry out a regulated activity in the UK or purport to do so, unless they are either authorised (ie, authorised by the PRA and/or FCA) or exempt from the requirement to be authorised. Contravention of the general prohibition is a criminal offence, for which the maximum sanctions are up to two years' imprisonment and an unlimited fine.

A further effect of acting in contravention of the general prohibition is that any agreements made are unenforceable by the offending person against the other party. This is also the case for agreements made as a result of the activities of someone who was contravening the general prohibition, even if that person is not a party to the agreement.

The other party is entitled to recover any money or property transferred under the agreement and to be compensated for any loss suffered. It is a defence for a person to show that they took all reasonable precautions and exercised all due diligence to avoid committing the offence.

Example

X buys shares in ABC plc. The purchase is made following the recommendation of a firm of brokers, UNA ltd. X subsequently discovers that UNA was not authorised under FSMA.

X now has two choices: she can keep her shares in ABC and take no action against UNA, or they can sue UNA for the recovery of her money and damages (handing back her shares in ABC) because UNA has breached the general prohibition.

The relevant staff of UNA have also committed a criminal act and are liable to a potential punishment of up to two years in prison, plus an unlimited fine.

For a person to become authorised by the PRA and/or the FCA as appropriate, that person must first apply for permission to perform particular regulated activities; if that person satisfies the criteria, the regulator(s) will give permission (Part 4A Permission).

There are various provisions in FSMA whereby a person can be exempt from the general prohibition when carrying on regulated activity. The provisions are, in summary, as follows:

- **Section 39 FSMA and the FSMA (Appointed Representatives) Regulations 2001** – for appointed representatives (ARs).
- **Section 285 FSMA** – for recognised investment exchanges and clearing houses.
- **Section 312A FSMA** – for operators of multilateral trading systems, exercising certain rights.
- **Section 316 FSMA** – special provisions for members of the Society of Lloyd's.
- **FSMA Exemption Order 2001** – for central banks, supranational bodies, local authorities, charities, industrial and provident societies and certain organisations that are subject to some oversight by the Government.
- **Part 20 FSMA** – the special regime for professional firms, subject to conditions.

6.2 Prohibition Orders

Separately from the general prohibition, Section 56 of FSMA gives the regulators (the FCA and the PRA) the power to make an order (**prohibition order**) prohibiting an individual from performing a specified function. Either regulator may do this if it considers the individual is not a fit and proper person to perform the function. The prohibition order may relate to a particular regulated activity or regulated activities generally. If the individual breaches the order, they are guilty of a criminal offence and liable to a fine. It is a defence for the person to show they took all reasonable care and exercised due diligence to avoid breaching the order.

An authorised person (the firm) must take reasonable care to ensure that individuals for whom they are responsible do not breach prohibition orders.

Prohibition orders may also be made against exempt persons and also exempt professional firms who are acting in accordance with the Part 20 regime of FSMA that enables professional firms (such as accountants, solicitors and actuaries) to undertake certain regulated activities under the supervision of their professional body rather than through direct authorisation from the FCA or the PRA.

A person may apply to the FCA or the PRA to have a prohibition order varied or revoked.

Under Section 59 of FSMA – an authorised person must take reasonable care to ensure that no person performs a role that required approval from the regulators (ie, SMF under the SM&CR and/or a controlled function under APER) unless they have received confirmation from the regulators of the approval for that individual.

Section 71 of FSMA provides for circumstances whereby a private person can sue a firm for damages if they suffer loss because the firm is found to be in breach of a statutory duty when:

- an individual within a firm carries out a function in breach of a Section 56 prohibition order, or
- an individual carries out a controlled function but without prior approval (Section 59).

Section 71 also provides for clients who are non-private persons (eg, businesses, trusts) to sue for damages as a consequence of negligence concerning prohibition orders, in prescribed circumstances.

Section 138D of the Financial Services Act 2012 sets out the circumstances in which a person who suffers losses, as a result of a breach of a rule, by an authorised person has the right to claim for damages for their resulting losses.

A breach of an FCA rule (unless otherwise stated) will, therefore, permit a person who has suffered a loss as a result of this breach a right to claim for damages; the person will only be required to show that the authorised person has breached a rule and that they have suffered a loss.

6.3 Regulated Activities

In order to understand whether someone is in breach of the general prohibition it is, of course, necessary to understand what the regulated activities themselves are. It is left to a separate statutory instrument, known as the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (commonly referred to as the 'Regulated Activities Order' (RAO), to clarify precisely what these regulated activities are. FSMA provides that these will be defined by reference to two sets of criteria:

- A range of investments (including assets which we might typically think of as investments, such as shares and bonds, but also other assets such as deposits and contracts of insurance).
- A range of activities which may be carried on in connection with those investments (such as dealing, managing or advising on investments, accepting deposits and effecting contracts of insurance).

Not all of the activities can be related to all the investments. Some are specific to just one type, eg, effecting a contract of insurance relates only to contracts of insurance.

If a person is performing one (or more) of these specified activities in relation to one (or more) of the specified investments, that person is performing a regulated activity and requires either authorisation or an exemption. It is the carrying on of a specified activity in relation to a specified investment which gives rise to regulated activity.

The investments and activities are detailed in secondary legislation issued under FSMA – principally the RAO (noted below), as subsequently amended.

6.3.1 Specified Investments

The following are defined as specified investments within the RAO (exclusions are noted within each category):

1. **Deposits** – money paid by one person to another, with or without interest being earned on it, and on terms that it will be repaid when a specified event occurs (eg, when a demand is made). The obvious example is deposits held with banks and building societies. For clarity, the RAO sets out certain exclusions – eg, electronic money (covered separately in point 2), money paid in advance for the provision of goods or services and money paid as a security deposit.
2. **Electronic money** – monetary value (as represented by a claim on the e-money issuer) which is stored on an electronic device, issued on receipt of funds and accepted as a means of payment by third parties. In effect it is an electronic substitute for notes and coins.
3. **Rights under contracts of insurance** – includes both long-term insurance contracts (eg, life assurance or endowment policies) and general insurance (eg, motor or building insurance). The FCA gives guidance on identifying a contract of insurance in the Perimeter Guidance (PERG) Sourcebook.
4. **Shares** – defined widely as shares or stock in any company (wherever incorporated) or in any unincorporated body formed outside the UK. The RAO definition excludes shares in **open-ended investment companies (OEICs)**, since an OEIC is a collective investment scheme (CIS) and is captured under a separate definition. It also excludes some building society shares since these can behave like (and are, therefore, captured under the definition of) deposits.
5. **Debentures, ie, instruments creating or acknowledging indebtedness** – including debentures, debenture stock, loan stock and, as a mopping-up clause, also specifies *'any other instrument creating or acknowledging debt'*. Again, the definition is wide, so the RAO provides for some exclusions – eg, trade bills, cheques and other bills of exchange, and (because they are separately captured) contracts of insurance and government and public securities.
6. **Government and public securities** – eg, gilts and US treasuries and local authority loan stocks. Again, certain instruments are excluded, such as trade bills issued by government bodies, and National Savings & Investments (NS&I) deposits and products.
7. **Warrants ie, instruments giving entitlements to investments** – warrants and similar instruments entitling the holder to subscribe for shares, debentures, government and public securities at a set price, and on or between set date(s) in the future.
8. **Certificates representing certain securities** – covers certificates which confer rights in (but are not themselves) other instruments such as shares, debentures, alternative debentures, gilts and warrants. It includes, for example, American depositary receipts (ADRs), which typically give holders rights over a certain number of a UK company's shares. These ADRs are designed to offer the US-based investor (typically) a more convenient way to invest in UK shares, because they are dealt in, and pay dividends in, US dollars. Also covered here are other **depositary receipts**, such as global depositary receipts (GDRs).

9. **Units in a collective investment scheme (CIS)** – covers holdings in any collective investment scheme, whether it is an authorised or an unregulated scheme. For example, it covers units in an authorised unit trust (AUT) or shares in an OEIC, which you may also see described as an investment company with variable capital (ICVC). This is why OEICs are specifically excluded from the heading of shares, as above. Unregulated schemes can also take other legal forms, such as limited partnerships, and so rights in such partnerships fall within the scope of units in a collective investment scheme (CIS).
10. **Rights under a stakeholder pension scheme** – stakeholder pensions are pension schemes set up under the Welfare Reform and Pensions Act 1999, which need to meet certain criteria, and need to be run in a particular way.
11. **Rights under a personal pension scheme** – pensions designed for individuals who do not belong to a company scheme, and/or who wish to take control of their own investment decisions for their pension provisions (for example, self-invested personal pensions (SIPPs)). A wide range of investments may be held within a personal pension scheme. Personal pensions are designed for individuals who do not belong to a company scheme and/or who wish to take control of their own investment decisions for their pension provisions (eg, self-invested personal pensions (SIPPs)). A wide range of investments may be held within a personal pension scheme.
12. **Options** – options (the right, but not the obligation, to buy or sell a fixed quantity of an underlying asset for a fixed price on or between fixed dates) are only covered if they relate to:

    - securities or contractually based investments (eg, stocks, shares, bonds, or futures on similar instruments)
    - currencies
    - certain precious metals, including gold and silver, or
    - options on futures contracts and other contracts for differences (see point 15).

13. **Futures** – contracts for the sale/purchase of an asset where delivery and settlement will be made at a future date, at a price agreed when the contract is made. The RAO excludes futures agreed for commercial purposes as opposed to those made for investment/speculative purposes. Thus, a contract to buy cocoa at an agreed price at some future date will not be caught if it is carried out by a chocolate maker to help them secure a certain price for the raw materials needed.
14. **Contracts for differences (CFDs)** – eg, spread bets, interest rate swaps. These are contracts where the investor's aim is to secure a profit (or avoid a loss) by making money by reference to fluctuations in the value of an index, or to the price of some other underlying property. The RAO excludes futures and options since these are separately caught.
15. **Lloyd's syndicate capacity and syndicate membership** – relates in the main to activities of Lloyd's members' agents and managing agents.
16. **Rights under a funeral plan contract** – ie, certain plans under which the customer pays for benefits which will pay for their (or someone else's) funeral upon their death.

17. **Rights under a regulated mortgage contract*** – ie, mortgage loans secured by first legal charge on property, at least 40% of which is to be used for the borrower's, or some related party's, dwelling. This specified investment also includes lifetime mortgages, a type of equity release transaction.
18. **Rights under a home reversion plan*** – another type of equity release transaction, whereby the customer sells part or all of their home to the plan provider in return for a lump sum, or series of payments; they retain the right to stay in their home until they die, or move into residential care.
19. **Rights under a home purchase plan*** – alternatives to mortgages, which allow people to buy their homes while complying with Islamic principles (financing via an interest-bearing mortgage is not permitted under a strict interpretation of these principles).
20. **Rights under a regulated sale and rent-back agreement*** – whereby a person sells all or part of qualifying interest in land/property, but remains in occupation of at least 40% of the land/property.
21. **Credit agreements** with respect to the regulated activities of entering a regulated credit agreement as lender and exercising (or having the right to exercise) the lender's rights and duties under a regulated credit agreement. This is subdivided into four different types.
22. **Consumer hire agreement**.
23. **Greenhouse gas emission allowance**.
24. **Alternative finance investment bonds/alternative debentures** – a form of Shariah-compliant bond or sukuk.
25. **Rights to, or interests in, other specified investments** – rights in anything that is a specified investment, excluding rights in home finance transactions, are themselves a specified investment.
26. **Emission allowances**.

The specified investments marked * are collectively known as 'home finance' transactions.

6.3.2 Specified Activities

This involves classes of activity and categories of investment. An activity is a regulated activity for the purposes of FSMA if it is an activity of a specified kind which is carried on by way of business and relates to an investment of a specified kind. Investment includes any asset, right or interest and 'specified' means specified in an order made by the Treasury.

The RAO defines 'regulated activities' by reference first to the range of specified investments and then to the activities a firm may carry on in relation to those investments. An activity which is listed, but which is carried out in relation to an asset which is not a specified investment, is not a regulated activity.

We also know that if a business is carrying out a regulated activity it must be either authorised or exempt.

The regulated activities themselves are as follows:

1. **Accepting deposits** – mainly the preserve of banks and building societies, but other firms may find themselves caught under this activity.
2. **Issuing e-money** – ie, acting as the issuer of e-money, as it is described above in section 1.2.1 (Specified Investments).
3. **Effecting or carrying out contracts of insurance as principal** – this essentially applies to insurers.
4. **Insurance risk transformation** – the activity of assuming a 'risk' from an undertaking (third- party) by way of a contract of insurance.
5. **Dealing in investments as principal or agent** – this applies only to certain of the specified investments. Dealing is buying, selling, subscribing for or underwriting the investments concerned. When the firm deals as principal (eg, on its own account), it applies only to those investments that are:

    - **securities** – shares, debentures and warrants, or
    - **contractually-based investments** such as options, futures, CFDs, and life policies. When the firm deals as agent (ie, on behalf of someone else), it applies to securities (as for dealing as principal) and relevant investments. Relevant investments include contractually based investments (as for dealing as principal) and additionally rights under pure protection and general insurance contracts.

6. **Arranging home finance transactions** – this covers the arranging and making of arrangements

    - in relation to a regulated mortgage contract, a lifetime mortgage contract, a home reversion plan, a home purchase plan, and regulated sale and rent-back agreements. These home finance transactions are captured in the same way as those for arranging deals investments.

7. **Operating a Multilateral Trading Facility (MTF)** – by an investment firm or a market operator, which brings together multiple third party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules. MTFs can be assimilated to alternative trading exchanges providing additional pools of liquidity to their members (usually banks, major mutual funds and large insurance companies).
8. **Operating an organised trading facility (OTF)** – this type of regulated trading venue came into force following the implementation of the Markets in Financial Instruments Directive (MiFID II). OTFs permit the trading of derivatives and other non-equity financial instruments. Equity-like financial instruments are not permitted to be traded on an OTF.
9. **Bidding in emission auctions** – The bidding for emission allowances on an auction platform.
10. **Credit broking- activities relating to entering forms of consumer credit as lender** – rights under any contract under which one person provides another with credit and contracts for hire of goods, rights under a contract for the bailment or hiring of goods to a person other than a body corporate.

11. **Operating an electronic system in relating to lending activities relating to consumer credit (credit agreement and/or consumer hire agreement)** – entering into a regulated consumer hire agreement as owner; exercising, or having the right to exercise the owner's rights and duties under a regulated consumer hire agreement; credit broking; operating an electronic system in relation to lending; debt adjusting; debt counselling; debt collecting and debt administration.
12. **Managing investments** – this applies in respect of investments belonging to someone other than the manager and when the manager exercises discretion over the management of the portfolio. The portfolio must include, or be able to include, securities or contractually-based investments. A typical example is a portfolio manager. Non-discretionary management (when the firm does not make the final decision) is not covered under this heading: it is captured under the separately defined regulated activities of dealing in investments and advising on investments.
13. **Assisting in the administration and performance of a contract of insurance**.
14. **Activities in relation to debt (consumer credit)**:

    - **adjusting** – negotiating with the lender of the owner, on behalf of the borrower or hirer; taking over, in return for payments by the borrower or hirer and any other activity concerned with the liquidation of a debt
    - **counselling** – providing advice to a borrower about liquidation of a debt due under a credit agreement
    - **debt counselling**
    - **debt collecting**, and
    - **debt administration**.

15. **Safeguarding and administering investments** – again, this applies in the context of securities (eg, shares, debentures) and contractually-based investments (eg, options, futures, CFDs, qualifying insurance contracts). This is sub-divided into safeguarding and administration of assets (without arranging) and arranging safeguarding and administration of assets. The firm must be holding the assets for someone else and it must be both safeguarding and administering the assets to be caught under this heading. A typical example is a custodian bank, which might hold title documents to investments, holding dematerialised investments in its name and administering the collection of interest/dividends or the application of corporate actions.
16. **Advising on investments** – this covers giving advice on securities and relevant investments. It does not extend to giving advice about deposits or generic advice (eg, 'invest in the US, not in Europe'). Neither does it extend to giving information – facts, which are not tailored to constitute a recommendation – instead of advice. This does not apply to advice given in the course of carrying out the regulated activity of providing basic advice on stakeholder products.
    - This includes advising on peer to peer (P2P) agreements and conversion or transfer of pension benefits.
    - This is sub-divided into: advising on investments (except pension transfers and pension opt-outs) and advising on pension transfers and pension opt-outs.

17. **Sending dematerialised instructions and allowing dematerialised instructions to be sent** – this covers firms which operate systems that allow for the electronic transfer of title in certain investments (again, securities and contractually based investments) and those which cause instructions to be sent on those systems. An example of such a system is CREST.
18. **Managing a Undertakings for Collective Investment in Transferable Securities (UCITS); acting as a trustee or depository of a UCITS; managing an AIF** (where the AIF is authorised/unauthorised); **acting as a trustee or depository of an AIF** (where the AIF is authorised/unauthorised) **and establishing, operating and winding up a collective investment scheme** – this activity captures persons who set up, operate/administer and wind up any type of CIS, whether an authorised or an unregulated scheme. Acting as a trustee of an AUT, or as the depositary or sole director of an OEIC are also separate regulated activities.
19. **Establishing, operating and winding up a pension scheme (stakeholder pension scheme and a personal pension scheme)** – this activity captures those who set up, operate/administer and wind up stakeholder pension schemes and SIPPs. These activities may be carried out by the scheme trustees and/or the scheme administrators.
20. **Providing basic advice on stakeholder products and the conversion or transfer of pension benefits** – this is a special regulated activity, for those who advise only on stakeholder products. Stakeholder products conform to certain criteria for cost and accessibility.
21. **Advising on the conversion or transfer of pension benefits** – this covers advising people on the transfer of funds from occupational pension schemes. Note that advising on transfers from personal or stakeholder pension schemes would be covered under other categories.
22. **Lloyd's market activities** – advising on syndicate participation at Lloyd's; arranging (bringing about) deals in investments; making arrangements with a view to transactions in investments; managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's and the activity of arranging deals in contracts of insurance written at Lloyd's.
23. **Entering into a funeral plan contract** – as provider is a regulated activity, the person to whom the pre-payments are made.
24. **Advising on home/land finance transactions** – advising on the merits of entering into, or varying the terms of, a regulated mortgage, a home reversion plan, a home purchase plan and regulated sale and rent back agreements is a regulated activity.
25. **Agreeing to carry on specified kinds of activity**.
26. **Dormant account fund operator (reclaim funds)**.
27. **Specified benchmarks**.

Advising, dealing and arranging activities, when carried on in connection with a contract of insurance, and the activity of assisting in the administration and performance of a contract of insurance, are collectively known as insurance mediation activity and subject to the provisions of the Insurance Mediation Directive.

6.4 Exemptions

As mentioned previously, FSMA provides for certain persons to be exempt from the general prohibition in the conduct of regulated activity. These exempt persons are summarised in the section that follows.

6.4.1 Appointed Representatives

An appointed representative can be any type of person (ie, a natural person or any other legal person) who has entered into a contract with an authorised person (the principal) for the purpose of conducting regulated activity. The authorised person becomes the principal and accepts legal responsibility for the regulated activity conducted by the appointed representative. In this way, the appointed representative becomes an exempt person under FSMA for the conduct of permitted regulated activity.

The FCA and the PRA rules do not apply to appointed representatives because they are not authorised persons. However, any business conducted by the appointed representative for which the principal has accepted responsibility is treated as having been conducted by the principal. The principal itself must have the relevant permissions for the activity that is to be carried out by the appointed representative.

Additionally, some persons within the appointed representative firm must be approved for controlled functions, namely, the governors (directors, partners) and individuals who will be performing customer functions.

The regulators expect principals to conduct thorough reviews of the suitability and conduct of their appointed representatives. The exempt status that appointed representatives enjoy (Section 39 FSMA and the FSMA (Appointed Representatives) Regulations 2001) comes at the price of ongoing supervision and monitoring by the principal firm.

The appointed representatives' regulations only allow certain regulated activities to be conducted by appointed representatives on an exempt basis. These activities are as follows:

- Dealing in investments as agent (pure protection or general insurance contracts only).
- Arranging deals in investments and making arrangements with a view to transactions in investments.
- Arranging deals in home finance transactions and making arrangements with a view to home finance transactions.
- Assisting in the administration and performance of a contract of insurance.
- Arranging the safeguarding and administration of assets.
- Advising on investments.
- Giving basic advice on stakeholder products.
- Advising on home finance transactions.
- Agreeing to carry on a regulated activity.

- Operating electronic platforms in relation to lending.
- Undertaking certain consumer credit related activities.

In particular, appointed representatives are not permitted to deal in investments as principal or manage investments.

As a result of the FCA Consumer Credit Regime, the FCA confirmed that a firm can have limited permission (for certain regulated consumer credit activities), and can also be an appointed representative for other regulated non-consumer credit activities.

6.4.2 Recognised Investment Exchanges (RIEs) and Recognised Clearing Houses (RCHs)

Substantial amounts of trading in, and issuance of, securities is conducted through formal exchanges such as the **London Stock Exchange (LSE)**. There are often separate clearing systems connected to these formal exchanges that facilitate the settlement of the trades that take place. The firms operating these systems are referred to as clearing houses.

FSMA gives the FCA the responsibility of recognising, regulating and supervising exchanges and clearing houses.

In order to be recognised by the FCA, these exchanges and clearing houses need to be fit and proper for their purpose. Once recognised, the exchanges are referred to as **recognised investment exchanges (RIEs)**, and the clearing houses are referred to as **recognised clearing houses (RCHs)**. RIEs and RCHs are exempt persons in that they do not need to seek authorisation from the FCA to carry out regulated activities – they are, instead, recognised. As an exempt person, an RIE is exempt from the general prohibition under FSMA in respect of any regulated activity which is carried on as part of the exchange's business as an investment exchange, or which is carried on for the purposes of, or in connection with, the provision of clearing services by the exchange. The FCA Handbook sets out the recognition and notification requirements for RIEs (in the Recognised Investment Exchanges and Recognised Clearing Houses Sourcebook).

The current RIEs in the UK are listed in the FCA's Financial Services Register.

Source: *FCA website (https://register.fca.org.uk/s/search?predefined=RIE)*

6.4.3 FSMA Exemption Order 2001

The Treasury has established certain exemptions from the need to be authorised for particular persons. Some of these exemptions are restricted in that they only apply in certain circumstances.

For example, the BoE (UK's central bank), the ECB (the European Central Bank) or a central bank of an EEA member are exempted from the need to be authorised to carry on any regulated activity, apart from effecting or carrying out contracts of insurance. In addition, other supranational bodes are also exempt, such as the European Investment Bank (EIB) and the International Monetary Fund (IMF).

In contrast, certain bodies are exempted from the need to be authorised for the sole regulated activity of accepting deposits; these include municipal banks, local authorities and charities.

Certain persons are able to perform limited regulated activities without the need to be authorised or exempt. In effect, the general prohibition of FSMA does not apply to them. Such persons include the members of Lloyd's insurance market and members of certain **designated professional bodies (DPBs)**.

6.4.4 Members of Lloyd's

Several activities carried on in connection with business at Lloyd's are regulated activities. These include:

- advising on syndicate participation
- acting as a managing agent for one or more syndicates, and
- arranging deals in insurance contracts.

However, FSMA disapplies the general prohibition for members of Lloyd's in relation to contracts of insurance written at Lloyd's. This is further extended to those members that ceased to be an underwriting member at any time after 1996; these former members can carry out insurance contracts underwritten at Lloyd's without the need for authorisation.

The reason why the general prohibition does not apply is because the activities at Lloyd's are expected to be suitably supervised and executed by the Society of Lloyd's and so additional FCA authorisation of members is unnecessary. The regulators do, however, have certain powers to impose rules on the members (or former members) of Lloyd's if it is felt necessary.

6.4.5 Members of the Professions

Part 20 of FSMA provides for five professions where individual firms are permitted to carry on particular regulated activities without the need to apply to the regulators for authorisation. Firms are required to apply to their relevant professional body for permission to conduct these activities. The individual professions are accountants, solicitors, actuaries, chartered surveyors and licensed conveyancers.

The professional bodies that are able to grant permissions are known as designated professional bodies (DPBs). They include the Institute of Chartered Accountants in England and Wales (ICAEW), the Law Society, the Institute of Actuaries and the Royal Institution of Chartered Surveyors (RICS).

The DPB must operate a set of rules with which its members must comply and the regulated activity must be incidental to the provision of professional services. For example, a firm of accountants providing tax advice can give a client advice as to which investments can best be sold to avoid the accrual of a tax liability.

In order to be able to rely on the Part 20 regime, the activities carried out by DPBs' member firms are restricted. For example, such firms are allowed to receive pecuniary reward only from the client (ie, they must return to the client any commissions received from the providers of products held); and certain regulated activities may not be carried out by the members, namely:

- accepting deposits
- dealing in investments as principal (ie, acting as **market maker**)
- lending or administering home finance transactions (unless the firm is acting as trustee or personal representative)
- establishing, operating or winding up a CIS
- establishing, operating or winding up a stakeholder pension scheme or a personal pension scheme
- acting as stakeholder pension scheme manager
- managing the underwriting capacity of a Lloyd's syndicate or advising on syndicate participation
- effecting or carrying out contracts of insurance (including Lloyd's business), or
- providing funeral plan contracts.

Advising on investments can only be performed in specified circumstances for it to be exempt.

6.5 Regulated Activities

1.7 Regulated Activities

1.7.1 Know the main exclusions from the need for authorisation under FSMA 2000 [Regulated Activities Order]: absence of holding out; groups and joint enterprises; advice in newspapers; trustees, nominees and personal representatives; employee share schemes; overseas persons

---

–

There are a significant number of exclusions provided in FSMA; those carrying on regulated activities falling entirely within the scope of an exclusion can conduct the activity without having to apply to the PRA/FCA for authorisation for the activity in question. Some key examples follow.

6.5.1 Exclusions from Dealing as Principal

Absence of Holding Out

Dealing in investments as principal is a regulated activity. This means that persons dealing for themselves in the hope of making profits are required to be authorised or exempt. However, this regulated activity is restricted to those persons who are holding themselves out as and acting as market makers and who regularly solicit the public with the purpose

of inducing them to deal. The result is that a wide range of activity is excluded from the regulated activity of dealing as principal.

This means that:

- firms which are professional dealers, such as market makers, and which hold themselves out as such, are carrying on a regulated activity, but
- individuals or companies which are not in the business of dealing in investments, and which invest only for themselves in the hope of making a profit, are excluded.

This exclusion relates to securities (shares and bonds) and assigning rights under a life policy, as long as they are entered into by an unauthorised person.

Furthermore, there is an exclusion relating to contractually based investments (futures, options and CFDs) if the transaction is entered into by an unauthorised person and it takes place in either of the following circumstances:

- Firstly, where the person with whom the unauthorised person deals is either an authorised person or an exempt person who is acting in the course of a business comprising a regulated activity in relation to which they are exempt.
- Secondly, where the unauthorised person enters into a transaction through a non-UK office (which could be their own) and they deal with or through a person who is based outside the UK. This non- UK person must be someone who, as their ordinary business, carries on any of the activities relating to securities or contractually based investments that are generally treated as regulated activities.

Other Exclusions

There are other exclusions where dealing as principal is not classified as a regulated activity, namely:

- a bank providing finance to another person and accepting an instrument acknowledging the debt
- a company or other organisation issuing its own shares, warrants or debentures, or purchasing its own shares in accordance with certain provisions of the Companies Act 1985 (Treasury shares)
- using options, futures and CFDs for risk management purposes, as long as the company's business is mainly unregulated activities and the sole or main purpose of the deals is to limit identifiable risks, or
- entering into transactions as principal for, or in connection with, the following:
    - while acting as bare trustee (or as **nominee** in Scotland)
    - the sale of goods or supply of services
    - between members of a group or joint enterprise
    - the sale of a body corporate
    - an employee share scheme
    - an overseas person, or
    - an incoming electronic commerce provider.

6.5.2 Exclusions for Group and Joint Enterprises

Firms undertaking intra-group dealing or activities, or where there are joint enterprise relationships, also benefit from the exclusion of these activities being regulated activities:

- Dealing in investments as principal.
- Dealing in investments as agent.
- Arranging deals in investments.
- Managing investments.
- Safeguarding and administering investments.
- Sending dematerialised instructions.
- Advising on investments.

6.5.3 Exclusions for Advice in Newspapers

There is a particular exclusion in relation to the giving of advice in writing or other legible form, if the advice is contained in a newspaper, journal, magazine, or other periodical publication, or is given by way of a service comprising regularly updated news or information. The existence of money and city pages or subsections within a newspaper does not make the principal purpose of the paper anything other than the provision of news, so there is no need for authorisation.

If the principal purpose of a publication is the provision of investment advice, with a view to encouraging investors or prospective investors to undertake investment activity, authorisation is required. This is the case for periodicals that tip certain investments and are often sold on a subscription basis.

6.5.4 Trustees, Nominees and Personal Representatives

There is an exclusion from the need for authorisation if the person carrying on the regulated activity is:

- acting as the representative of another party
- not generally holding themselves out as carrying on regulated activities, and
- not receiving additional remuneration for providing these investment services.

This exclusion can apply to the following types of regulated activity:

- Dealing in investments as principal.
- Arranging deals in investments and making arrangements with a view to transactions in investments.
- Arranging a home finance transaction.
- Managing investments.
- Safeguarding and administering investments.
- Sending dematerialised instructions.
- Advising on investments or advising on a home finance transaction.
- Assisting in the administration and performance of a contract of insurance.
- Entering into, or administering, a home finance transaction.

It is important to note that this exclusion is not available if the person is carrying on, dealing, arranging or advising activity in connection with a contract of insurance.

6.5.5 Employee Share Schemes

In order to encourage companies to set up schemes enabling their employees to hold shares in the company they work for, there are exclusions from the need to be authorised to operate such schemes. The exclusion covers four types of activity:

- Dealing in investments as principal.
- Dealing in investments as agent.
- Arranging deals in investments and making arrangements with a view to transactions in investments.
- Safeguarding and administering investments.

6.5.6 Overseas Persons

There are a number of exclusions for overseas persons carrying on regulated activities, providing that they do not do so from a permanent place of business in the UK. These exclusions apply only if the business is done through an authorised, or exempt, UK person, or if they are the result of a legitimate approach, such as a UK client approaching an overseas person in an unsolicited manner.

The exclusions mainly cover the following types of activity:

- Dealing in investments as principal.
- Dealing in investments as agent.
- Arranging deals in investments and making arrangements with a view to transactions in investments.
- Arranging a home finance transaction.
- Advising on investments.
- Agreeing to carry on the regulated activities of managing investments, making arrangements with a view to transactions in investments, assisting in the performance and administration of a contract of insurance, arranging deals in investments, safeguarding and administering investments or sending dematerialised instructions.
- Operating an MTF or OTF.
- Entering into, or administering a home finance transaction.

6.6 Authorisation

1.7 Regulated Activities

1.7.3 Know the authorisation procedures for firms: the need for authorisation; the threshold conditions for authorisation

---

–

Persons wishing to carry on regulated activities in the UK, by way of business, need to be authorised or exempt from the requirement to be authorised, unless their activity falls wholly within the scope of one or more exclusions. By way of business broadly means holding oneself out as carrying out the activity on a commercial basis.

Although regulated activities must be carried out by way of business, what this includes or excludes partly depends upon the nature of the activities undertaken. For example:

- accepting deposits is not considered to be carried out by way of business by a person if they do not hold themselves out as accepting deposits on a day-to-day basis, and if the deposits they accept are accepted only on particular occasions. In determining whether deposits are accepted only on particular occasions, the frequency of the occasions and any distinguishing characteristics are taken into account, and
- a person who carries on an insurance mediation activity will not be regarded as doing so by way of business, unless they take up or pursue that activity for remuneration.

Whether or not an activity is carried on by way of business is ultimately a question of judgement that takes account of several factors (none of which is likely to be conclusive). These include the degree of continuity, the existence of a commercial element, the scale of the activity, and the proportion the activity bears to other activities carried on by the same person, but which are not regulated. The nature of the particular regulated activity that is carried on will also be relevant to the factual analysis.

More generally, the following questions provide a non-exhaustive list of some of the key considerations a person should have when their proposed activities may require authorisation:

- Will I be carrying on my activities by way of business?
- Will I be managing the assets of an occupational pension scheme?
- If the answer is 'Yes' to (1) or (2), will my activities involve specified investments in any way?
- If so, will my activities be, or include, regulated activities?
- If so, will I be carrying them on in the United Kingdom?
- If so, will my activities be excluded?
- If not, will I be exempt?
- If not, am I allowed to carry on regulated activities without authorisation?

- If not, do I benefit from the few provisions of the Act that authorise me without permission?
- If not, what is the scope of the permission that I need to seek from the regulator?

Source: *FCA Website ('PERG' Sourcebook)*

6.6.1 The Permissions Regime

The term 'authorised person' includes those who have been authorised by the FCA or the PRA and also other persons such as overseas firms and the Society of Lloyd's. This section looks at those who are authorised by the FCA or the PRA.

Authorisation in this way is provided through the regulators' powers under Part 4A of FSMA (as amended) and is referred to as a Part 4A permission. The FCA or PRA gives Part 4A permission as appropriate and, once granted, the firm becomes an authorised person. As an authorised person, the firm can carry on its designated regulated activities without breaching the general prohibition.

There is a very wide range of specified investments and activities. The Part 4A permission specifies precisely which regulated activities the firm can carry out, the investments those activities may relate to and any further requirements or special conditions attached to the permission. For example, the holding, or controlling, of client money is not, in itself, a regulated activity. However, if a firm does not wish to hold client money the FCA will impose a requirement on the firm's scope of permission that the firm may not hold or control client money.

The activities which a firm is given permission to conduct can be limited. For example, it may be permitted to deal as principal, but only for a particular type of client.

6.6.2 The Authorisation Process

Depending on the type of firm, a firm will need to submit an application pack to either the PRA and/or the FCA (for FCA-only regulated firms).

If the firm is likely to be dual-regulated (ie, it is to be subject to both PRA and FCA supervision) and it wants to become authorised, the firm will make a single application to the PRA as its lead regulator. Although the PRA will make the final decision on the firm's application, the PRA can only authorise the firm once the FCA has also consented to the firm's authorisation.

The applicant completes an application pack, available from the regulators. The packs are tailored depending on the type of authorised activity to be applied for. The pack requires information on the following:

- **Core details** – the applicant's legal form, summary details of ownership, accounting year end, organisational structure and IT systems.
- **Controllers** – detailed information about the firm's owners and controllers.

- **Business supplement, or regulatory business plan** – a detailed form covering the business plan, type of activity, anticipated business levels, financial forecasts showing how the applicant will meet capital adequacy requirements, details of professional indemnity insurance and compliance procedures, governance framework and organisation (this is the basis upon which the FCA will authorise and consider subsequent changes).
- **Disclosure of significant events** – if the firm has traded before (for example, as an appointed representative), this questionnaire must be completed to disclose any previous and/or current trading issues.
- **Approved persons forms** – each person who is to carry out Senior Management Function (SM&CR) or a controlled function (APER) must send an individual form.
- **Checklist and declaration** – including the application fee, the FCA has moved its fee structure to '10 pricing categories' for firms applying for authorisation – the pricing structure reflects the amount of work that the FCA will need to perform for straight forward cases (reflected with lower pricing) to more complex structures (higher fee). The fee is not refundable under any circumstances.

Once the PRA/FCA has received an application, it will be allocated to a case officer to review the case in more detail, requesting further information from the applicant if necessary. The case officer prepares a report for their line manager or team leader who will notionally approve the application. A committee then signs this off and the applicant is notified that they are approved subject to formal notification, evidencing all outstanding items, for example, demonstrating proof of capitalisation. Applicants then become authorised with effect from a specified date, and a reporting pack is dispatched, along with a confirmatory letter of categorisation. The regulators have statutory deadlines for determining cases: six months for complete cases and up to 12 months for incomplete cases.

If an authorised firm that was previously unincorporated (eg, a sole trader, or partnership) decides to incorporate (eg, become a limited company or a limited liability partnership (LLP)), the new entity will require authorisation. In these circumstances, and so long as there are no material changes to the firm and/or its authorised activities, the regulator allows for a simplified application pack to be submitted (change of legal status), along with a reduced application fee. The regulator will give careful consideration to the new application to ensure that the firm is not trying to escape its existing liabilities through any structure change.

6.6.3 The Threshold Conditions (TC)

The Threshold Conditions (TCs) are effectively the minimum standards expected of authorised persons being, and remaining, authorised. The FSMA (Threshold Conditions) Order 2013 changed and redistributed responsibility for TCs between the FCA and the PRA. Some FCA TCs will apply to all firms, including dual-regulated firms.

The FCA conditions have been widened in scope, allowing the regulator to exercise a greater degree of subjective judgment. In particular, it currently sees rigorous business model analysis as the key to an effective supervisory regime that avoids the alleged deficiencies of past approaches. This is the reason why firms need to provide a

comprehensive business plan for the regulator to refer to in any subsequent changes to a firm's regulatory permission changes. The latest TCs were issued in August 2023.

The FCA assesses applicants only for conduct issues, if they are dual-regulated firms, with the PRA assessing prudential issues. For solo regulated firms, the FCA will assess the applicant for both conduct and prudential issues.

Business Model Threshold Condition

The business model threshold condition to demonstrate the importance that the FCA places on a firm's ability to put forward an appropriate, viable and sustainable business model, given the nature and scale of business activity which it intends to carry out. The FCA expects firms to demonstrate adequate contingency planning in their business model. Firms will need to make it clear how their business model meets the needs of clients and customers, not placing them at undue risk, or placing at risk the integrity of the wider financial services system, for example, from financial crime. The FCA will also expect firms to provide clear information as to how they can evidence the meeting of this threshold condition.

The FCA has stated that it will recommend refusal at an early stage where it is satisfied that a firm does not meet, or will continue not to meet, the minimum threshold standards expected. This acts as a catch- all provision in determining ongoing sustainability and a good fall-back position for a firm's refusal to entry to the FCA if need be.

PRA Additional Conditions

Firms must meet both the PRA- and FCA-specific threshold conditions. The PRA-specific threshold conditions apply to banks, building societies, credit unions and designated investment firms which are regulated by the PRA for prudential purposes.

In granting Part 4A permission, the regulators are required to ensure that the applicant satisfies the minimum standards in relation to being an authorised person. These are the threshold conditions:

1. **Legal status** – the regulators broadly accept individuals, companies, branches of companies, partnerships and unincorporated associations as authorised persons. However, there are some restrictions on the legal form which are acceptable for a firm wishing to undertake certain authorised activities; for example, an individual or partnership does not meet the criteria needed to hold banking deposits or to complete insurance business.
2. **Location of offices** – the regulators require companies established under UK law to have their head and registered offices in the UK if they are to be authorised. For firms other than companies, FSMA stipulates that a 'non-body corporate with its head office in the UK must carry on business in the UK'.
3. **Business to be conducted in a prudent manner** – the new condition incorporates some of the considerations in the former adequate resources condition and requires firms to have appropriate (rather than adequate) financial and non-financial resources. To have appropriate financial resources, the firm must have

appropriate capital, liquidity and be willing and able to value its assets and liabilities appropriately. To have appropriate non-financial resources, the firm must have suitable resources to monitor, manage, and take action to remove or reduce risks to the safety and soundness of the firm, and to the firm's valuation of its assets and liabilities. The firm's business must be managed effectively, and the firm's non-financial resources must be sufficient for the firm to comply with the PRA's requirements.

4. **Effective supervision (including the existing close links condition)** – The effective supervision condition includes the former close links TC, (eg, the effect of group structures on supervision) and, in addition, firms need to ensure that there is no impediment to their effective supervision by virtue of:

    - the nature and complexity of regulated activities the firm undertakes
    - the products offered, and
    - the business organisation.

5. **Appropriate resources** – the appropriate resources test reflects the importance of firms considering the quality as well as quantity of resources available. The revised TCs list two extra matters as relevant: the nature and scale of the firm's business; and the risks to the continuity of the services provided by the firm. Additional new material specifically addresses a firm's non-financial resources – these include any *'systems, controls, plans or policies...any information that the firm holds and the human resources that the firm has available'*. In assessing appropriateness of non-financial resources, the FCA will consider the skills and experience of those who manage the firm's affairs.
6. **Suitability** – the firm is required to prove itself fit and proper to be granted Part 4A permission. The fit and proper requirement is considered in the context of all of the firm's circumstances; this includes the range and nature of its proposed regulated activities, the need to be satisfied that its affairs are conducted soundly and prudently, and its connections with other persons. The regulators will assess an applicant's fit and proper status in the light of the specific activities it wishes to carry out. Just because an applicant is suitable to carry out one regulated activity, it does not mean that the applicant is suitable to carry out all regulated activities. In addition, for FCA-regulated firms, the current condition of suitability has been amended and contains additional references to the firm's affairs being conducted in an appropriate manner with regard to the interests of consumers and the integrity of the UK financial system, including the need to minimise the extent to which the business carried on by a firm can be used for a purpose connected with financial crime. Firms must also be generally cooperative in the provision of information to the FCA, and the firm's management must act with probity, in addition to having adequate skills and experience in order to complete their senior management roles. For PRA-regulated firms, the amended condition of suitability contains requirements for firms to comply on a proactive basis, with the PRA's requests relating to the provision of information; and that the firm's management acts with probity, in addition to having adequate skills and experience, again to complete their senior management roles.
7. **Business model** – this requires that a firm's strategy for doing business must be suitable for its regulated activities, having regard to whether the business model is

compatible with the firm's affairs being conducted in a sound and prudent manner, in the interests of consumers and the integrity of the UK financial system.

8. **Appointment of claims representatives** – this condition is only relevant to motor insurers who must have a claims representative for dealing with claims, and in this respect is not reflected in the table below.

The following table summarises the applicability of the threshold conditions:

Condition	FCA firm	Dual-regulated firms	
		FCA	PRA
Legal status	N/A	No	Yes
Location of offices	Yes	No	Yes
Prudent conduct	N/A	No	Yes
Effective supervision	Yes	Yes	Yes
Appropriate resources	Yes	Yes	No
Suitability	Yes	Yes	Yes
Business model	Yes	Yes	No

Source of information: *FCA Website (Threshold Conditions Sourcebook)*

7. Training and Competence

1.8 Training and Competence

1.8.1 Know the regulatory responsibilities in relation to the assessment of employee competence: per-engagement; at engagement; continuing professional development (CPD); Statement of Professional Standing (SPS)

–

7.1 Overall Requirements

The Principle for Businesses 3 (management and control) requires that firms take reasonable care to organise and control their affairs responsibly and effectively. To comply with this requirement, firms must, clearly, ensure that any employee involved with a regulated activity achieves and maintains the competence needed for this role.

The principles are built on further in the section of the FCA Handbook and the PRA Rule Book that deals with senior management arrangements, systems and controls (SYSC). This incorporates a high-level competence requirement which applies to all UK-authorised firms (including wholesale firms).

This high-level approach is then supplemented – for firms carrying on activities with or for retail customers only and in some limited cases for customers and consumers – by the **Training and Competence (T&C) Sourcebook**. The T&C Sourcebook is more focused on the outcomes achieved by firms through their internal training and competence arrangements.

7.2 The Requirements for Retail Firms: Assessing and Maintaining Competence

Assessment

The T&C Sourcebook requires that firms do not deem an employee competent to carry on any of a specified range of activities until that employee has demonstrated the necessary competence to do so and has (if required by the Sourcebook) passed each module of an appropriate examination. This assessment need not take place before they start to carry on the activity.

Supervision

Further, firms must not allow an employee to carry on any of those specified activities without appropriate supervision. They are required to ensure that employees are appropriately supervised at all times. The Sourcebook states that the FCA expects that the level and intensity of that supervision will be significantly greater in the period before a firm has assessed its employee as competent, than after. Firms should thus have clear criteria and procedures relating to the specific point at which their employees are assessed by them as being competent, so as to be able to demonstrate when and why a reduced level of supervision was considered appropriate.

At all stages, firms are required to consider the level of relevant experience that an employee has in determining the level of supervision required.

Supervisors

There are additional requirements in respect of those supervising staff carrying out the activities specified: the firms must ensure that these people have the necessary coaching and assessment skills, as well as the technical knowledge associated with the activity so as to act as a competent supervisor and assessor. In particular, the Sourcebook states that firms should consider whether it is appropriate to require these people to pass an appropriate examination, if the staff that they supervise have not themselves yet been assessed as competent.

If the employee is advising on packaged products to retail customers, however, the firm must ensure that the supervisor has passed an appropriate examination.

7.3 Qualification Requirements before Starting Activities

The T&C Sourcebook states that firms must not allow their employees to carry on/undertake a specified activity (other than an overseeing activity) for which there is a qualification requirement without first having passed the relevant regulatory module of an appropriate qualification. Specifically, firms must not allow their employees to undertake any of the following activities unless they have passed each module of an appropriate qualification:

- certain advising and dealing activities
- acting as a broker fund adviser
- advising on syndicate participation at Lloyd's, and
- acting as a pension transfer specialist.

Exemptions from the Requirements

If a firm is satisfied that an employee meets certain conditions, then the requirement to have passed each module of an appropriate qualification only applies if they are carrying on one of the following activities:

- advising retail clients on investments which are packaged products
- acting as a broker fund adviser
- advising on syndicate participation at Lloyd's, or
- acting as a pension transfer specialist.

The conditions are that the firm must be satisfied that the employee:

- has at least three years' up-to-date relevant experience in the activity, which they gained while employed outside the UK
- has not previously been required to comply fully with the relevant examination requirements, and
- has passed the relevant module of an appropriate examination.

The last two conditions do not apply to someone who is benefiting from the 30-day rule exemption, unless the employee benefits from the 30-day rule exemption because they are advising retail clients on packaged products or broker funds.

In addition, the customer function does not extend to an individual who is performing the function, is based overseas and, in a 12-month period, spends no more than 30 days in the UK to the extent that they are appropriately supervised by a person approved for this function.

Selecting an Appropriate Examination

Firms are required to select an appropriate qualification from the list of qualifications maintained by the FCA (TC App 4 – 'appropriate qualification tables'). If they do so, this will tend to demonstrate compliance with the qualification requirements.

Training Needs

The T&C Sourcebook states that firms must assess their employees' training needs at the outset, and again at regular intervals (including if their role changes). They should also review the quality and effectiveness of their training.

7.3.1 Maintaining Competence

To ensure that employees remain competent for their role, firms are required to review their competence regularly, and to take appropriate action when needed. In doing so, they should take account of:

- the individual's technical knowledge and its application
- their skills and expertise, and
- changes in the market and to products, legislation and regulation.

A way in which individuals can ensure that they maintain competence, apart from undertaking professional qualifications is through continued professional development – depending on their role this would include attending applicable and relevant conferences, webinars and seminars, reading material published by the UK regulators (BoE, HMT, PRA and FCA), law or accountancy firms on the general UK regulatory landscape or publications on specific topics.

Activities to which the T&C Rules Apply

Designated investment business carried out for a retail client by:

- advising
- dealing
- managing, and
- overseeing on a day-to-day basis.

Regulated mortgage activity and reversion activity carried on for a customer by:

- advising
- designing scripted questions for non-advised sales, and
- overseeing non-advised sales on a day-to-day basis.

Non-investment insurance business carried on for a consumer by:

- advising.

7.4 Statements of Professional Standing (SPSs)

Under the Adviser Charging rules, individuals wishing to operate as a retail investment adviser must be in possession of a valid SPS from an FCA-accredited body (such as the CISI).

SPSs confirm that an adviser has:

- Completed a Qualification and Credit Framework (QCF) Level 4 qualification, that appears on the list of approved qualifications in the FCA Handbook.
- Completed an annual programme of 35 hours of continuing professional development (CPD) that meets the requirements laid out by the FCA.
- Acted in accordance with the FCA's APER and/or SM&CR requirements (when they come into effect).
- Agreed to adhere to a code of ethics.

The FCA has said that advisers must complete a minimum of 35 hours of relevant CPD each year, with at least 21 hours of this being structured learning.

The FCA publishes qualifications tables (TC App 4) containing the appropriate qualifications that need to be attained by employees in order to carry out certain activities for retail clients. These activities are set out in Appendix 1.1.1R of the Training and Competence (T&C) Sourcebook.

The qualification requirements apply to individuals carrying out one or more of the following regulated activities:

- advising on (but not dealing in) securities (which are not stakeholder pension schemes or broker funds)
- advising on (but not dealing in) derivatives
- advising on packaged products (which are not broker funds)
- advising on friendly society tax-exempt policies
- advising on, and dealing in securities (which are not stakeholder pension schemes or broker funds), or
- advising on and dealing with or for clients in derivatives.

Advisers will need to hold an SPS as evidence that they are meeting the standards. The SPS is valid for 12 months. The SPS will contain:

- the adviser's name
- the name and contact details of the accredited body and a named signatory
- the end date of verification (maximum of 12 months from date of verification)
- confirmation the adviser's qualification(s) have been verified
- confirmation that the adviser has signed an annual declaration that states that they:
    - have kept their knowledge up to date, and
    - adhere to standards of ethical behaviour

- the adviser's individual reference number as it appears on the FCA Register, and
- a recommendation that the reader should check that the adviser is on the FCA Register, and how to do so.

End of Chapter Questions

Think of an answer for each question and refer to the appropriate section for confirmation.

1. **Who are the two regulators that together make up the twin peaks of UK financial services regulation and how do their responsibilities differ?**
   Answer Reference: Section 1.1

2. **To which government body is the FCA accountable?**
   Answer Reference: Section 1.1

3. **What are the statutory and operational objectives of the FCA and the PRA?**
   Answer Reference: Section 1.2

4. **What is conduct risk?**
   Answer Reference: Section 1.2.3

5. **List the 12 Principles for Businesses.**
   Answer Reference: Section 2.1

6. **What is the likely outcome for a firm that breaches a Principle?**
   Answer Reference: Section 2.1

7. **What are the Consumer Duty 'Cross-cutting rules' and 'expected Outcomes'?**
   Answer reference: Section 2.2.1

8. **When would Principle 12 apply to a firm?**
   Answer reference: Section 2.2.1

9. **To whom does the 'Fair Treatment of Customers' initiative apply?**
   Answer Reference: Section 2.3

10. **What is the purpose behind the FCA requirements for senior management?**
    Answer Reference: Section 3.1

11. **What is a Management Responsibilities Map?**
    Answer Reference: 3.2

12. **What individuals within an authorised firm would be subject to the Certification Regime?**
    Answer Reference: Section 3.3

13. **Who do the Conduct Rules apply to?**
    Answer Reference: Section 3.4

14. **What factors are taken into account when assessing an individual as fit and proper for approval?**
Answer Reference: Section 3.5

15. **What is the relationship between the FCA and HM Treasury?**
Answer Reference: Section 5.5

16. **What is the role of each of the following: the CMA, BoE and The Pensions Regulator?**
Answer Reference: Sections 5.1, 5.4 & 5.6

17. **What is the purpose and objective of the FATF, BIS and IOSCO?**
Answer Reference: Section 5.7.2

18. **What is the General Prohibition?**
Answer Reference: Section 6.1

19. **What are regulated activities?**
Answer Reference: Section 6.3

20. **Does a firm that that accepts deposits from customers need to be regulated and authorised to carry out this activity?**
Answer Reference: Section 6.3

21. **What are examples of specified investments and specified activities?**
Answer Reference: Sections 6.3.1 & 6.3.2

22. **Is a market maker required to be regulated and authorised when carrying out such activity?**
Answer reference: Section 6.3 & 6.4

23. **What exemptions are available from the need to be regulated?**
Answer Reference: Section 6.4

24. **How are Appointed Representatives exempt from the requirement to be regulated and authorised?**
Answer Reference: Section 6.4

25. **What are the main exclusions from the need for authorisation under FSMA?**
Answer reference: Section 6.5.1 – 6.5.6

26. **What are the Threshold Conditions and how do they apply**?
Answer reference: Section 6.6.3

27. **What is the purpose of the Training and Competence requirements?**
Answer reference: Section 7

28. **What is the purpose of the FSCS?**
Answer reference: Section 7.2

Chapter Two
Conduct of Business and Client Assets

Section 1	The Application and General Provisions of Conduct of Business Sourcebook (COBS)
Section 2	Appointed Representatives
Section 3	Accepting Clients
Section 4	Client Agreements and Information Provision
Section 5	Communicating with Clients, including Financial Promotions
Section 6	Retail Clients
Section 7	Advising and Selling Standards
Section 8	Product Disclosure and the Right to Cancel
Section 9	Conflicts of Interest
Section 10	Inducements and Payment for Research
Section 11	Dealing and Managing
Section 12	Reporting of Transactions
Section 13	Client Assets

This syllabus area will provide approximately 35 of the 75 examinations questions

1. The Application and General Provisions of Conduct of Business Sourcebook (COBS)

The **Conduct of Business Sourcebook (COBS)** is contained within the Business Standards block of the FCA Handbook.

The aim of COBS is to move the regulatory approach towards a better focus on outcomes rather than compliance with detailed and prescriptive rules. It also implemented the provisions of MiFID which relate to conduct of business. The provisions of MiFID are high-level standards for business conduct, without specifically prescribing how firms should achieve those standard provisions.

COBS also contains provisions for investment firms that are not subject to MiFID.

1.1 Firms Subject to COBS

2.1 The Application and General Provisions of the FCA Conduct of Business Sourcebook (COBS)

2.1.1 Know firms subject to the FCA Conduct of Business Sourcebook; activities which are subject to the FCA Conduct of Business Sourcebook including Eligible Counterparty Business and transactions between regulated market participants; the impact of location on firms/ activities of the application of the FCA Conduct of Business Sourcebook: permanent place of business in UK

The general application rule is based on geographical location and states that firms are subject to COBS if they carry out any of a range of activities from an establishment maintained by them or their appointed representative in the UK.

Furthermore, COBS generally applies to a firm which carries on business with a client in the UK from an establishment overseas (unless the overseas person meets certain criteria which allows for some activities to be excluded from the scope of COBS).

In summary:

- COBS applies to UK firms conducting MiFID business for UK clients within the UK.
- Following Brexit, the COBS Handbook no longer applies to MiFID business of a UK MiFID firm carried on from an establishment in an EEA member state.
- The rules in COBS that are derived from MiFID apply to a Non-UK MiFID investment firm (ie, a third- country firm operating a branch). Post Brexit EEA firms operating from a branch in the UK are classified as a 'third-country firm' when carrying out MiFID business within the UK.

There is an exception to this rule for investment research and personal account dealing, where the COBS rules apply on a home state basis only. This means that this aspect of COBS applies to UK firms, regardless of where they are conducting business.

1.2 Activities Subject to COBS

The activities which are subject to COBS are:

- designated investment business
- long-term insurance business in relation to life policies, and
- accepting deposits – in part, eg, financial promotion rules, and rules on preparing and providing product information.

Specific types of activities are exempt from certain COBS rules. For example, a range of COBS rules are disapplied, in certain cases, for firms carrying on **eligible counterparty** business (see section 2.3, chapter 2). These include:

- **Parts of COBS 2** – the conduct of business obligations (such as inducements, agent as client and reliance on others)
- **Much of COBS 4** – communicating with clients (fair, clear and not misleading) including financial promotions, direct offer promotions and information disclosure requirements before providing services
- **COBS 6** – information on costs and charges, compensation information
- **COBS 8A** – client agreements
- **COBS 10** – appropriateness requirements (non-advised services)
- **Parts of COBS 11** – **best execution**, client order handling
- **Parts of COBS 12** – the labelling of non-independent research, and
- **COBS 16** – reporting information to clients.

Additionally, members and participants in a regulated market do not have to comply with COBS 11.4 (client limit orders) in respect of each other but they must comply when they are executing orders on a client's behalf.

2. Appointed Representatives (ARs)

2. Appointed Representatives

2.2.1 Know the application of the FCA Conduct of Business Sourcebook applies to appointed representatives, including financial promotions and firms' responsibilities for appointed representatives

---

The COBS rules also apply to firms in relation to the relevant activities carried out for them by their appointed representatives (ARs).

Appointed representatives are exempt, because they can carry out a range of regulated activities under the umbrella of principal firm, which has accepted responsibility for the activity.

Further information in relation to the regulated activities which may or may not be conducted by appointed representatives was discussed in detail in section 6.4.1 of chapter 1.

Firms must also ensure that their appointed representatives comply with the COBS rules when they communicate financial promotions. Particular reference is made of this in COBS because, technically, a financial promotion communicated by an appointed representative is an exempt promotion and so does not need approval. Therefore, by making reference to this matter in COBS, the FCA reminds firms that they are responsible for the content of the financial promotions communicated by their appointed representatives.

Improving the Appointed Representatives Regime

In 2021 the FCA consulted on improving the appointed representatives regime, with the objective of reducing, potential harm to consumers and markets. The rules came into effect at the end of 2022.

The FCA identified the following as the two main areas of change required to the appointed representatives regime:

- Additional information on ARs and notification requirements for principals.
- Clarifying and strengthening the responsibilities and expectations of principals.

In its policy statement, the FCA highlighted the outcomes that it sought with its rules for ARs:

- Principals fully understand their responsibilities in relation to ARs, and have stronger and better oversight of, and take more effective responsibility for, their ARs.
- The FCA will be able to challenge firms with, and those looking to appoint, ARs.

- Principals address problems with their ARs that are causing, or have the potential to cause harm to consumers or markets.
- Retail consumers can access better-quality information on principals and ARs and make good decisions when choosing products and services.

FCA Rules Regarding ARs

Information and notification requirements

- Principals will be required to notify the FCA of a new AR appointment 30 days before the appointment takes effect.
- Principals to provide information on their business and their ARs, including the nature of the regulated activities that the ARs will undertake.
- Within 60 days of the rules coming into force, Principals must provide information on ARs to the FCA.
- Complaints and revenue data on ARs to be provided by Principals.
- FCA to update the 'register' with the regulated activities that Principals permit their ARs to undertake.
- Principals to notify the FCA whether they currently intend to provide, or will cease to provide, regulatory hosting services.

Responsibilities of Principals and FCA Expectations

- Enhanced oversight of the ARs, including:
    - adequate systems and controls
    - sufficient resources, and
    - monitoring growth.
- More effective responsibility for ARs:
    - monitoring and assessing the risk of harm to consumers and market integrity, and
    - overseeing to a comparable standard as if they were direct employees.
- Clarity on the circumstances where they terminate an AR relationship and assist with an orderly wind down.
- Annual review on ARs' activities, business and senior management:
    - principals must prepare a self-assessment document.

3. Accepting Clients

2.3 Accepting Clients

2.3.1 Understand client status: definition of client; the application of the rules on client categorisation; retail client, professional client and eligible counterparty

2.3.2 Understand client status: when a person is acting as agent for another person; the rule on categorising elective professional clients and the requirements for clients electing to be professional clients; the rule on elective eligible counterparties; providing clients with a higher level of protection; the requirement to provide notifications of client categorisation

---

3.1 Application of the Client Categorisation Rules

A firm is required to categorise its clients if it is carrying on designated investment business.

MiFID laid down rules on how client categorisation has to be carried out for MiFID business. For non- MiFID business, the FCA adopted the same client categorisation terminology, but the rules on how the categories must be applied are modified in some instances.

If a firm provides a mix of MiFID and non-MiFID services, it must categorise clients in accordance with the MiFID requirements, unless the MiFID business is conducted separately from the non-MiFID business.

For example, if a firm were to advise a client on investing in a collective investment scheme (advice about which would fall within the scope of UK MiFID) and also about a life policy (which would not), they should use the MiFID client categorisation.

3.1.1 The Definition of a Client

COBS defines a client as someone to whom a firm provides, intends to provide, or has provided a service in the course of carrying out a regulated activity; and, in the case of MiFID or equivalent third country business, anything which is an **ancillary service**. The term includes potential clients and people acting as agent for another person.

In addition, in relation to the financial promotion rules, it includes persons with whom the firm communicates, whether or not they are actually clients.

Clients of a firm's appointed representative or tied agent are also regarded as clients of the firm.

3.1.2 The Client Categories

Under COBS, clients may be categorised as either:

- a retail client
- a professional client, or
- an eligible counterparty.

The classification determines the level of protection the client receives, with retail clients being afforded the most protection, and eligible counterparties the least.

- A **retail client** is any client who is not a professional client or an eligible counterparty. (Note: the term customer is an umbrella term covering both retail clients and professional clients.)
- **Professional clients** may be either per se professional clients (see below) or elective professional clients (noted below).
- **Per se professional clients** are, generally, those which fall into any of the following categories – unless they are an eligible counterparty, or are categorised differently under other specific provisions.

The 'Per se' professional client categories are:

- An entity required to be authorised or regulated to operate in the financial markets. This includes:
    - a credit institution
    - an investment firm
    - any other authorised or regulated financial institution
    - an insurance company
    - a CIS or the management company of such a scheme
    - a pension fund or the management company of a pension fund
    - a commodity or commodity derivatives dealer, or
    - any other institutional investor.
- Large undertakings – companies whose balance sheet, turnover or own funds meet certain levels. Specifically:
    - For MiFID and equivalent third country business, this means undertakings that meet any two of the following size requirements on a company basis: a balance sheet total of €20 million; a net turnover of €40 million; or own funds of €2 million.
    - For other (non-MiFID) business, large undertakings are:
        - A company whose called-up share capital or net assets are, or have, at any time in the past two years been, at least £5 million, or the currency equivalent (or any company whose holding companies/subsidiaries meet this test).

- A company which meets (or of which the holding companies/subsidiaries meet) any two of the following criteria: a balance sheet total of €12.5 million; a net turnover of €25 million; an average of 250 employees during the year.
- A partnership or unincorporated association whose net assets are, or have at any time in the past two years been, at least £5 million, or currency equivalent. In the case of limited partnerships, this should be calculated without deducting any loans owing to the partners.
- A trustee of a trust (other than certain types of pension scheme dealt with in the next bullet point) which has, or has at any time in the past two years had, assets of at least £10 million.
- A trustee of an occupational pension scheme or a small self-administered scheme, or the trustee/operator of a personal pension or stakeholder pension scheme, where the scheme has, or has at any time in the past two years had, at least 50 members, and assets under management of at least £10 million.

The list of 'per se' professional clients also includes:

- national or regional governments, certain public bodies, central banks, international/supranational institutions and other similar institutions, and
- institutional investors whose main business is investment in financial instruments.

COBS also contains a list of the types of client which can be classified as eligible counterparties (ECPs).

The following list is, to a certain extent, identical to the per se professional client listed above.

However, the ECP category is narrower as it does not include large undertakings:

- a credit institution
- an investment firm
- another financial institution authorised or regulated under EU legislation or the national law of an EEA state (that includes regulated institutions in the securities, banking and insurance sectors)
- an insurance company
- a CIS authorised under the UCITS Directive or its management company
- a pension fund or its management company
- a national government or its corresponding office, including the contact details necessary to enable a public body that deals with the public debt
- a supranational organisation
- a central bank, and
- an undertaking exempted from the application of MiFID under either Article 2(1)(k) (certain own account dealers in commodities or commodity derivatives) or Article 2(1)(l) (locals) of that directive.

The FCA Handbook defines eligible counterparty business as the following services and activities carried on by a firm but only to the extent that the service or activity is carried on with or for an eligible counterparty:

1. dealing on own account, execution of orders on behalf of clients or the reception and transmission of orders
2. any ancillary service directly related to the service or activity referred to above
3. arranging in relation to business which is not MiFID or equivalent third country firm business.

This means that if an ECP wants to engage in other types of business, for example, the provision of investment management or investment advice, it will have to be classified as a per se professional client.

As explained earlier, many of the COBS rules do not apply when the client is an ECP; the result of this is that the ECP will not benefit from the protections afforded by these rules. Having said that, ECPs are large firms who are very familiar with, or are themselves large players in the financial markets and do not need such protections. Some ECPs, however, would rather have more protections by voluntarily asking for a client category affording more protection, and, therefore, become a professional client.

3.2 Agents

If a firm knows that someone to whom it is providing services (A) is acting as the agent of another person (B), the firm should regard A as its client.

The exception to this rule is however, when the firm has agreed in writing with A that it should treat B as its client instead.

There is a further exception to this rule, if the involvement of A in the arrangement is mainly for the purpose of reducing the firm's duties to B: in this case, B should be treated as the client in any case.

3.3 Recategorising Clients and Providing Lower Levels of Protection

Elective Professional Clients

A retail client may be treated as an 'elective professional client' when:

- the firm has assessed their (or its) expertise, experience and knowledge and believes that they can make their own investment decisions and understand the risks involved (this is called the **qualitative test**) and, additionally, for MiFID business
- any two of the following are true (this is called the **quantitative test**):
    - the client carried out, on average, ten significantly sized transactions on the relevant market in each of the past four quarters
    - the size of the client's financial portfolio exceeds €500,000 (defined as including cash deposits and financial instruments)
    - the client works or has worked as a professional in the financial services sector for at least a year on a basis which requires knowledge of the transactions envisaged.

Assuming the client passes the qualitative and, for MiFID business, the quantitative test, the client must put in writing to the firm their wish to be reclassified and the specific services and/or products this reclassification will apply to. The firm has to respond with a clear written warning to the investor, outlining to the investor protections which will be lost, and the client must state, separately, in writing, that they are aware of the consequences of losing such protections.

It is up to the professional client to keep the firm up to date with their circumstances and notify the firm if there are any changes which may affect their classification. If a firm becomes aware that a client no longer fulfils the conditions under the elective professional client classification, the firm must take appropriate action. If the appropriate action involves recategorising the client as a retail client, the firm must notify the client of its new categorisation.

Elective Eligible Counterparties

A professional client may be treated as an elective ECP if it is an undertaking and it is:

- a per se professional client (other than one which is only a professional client because they are an institutional investor), and
- they request to be treated as an ECP.

MiFID II introduced extra protections for local authorities and/or municipalities which must, by default, now be classified as retail clients. They can be reclassified as an elective professional client where they meet or comply with the following circumstances.

The qualitative test as per COBS 3.5.3(1):

'the firm undertakes an adequate assessment of the expertise, experience and knowledge of the client that gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making their own investment decisions and understanding the risks involved (the 'qualitative test')'.

The quantitative test (as per COBS 3.5.3B(2):

- *the size of the authority's financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds £10 million, and*
- *either:*
    - *it has carried out transactions, in significant size, on the relevant market at an average frequency of ten per quarter over the previous four quarters*
    - *the person authorised to carry out transactions on behalf of the authority works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the provision of services envisaged*
    - *the authority is an 'administering authority' of the Local Government Pension Scheme and is acting in that capacity.*

3.3.1 Recategorising Clients and Providing Higher Levels of Protection

Firms must allow professional clients and ECPs to request recategorisation, to retail client and professional client, so that they can be afforded the benefit from the higher protections if they wish to be.

In addition, firms can own their initiative, or as well as at the client's request:

- treat per se professional clients as retail clients, and
- treat per se ECPs as professional or retail clients.

In addition, recategorisation may be carried out for a client on:

- a general basis, or
- more specific terms, for example, in relation to a single transaction only.

A firm can classify a client under a different classification for different financial instruments in which they may trade/undertake transactions. However, this will mean complex internal arrangements for firms and this is why most firms will classify a client just once for all financial instruments for which they may undertake transactions.

In the event a retail client has requested to be classified as an 'elective professional client', they meet the criteria, and the firms agrees to this, they will lose the following investor protections (ie, requirements in these provisions for retail clients):

- Communicating with clients, including financial promotions (ie, fair, clear and not misleading).
- Information about the firm, its services and remuneration.
- Suitability.
- Appropriateness – (for non-advised activity).
- Dealing and Carrying out orders.
- Reporting information to clients.
- Remuneration and incentivisation of staff.
- Client reporting.
- Investor compensation (FOS and FSCS).
- Exclusion of liability.
- Share Trading Obligation.
- Transfer of financial collateral arrangements.
- Client Money (some limitations will apply).

Where a professional client has requested to be classified as an 'elective eligible counterparty', and they meet the criteria and the firms agrees to this, they will lose the following investor protections (ie, requirements for Professional clients):

- Client agreement.
- Appropriateness – (for non-advised activity).
- Best Execution.
- Order Handling.
- Product Governance.
- Disclosure on financial instruments, costs and charges, remuneration and commissions.
- Package Products.

3.4 Notifications of Client Classification

New clients must be notified of how the firm has classified them. They must also, before services are provided, be advised of their rights to request recategorisation and of any limits in their protections which will arise from this.

3.5 Policies, Procedures and Records

Firms must implement appropriate written internal policies and procedures to categorise their clients. Firms must make a record of the form or each notice provided and each agreement entered into. This record must be made and retained for the relevant period after the firm ceases to carry on business with clients.

3.6 Reliance on Others

2.5.3 Reliance on Others

2.5.1 Know the rules, guidance and evidential provisions regarding reliance on others

If a firm carrying out UK MiFID business receives an instruction to provide investment or ancillary services for a client through another UK MiFID firm or is subject to equivalent regulations, the firm can rely on:

- information relayed about the client to it by the third-party firm, and
- recommendations that have been provided by the third-party firm.

The third-party firm retains responsibility for the completeness and accuracy of client information, and the appropriateness of any recommendations which are provided.

The firm takes responsibility for concluding the services or transactions.

When a firm relies on information provided by a third-party, this information should be given in writing.

For non-MiFID investment firms, the FCA states that it will generally be reasonable for a firm to rely on information provided to it in writing by an unconnected authorised person, or a professional firm, unless it is aware, or ought reasonably to be aware, of anything that would give it reasonable grounds to question the accuracy of that information. The firm should take reasonable steps to establish that the other person is unconnected and competent to provide the information.

4. Client Agreements and Information Provision

2.4 Client Agreements and Information Provision

2.4.1 Know: the requirement for firms to provide client agreements; when a client agreement is required to be signed; when it is acceptable to be provided to clients for MiFID business

---

4.1 The Requirement to Provide a Client Agreement

The requirement to enter into a client agreement applies to designated investment business for a retail client and for MiFID business and **ancillary services** or equivalent third-country business carried on for a retail and/or a professional client.

It does not apply to insurance firms issuing life policies as principal.

Firms must enter into a written basic agreement with the client, setting out the essential rights and obligations of the firm and the client. The agreement has to be on paper or other **durable medium**.

In good time before the retail client is bound by the agreement, or before the provision of investment services, (whichever is earlier) firms must provide the client with the:

- terms of any such agreement, and
- information about the firm and its services relating to that agreement or those services required by COBS 6.1.4 and COBS 6.1ZA.2, including authorised communications, conflicts of interest and the firm's authorised status.

If the client requests the use of distance communications and the firm complies with rules on voice telephone communications, a firm may provide the agreement and the information immediately after the client is bound by any such agreement.

Firms have to notify the client of any material change to terms in the client agreement, in good time before the change takes effect, and in a durable medium.

Client agreement records must be maintained for whichever is the longer of:

- five years
- the duration of the relationship with the client, or
- in the case of a pension transfer, pension opt-outs or freestanding additional voluntary contributions indefinitely.

Firms should also consider other COBS rule requirements when issuing their client agreements, for example, being fair, clear and not misleading; disclosure of information; and distance communications.

4.2 Information Requirements

2.4.4 Client Agreements and Information Provision

2.4.2 Know the requirement to provide information to clients prior to providing services to clients including information relating to the nature and risk of the services and designated investments being offered for MiFID and non-MiFID business

4.2.1 Information about the Nature and Risks of Investments

COBS 2.2 and COBS 2.2A set out the high-level disclosure requirements for firms carrying on MiFID business, or equivalent third country business with regards to the information that they must provide to retail clients and professional clients (as well as potential retail clients and professional clients) in a comprehensible form about:

- the firm and its services
- designated investments and proposed investment strategies, including appropriate guidance on, and warnings of, the risks associated with investments in those designated investments or in respect of particular investment strategies
- execution venues, and
- the costs and associated charges.

This enables the client to be able to reasonably understand the nature and risks of the service and of the specific type of designated investments which are being offered, and, therefore, enable the client to take relevant investment decisions on an informed basis.

Firms carrying on non-MiFID business with or for a retail client in relation to derivatives, warrants or stock lending activity must also provide the information detailed above.

These high-level rules are expanded in COBS 6.1 in relation to information about the firm, and in COBS 14.2 in relation to information about products. In general terms, for non-MiFID business, the disclosure requirements apply to retail clients, and for UK MiFID business, the disclosures must be also be provided to professional clients.

4.2.2 Information about the Firm

A firm must provide retail clients, professional clients and ECPs (including potential retail clients, professional clients and ECPs) with the following general information, if relevant:

- the name and address of the firm, including the contact details necessary to enable the client to communicate effectively with the firm
- in respect of MiFID business or equivalent third-country business, the languages in which the client may communicate and receive documents and other information from the firm
- the methods of communication to be used between the firm and the client, including those for the sending and reception of orders
- a statement of the fact that the firm is authorised and the name and contact details of the competent authority enabling it
- if the firm is acting through an appointed representative or, where applicable, a tied agent, a statement detailing this fact
- the nature, frequency and timing of reports on the performance of the service provided by the firm to the client, in accordance with the rules on reporting to clients on the provision of services [COBS 16]
- information about the firm's conflict of interest policy, a summary of the firm's policy, including the manner in which the firm will ensure fair treatment of the client and that further details are available on request.

4.2.3 Information Requirements Relating to Managing Investment

A firm that manages investments for a client must establish an appropriate method of evaluation and comparison, such as a meaningful benchmark, based on the investment objectives of the client and the types of investment included in the client's portfolio, to enable the client to assess the firm's performance.

If a firm proposes to manage investments for a retail client, the firm must provide the client with the following information, if applicable:

- information in relation to the method and frequency of the valuation of the investments in the client's portfolio
- details of any delegation of the discretionary management of all or part of investments or funds in the client's portfolio
- specification of any benchmark against which performance of the portfolio will be compared
- the types of investment which may be included and the types of transaction which may be carried out, including any limits, or
- objectives, the level of risk which is reflected in the manager's exercise of discretion and any specific constraints on that discretion.

4.2.4 Information on Safeguarding Investments/Money

Firms holding client money or investments for retail clients, professional clients and ECPs (as well as potential retail and professional clients and potential ECPs) subject to the UK MiFID custody/client money rules (as applicable), also have to provide the following information, as appropriate:

1. that the investments/money may be held by a third-party on the firm's behalf
2. what the firm's responsibility is for any acts and/or omissions of that third-party
3. what will happen if the third-party were to become insolvent
4. if the investments cannot be separately designated in the country in which they are held by a third-party, what this means for, and what the risks are to the client
5. that the investments are subject to the laws of a non-UK jurisdiction and what this means for their clients' rights over them
6. a summary of the steps the firm has taken to protect the client's money and/or investments, including details of any relevant investor compensation or deposit guarantee schemes available to them
7. if the money or investments are subject to any security interest, lien or right of set-off, full details of this fact and the terms of it, and
8. full and clear information, in a durable medium, in good time before entering into securities detailing clearly what the firm's obligations are with regard to those investments and what the risks may be.

4.3 Disclosure of Costs

2.4 Client Agreements and Information Provision

2.4.3 Know the rules on: disclosure of costs and associated charges; timing of disclosure; medium of disclosure; changes to information provided to the client; compensation information for MiFID and Non-MiFID business

Firms must provide retail clients with information on the costs and charges to which they will be subject in respect of both investment services and/or financial instruments, including ancillary services. Relevant costs and charges include:

- the total price to be paid, including all related fees, costs, charges and expenses and any taxes payable via the firm
- if these cannot be indicated at the time, the basis on which they will be calculated should be provided so that the client can verify and clarify them later
- the costs charged by the firm, which must be itemised separately in every case
- if the above are to be paid in foreign currency, what currency is involved and the conversion rates and costs applicable
- if other costs and taxes which are not paid or imposed by the firm could be applicable, the fact that further costs, charges, or taxes may be payable must be stated, and if is so:

    - how the above items are to be paid and/or levied, and
    - information about compensation schemes.

It should be noted that a ECP or a professional could request for details on the costs and charges – this request would be a commercial decision on whether a firm provides this information as there is no regulatory obligation to provide this information.

4.3.1 Timing and Medium of Disclosure

Client information should be provided in good time before the provision of the firm's services. The firm may, however, provide the information immediately after the provision of services if:

a. at the request of the client, the agreement was concluded using a means of distance communication which prevented the firm providing the information beforehand, and
b. the firm complies with the rules in relation to voice telephone communications.

The disclosures must be made in a durable medium or, if the website conditions are satisfied, via the firm's website.

4.3.2 Keeping the Client Up to Date

A firm must notify a client in good time about any material change to the information provided which is relevant to a service which is being provided to that client. This notification must be provided in a durable medium if the information to which it relates was originally provided in a durable medium.

4.3.3 Existing Clients

A firm does not need to treat each of several transactions in respect of the same type of financial instrument as a new or different service. This means that it does not need to comply with the disclosure rules in relation to each transaction. The firm should, however, ensure that the client has received all relevant information in relation to a subsequent transaction, for example, details of product charges, which may differ from those disclosed in respect of a previous transaction.

4.3.4 Compensation Information

A firm which carries on MiFID business must make available to the client who has used or intends to use those services, the information necessary for the identification of the compensation scheme or any other investor compensation scheme of which the firm is a member or any alternative arrangement provided for in accordance with the investor compensation scheme. The information must include the amount and scope of the cover offered by the compensation scheme. If the client so requests, the firm must provide information concerning the conditions governing compensation and the formalities which must be completed to obtain compensation. This information must be provided in a durable medium or via a website if the website conditions are satisfied.

5. Communicating with Clients, including Financial Promotions

2.6 Communicating with Clients, including Financial Promotions

2.6.1 Know the FCA Conduct of Business Rules relating to fair treatment of customers, the application of the rules on communication to clients and on fair, clear and not misleading communications and financial promotions and the additional requirements relating to retail clients in respect of MiFID and Non-MiFID business

---

5.1 The Application of the Rules on Communicating with Clients and the Financial Promotion Rules

The FCA Handbook includes 12 Principles for Businesses (covered in chapter 1, section 2), which all authorised firms must observe. The Principles apply with respect to the carrying on of regulated activities, activities that constitute dealing in investments as principal, ancillary activities in relation to designated investment business, home finance activity, insurance mediation activity and accepting deposits, as well as the communication and approval of financial promotions.

A general theme of overriding fair play runs through the Principles. This is coupled with a recognition that there is often an information imbalance between the firm and its customers (since the firm usually has more expertise in its products and services than its customers).

Where firms are subject to the Consumer Duty, all communications with clients are subject to the overarching Principle (Principle 12), the cross-cutting rules and the 'outcomes'.

With regard to firms not captured by the Consumer Duty, ie, they do not deal with retail consumers, are out of scope or an exemption applies, they are still subject to the FCA's Fair Treat of Customers (FTOC) initiative.

We previously discussed the 'Consumer Duty' and 'FTOC' in chapter 1, section 2).

Firms must have appropriate management information arrangements in place to enable them to monitor their own performance and be able to demonstrate and provide evidence that through their own MI, that they are in fact treating their customers fairly at all stages of the relationship.

In addition, these efforts were underpinned when MiFID (MiFID I) came into force in 2007. This introduced a general obligation that was imposed on firms which required that *'… all firms act honestly, fairly and professionally, and in accordance with the best interests of the client'*.

The MiFID requirement was implemented in the UK through its inclusion in the FCA's Conduct of Business rules (COBS). It may not appear to differ distinctly from the overall impact of the Principles – and indeed if firms comply with all the Principles, they should not, in general, have much difficulty in complying with COBS. However, there are some differences in specific areas.

It is an offence under FSMA for a person to communicate a financial promotion unless:

- the person is an authorised firm, or
- the financial promotion has been approved by an authorised firm.

The rules in COBS 4.1.1 apply to firms communicating with clients regarding their designated investment business. When communicating or approving a financial promotion, certain exemptions apply:

- for qualifying credit, a home purchase plan or a home reversion plan
- a promotion for a non-investment insurance contract
- the promotion of an unregulated CIS (firms are not permitted to communicate or approve such promotions), or
- a financial promotion that relates to a credit agreement, a consumer hire agreement or a credit-related regulated activity.

They also apply to communications to authorised professional firms in accordance with COBS 18 (Specialist Regimes).

In general, the financial promotion rules apply to a firm that carries on business with, or communicates a financial promotion to, a client in the UK (including where this is done from an establishment overseas). The majority of these rules do not apply when the client is an ECP.

5.1.1 The Purpose of the Rules

The purpose of the financial promotion rules is to ensure that promotions are identified as such, and that they are fair, clear and not misleading.

The financial promotion rules are consistent with Principles 6 and 7 of the FCA's Principles for Businesses (PRIN):

- **Principle 6** – a firm must pay due regard to the interests of its customers and treat them fairly.
- **Principle 7** – a firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading.

For firms subject to the Consumer Duty, Principle 12 (Consumer Duty) will apply instead of Principles 6 and 7.

The FCA can remove promotions immediately from the market, or prevent them being launched and/or used in the first place, without having to go through the FCA's enforcement process.

The process involves the following provisions:

- The FCA will give a direction to an authorised firm to remove its own financial promotion or one it approves on behalf of an authorised firm, setting out the reasons for banning it.
- Firms can make representations to the FCA if they think the wrong decision is being made.
- The FCA will decide whether to confirm, amend or revoke the direction. If it confirms its request, the FCA will publish the direction along with a copy of the promotion and the FCA's reasons behind its decision to ban the promotion.

5.1.2 Fair, Clear and Not Misleading

Firms must ensure that all communications relating to designated investment business, including financial promotions, are fair, clear and not misleading.

The way in which this is achieved should be appropriate and proportionate and take into account the means and the type of communication and what information the communication is intended to convey. For example, communications aimed at professional clients may not need to include and/or provide as much detailed information as those aimed at retail clients. An example being that the type and level of information for a professional client can be more detailed and complex; whereas for a retail client, it would be need to be less detailed and clearer.

In connection with communications which are financial promotions, firms should ensure that:

- those which deal with products or services where a client's capital may be at risk make this clear
- those quoting yields give a balanced impression of short-, medium- and long-term prospects for the investment
- if an investment product is, or services charges are, complex, or if the firm may receive more than one element of remuneration, this is communicated fairly, clearly and in a manner which is not misleading and which takes into account the information needs of the recipients
- if the FCA is named as the firm's regulator but the communication also includes matters not regulated by the FCA, that it is made clear that some aspects of the business relationship are not regulated by the FCA (for example, those aspects of the financial promotion do not have to include reference to the FCA), and
- those relating to packaged or stakeholder products not produced by the firm itself, give a fair, clear and non-misleading impression of the producer or manager of the product.

FCA guidance advises that firms may wish to take account of the *Code of Conduct for the Advertising of Interest-Bearing Accounts*, produced by UK Finance and the Building Societies Association (BSA), when they are drafting financial promotions for deposit accounts.

5.1.3 Identifying Promotions

Firms must ensure that financial promotions that they communicate or approve, and which are addressed to clients, are clearly identifiable as such.

There are some exceptions, for example, if the financial promotion is made to a professional client or ECP.

The methods of communication include:

- **real time** – such as face-to-face meetings, telephone conversations, presentations or other interactive dialogue
- **unsolicited real-time** communications, commonly known as 'cold calls'
- **non-real-time** communications, for example, emails, letters or websites, typically where a record is made, and
- **direct offer financial promotions** – these are promotions which make an offer to any person to enter into an agreement and include a form of response or specify the manner of responding.

5.1.4 Sustainability Disclosure Requirements, Investment Label and Anti-Greenwashing

The FCA's anti-greenwashing rule and guidance came into effect in 2024. They apply to all regulated firms when undertaking client communication, marketing or making a statement about the 'sustainability characteristics' of a product or service.

The purpose of the rules is to ensure that such claims are:

- consistent with the sustainability characteristics of the products to services, and
- fair, clear and not misleading.

The requirements apply to all FCA regulated firms, no matter where the communication was developed or written – if it is distributed by a FCA regulated firm to its clients (both retail and professional), then the FCA rules apply.

Client communications include statements, assertions, strategies, targets, policies, information and images.

In its guidance, the FCA notes that sustainability references should be:

- correct and capable of being substantiated
- clear and presented in a way that can be understood

- complete – they should not omit or hide important information and should consider the full life cycle of the product or service, and
- comparisons to other products or services.

The FCA notes in its guidance that there are existing sections of its Handbook that require firms to ensure information client communications is fair, clear and not misleading (the Principles for Businesses, Conduct of Business and Consumer Credit). The FCA further noted that the anti-greenwashing rule is intended to complement and be consistent with these rules, stating that they are not intended to override or substitute any of the rules.

In addition, the FCA noted that it considers the anti-greenwashing rules to be consistent with the Consumer Duty, where firms must act in good faith towards their retail customers.

5.2 Exceptions to the Financial Promotion Rules

2.6 Communicating with Clients, including Financial Promotions

2.6.2 Know: the main exceptions to the financial promotion rules in COBS; the limitations in connection to MiFID business; the existence of the FPO

–

The financial promotion rules are disapplied in certain cases, notably for excluded communications. These are communications which are:

- aimed at high-net-worth individuals (Article 48 of the FPO) and sophisticated investors (Article 50 and 50A of the FPO), or
- exempt under the financial promotion order (FPO). This is an order which makes certain sorts of promotion exempt from the regime if it is communicated by an unauthorised person, or originates outside the UK and cannot have an effect within the UK, or
- from outside the UK, and would be exempt under the FPO if the office from which they are communicated were a separate unauthorised person (even though it is not), or
- subject to (or exempted from) the Takeover Code, and
- one-off promotions that are not cold calls.

However, the exemption for excluded communications does not generally apply in relation to UK MiFID business.

In November 2023 HM Treasury published its consultation response to financial promotion exemptions for high net worth individual and sophisticated investors.

The changes can be summarised as follows:

Requiring businesses to provide details of themselves in any communications made using the exemptions.

- Updating the title of the certified high net worth individual exemption by removing 'certified'.
- Updating the high net worth individual and self-certified sophisticated investor statements.
- Applying these changes to the equivalent exemptions for promotion of collective investment schemes.

The changes noted above came into effect on in 2024, therefore investor statements that complied with the previous requirements are no longer valid.

5.3 The Rules on Prospectus Advertisements

2.6 Communicating with Clients, Including Financial Promotions

2.6.3 Know the rules on prospectus advertisements

–

The section of the COBS rules which deals with communications to clients, COBS 4, does not apply where the prospectus requirements of the Admissions to Trading on a Regulated Market (PRM) rules apply.

PRM 12.1 (Advertisements and other disclosure of information) applies to offers, or admission to trading, of transferable securities in respect of which:

- a prospectus is required, or
- where an election to produce a prospectus has been made under Section 87 of FSMA.

A prospectus advertisement is any type of communication (eg, TV, press, email, letter, text and brochure) which specifically promotes the offer to subscribe or acquire securities.

An advertisement relating to such offers or admissions to trading must not be issued, unless:

1. it states that a prospectus has been (or will be) published, and where investors can obtain it
2. it is clearly recognisable as an advertisement
3. the information in it is not inaccurate, or misleading, and
4. it is consistent with the information that is, or is required to be, in the prospectus.

Any written advertisement falling under these rules must also contain a bold and prominent statement to the effect that it is not itself a prospectus, but an advertisement, and that investors should not subscribe to any transferable securities which it refers to, except on the basis of information in the prospectus.

FCA Finalised Guidance on Financial Promotions on Social Media

The FCA set out how adverts across social media channels must be fair, clear and not misleading, meaning they must have balance and carry the right risk warnings so people can make well-informed financial decisions.

Its finalised guidance for firms was developed many years ago, before the growth of social media and influencers. Social media is now a central part of firms' marketing strategies. Firms are responsible for 'all' their promotions, and the FCA made it clear that firms need to ensure that any influencers they work with communicate to their followers in the right way.

The FCA also noted in its finalised guidance that influencers who promote a financial product without approval from an FCA-authorised person (firm), with the right permission, could be undertaking a criminal offence.

The FCA stated that consumers need to be alert to dubious adverts and scams online, but it is important that influencers ensure they're on the right side of the rules and consider what would happen to their own reputations if they're found to promote products illegally.

The Director of Consumer Investments at the FCA, said:

'Any marketing for financial products must be fair, clear and not misleading so consumers can invest, save or borrow with confidence. Promotions aren't just about the likes, they're about the law. We will take action against those touting financial products illegally. Social media will not always be the best place to promote complex products. Firms need to consider whether a platform that offers limited characters or space is the right place to do so. Scrutiny of financial promotions has been ramped up and last year we removed over 10,000 misleading adverts, up from around 8,500 in 2022.'

Source: *FCA website*

5.4 Approval of Financial Promotions

2.6 Communicating with Clients, Including Financial Promotions

2.6.4 Know the requirement for approving financial promotions and the circumstances of relying on another firm's confirmation of compliance

---

–

It is an offence for an unauthorised person to communicate a financial promotion, unless the promotion is exempt (by virtue of the financial promotion order) or an authorised firm has approved it.

Approving a financial promotion is a formal process set out in the FSMA and reflected in COBS 4.10 rules.

The COBS rules on approval of financial promotions complement requirements under the SYSC. SYSC 3 and SYSC 4 requires a firm which:

- communicates with a client, in relation to designated investment business, or
- communicates or approves a financial promotion, to puts in place systems and controls or policies and procedures in order to comply with the rules on financial promotions.

In 2023, the FCA introduced a 'gateway' for firms that approved financial promotions for third parties. Previously under FSMA only authorised person could approve financial promotions for unauthorised firms. All firms that wished to continue to be able to approve promotions for third parties needed to apply to the FCA for permission to do so. Therefore, firms that did not obtain permission will no longer be permitted to approve financial promotions other than their own.

The outcomes that the FCA are expecting includes firms approving financial promotions to a higher standard, ensuring consumers receive high quality financial promotions that enable them to well-informed and effective financial decisions.

5.4.1 Approving a Financial Promotion

COBS states that, before an authorised firm approves a financial promotion for communication by an unauthorised person (using the 'gateway'), it must confirm that it complies with the financial promotion rules. If, later, it becomes aware that the financial promotion no longer complies, it must withdraw its approval and notify anyone it knows to be relying on that approval as soon as is reasonably practicable. The rules for approving a financial promotion apply in the same way as though the firm was communicating the financial promotion itself.

Firms may not approve real-time financial promotions, that is, financial promotions to be made in the course of personal visits, telephone conversations or other interactive dialogue.

Authorised firms are restricted in the promotion of unregulated collective schemes and so, they may not approve a financial promotion relating to such a scheme unless they would have been able to legitimately promote it for themselves, for example, by way of an exemption or in compliance with certain rules made for this purpose.

If a firm approves a financial promotion for which any of the financial promotion rules are disapplied, it must do so on the terms that its approval is limited to those circumstances. For example, if the approval is for communication to a professional client or ECP, the approval must state this limitation. If an unauthorised person then communicates the promotion outside of the limited approval, they are committing an offence.

5.4.2 Firms Relying on Promotions Approved by Another Party

In relation to non-MiFID business, a firm is not in breach of the rules if it communicates a financial promotion that has been produced by another party and:

- takes reasonable care to establish that another authorised firm has confirmed that the promotion complies with the rules
- takes reasonable care that it communicates it only to the type of recipient that was intended at the time of the confirmation, and
- as far as it is (or should be) aware, the promotion is still fair, clear and not misleading, and has not been withdrawn by the other party.

5.5 Communicating with Retail Clients

2.8 Communicating with Retail Clients

2.8.1 Know: the general rule in connection with communicating with retail clients; the restrictions on the promotion of speculative illiquid securities to retail clients; the rules on past, simulated past and future performance; the rule on financial promotions containing offers or invitations

---

–

Firms must ensure that where they provide information about designated investment business, or issue and/or approve a financial promotion which is likely to be received by a retail client, they adhere to certain rules in COBS. These rules state that the:

- firm's name is included on the communication
- information is accurate and does not emphasise potential benefits without also giving fair and prominent indication of any relevant risks

- information is sufficient for, and presented in a way likely to be understood by, the average member of the group at whom it is directed or by whom it is likely to be received, and
- information does not disguise, diminish, or obscure important items, statements or warnings.

If comparisons are made, they must be meaningful and presented in a fair and balanced way. For MiFID business, the data sources for the comparisons must be cited; in addition, any key facts and assumptions used must also be detailed. If tax treatment is mentioned, firms must explain that any tax treatment will depend on each client's individual circumstances and that it may be subject to change. Information included in financial promotions must be consistent with that provided in the course of carrying on business. These rules are disapplied for third party prospectuses and image advertising. For non-MiFID businesses, they are also disapplied for excluded communications.

In 2020, the FCA implemented temporary rules regarding the promotion of speculative illiquid securities to retail clients.

The FCA brought in these temporary rules to prevent harm to retail clients from investing in higher- risk products that they do not understand and that are unsuitable for them. The new rules prevented the promotion of mini-bonds and preference shares from being marketed to retail investors. It also increased transparency on the disclosure of key risks and costs on marketing to professional clients.

Specific rules related to risk warnings for financial promotions of high-risk investments apply, in particular:

- The promotion of 'Non Mass Market Investments' (NMMI) is banned to retail investors.
- The promotions of 'Restricted Mass Market Investments' (RMMI) are subject to certain restrictions to retail investors.
    - ie, not permitted to non-readily realisable securities and peer-to-peer agreements
- Enhanced requirements in terms of risk warnings (where the customer journey into high-risk investments begins).
- Risk warnings:
    - Stating that investors could lose all of their money invested.
    - Risk Summaries.
    - Prescribed risk summaries – should take no more than two minutes to read.
    - Firms can diverge from this if there are valid reasons for doing so.
- Banning incentives to invest.
    - The ban of monetary or non-monetary benefits (ie, refer a friend or new joiner bonuses)

- Cooling off period:
    - Minimum 24 hour cooling off period for first time investors with a firm.
    - The FCA would like to see that firms apply higher standards than the minimum regulatory standards.
- Personalised risk warnings:
    - Clients ('investors') of a firm must be provided with a personalised risk warning – which must be personalised (ie, it must include the client's name).
- Client categorisation:
    - Retail clients must self-certify they meet the criteria to receive promotions on high-risk investments.
    - Retail clients must provide evidence – why they believe they meet the relevant criteria.
        - ie, a statement on their income/assets, etc.
- Appropriate test:
    - Make the test more robust.
    - Prevent firms from coaching investors to pass the test.
- Record keeping requirements:
    - Additional requirements for firms.
    - Metrics on new client categorisation and appropriateness assessments.

The following Handbook guidance was published by the FCA, applying from 2023:

- Firms must display the name of the approver and date of approval on the financial promotion.
- 'Approvers' must have appropriate levels of competence and expertise in the type of investment/service being promoted.
- 'Approvers' must take an active role in ensuring that the promotion remains compliant while being used.
- 'Approvers' must take reasonable steps to ensure compliance with appropriateness rules through the life of the promotion.
- Enhanced conflict of interest requirements for approvers.
- 'Approvers' must undertake preliminary suitability assessments before NMMIs are promoted to retail investors.

5.5.1 Financial Promotion Rules for Cryptoassets

In September 2023 the FCA published 'final' rules in relation to the financial promotion of crypto assets in the UK, it also published a Finalised Guidance to proposals to assist firms with the requirements and focuses on the key central requirements on the financial promotion rules that all financial promotions are fair, clear and not misleading.

Background

HM Treasury legislated to bring promotions of qualifying cryptoassets within scope of the financial promotion regime.

A 'qualifying cryptoasset' is any 'cryptographically' secured digital representation of value or contractual rights that is transferable and fungible, but does not include cryptoassets which meet the definition of electronic money or an existing controlled investment.

HM Treasury amended the following activities related to the buying and selling of investments to include reference to qualifying cryptoassets. Therefore, invitations or inducements to engage in these activities in relation to cryptoassets will be within scope of the financial promotions regime:

- dealing in securities and contractually based investments
- arranging deals in investments
- managing investments
- advising on investments, and
- agreeing to carry on specified kinds of activity.

The Government has introduced a bespoke exemption in the FPO for cryptoasset businesses registered with the FCA under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ('MLRs'). This exemption enables cryptoasset businesses which are registered with the FCA under the MLRs, but which are not authorised persons , to communicate their own cryptoasset financial promotions to UK consumers.

There will be four routes to legally promoting cryptoassets to consumers:

1. The promotion is communicated by an authorised person.
2. The promotion is made by an unauthorised person but approved by an authorised person. Legislation is currently making its way through the UK Parliament which, if made, would introduce a regulatory gateway that authorised firms will need to pass through to approve financial promotions for unauthorised persons.
3. The promotion is communicated by (or on behalf of) a cryptoasset business registered with the FCA under the MLRs in reliance on the exemption of the FPO.
4. The promotion is otherwise communicated in compliance with the conditions of an exemption in the FPO).

The FCA consulted on, and is taking forward, the approach that cryptoassets will be classified as 'Restricted Mass Market Investments', meaning that they would be permitted to be mass marketed to UK consumers subject to certain restrictions.

The restrictions include the following:

- Clear risk warnings
    - associated risk warnings – general and personalised.
- Banning incentives to invest.
- Positive frictions
    - cooling off period (24 hours)
    - direct offer financial promotion rules
    - client categorisation requirements, and
    - self-certified sophisticated investor category will not be applied.
- Appropriate assessments.

Source: *FCA Website (Conduct of Business Sourcebook)*

5.6 Past, Simulated Past and Future Performance

5.6.1 Past Performance

Firms must ensure that information including indications of past performance is such that:

- the past performance is not the most prominent feature
- it covers at least the immediately preceding five years (or the whole period for which the investment has been offered, and/or the financial index has been established, and/or the service has been provided if this is less than five years); in any event, it must show complete 12-month periods
- reference periods and relevant sources are clearly shown
- there is a clear and prominent warning that the data and/or figures refer to the investment's past performance and that past performance is not a reliable indicator of future results
- if the figures are in a currency other than sterling, the currency is stated and there is a warning about the possible effects of currency fluctuations, and
- if the performance is cited gross, that the effects of commissions, fees, tax and other charges are disclosed.

5.6.2 Simulated Past Performance

When firms give figures based on simulated (ie, notional, not having taken place in reality) past performance because the product or service does not have a track record, a firm must ensure that the simulated past performance figures:

1. relate to an investment or financial index
2. are based on the actual past performance of one or more investments and/or indices which are the same as, or underlie, the investments being simulated
3. meet the rules set out in relation to past performance (except for the statement that they relate to that investment's past performance, since they do not), and
4. contain a prominent warning that they relate to simulated past performance and that past performance is not a reliable indicator of future performance.

5.6.3 Future Performance

Firms must ensure that information containing an indication of the possible future performance of relevant business, a relevant investment, a structured deposit or a financial index:

- is not based on, or does not refer to, simulated past performance
- is based on reasonable assumptions supported by objective data
- if it is based on gross performance, discloses the effects of commissions, fees, tax and or other charges, and
- contains a prominent warning that such forecasts are not reliable indicators of future performance.

Source: *FCA Website (Conduct of Business Sourcebook)*

5.7 Direct Offers or Invitations

Direct offer promotions, those making a direct offer or invitation, for example, those detailed in a newspaper, trade magazine or in direct mail, likely to be received by a retail client must contain:

- prescribed information about the firm and its services
- if relevant, prescribed information about the management of the client's investments
- prescribed information about the safekeeping of client investments and money
- prescribed information about relevant costs and charges
- prescribed information about the nature and risks of any relevant designated investments, including information about taxation, where relevant
- a statement that a prospectus has been published and is available in accordance with the Prospectus Regulation

- if a designated investment combines two or more investments or services, which results in greater risk than those risks associated with a single component, an adequate description of those components and how the increased risk arises, and
- if a designated investment incorporates a third-party guarantee, enough detail for the client so that they can make a fair assessment of it.

The above need not be included, however, if the client is able to refer to another document containing this information, in order to respond to the offer.

The offer should include a statement that the recipient should seek a personal recommendation if they are unsure about the suitability of the investment or service being promoted.

5.8 Unwritten Promotions and Cold Calling

2.9 Cold Calls and Other Promotions that are not in writing

2.9.1 Know the rules on: unwritten promotions and the restriction on cold calling; financial promotions for overseas persons

---

5.8.1 Unwritten Promotions

A firm must not initiate an unwritten promotion to a particular person outside its premises, unless the individual:

- does so at an appropriate time of day
- identifies themselves and their firm at the outset and makes the reason for the contact clear
- gets clarification of whether the client would like to continue with the communication or terminate it (and does so if requested), and
- gives the client a contact point, if an appointment is arranged.

5.8.2 Unsolicited Real-Time Communications (Cold Calling)

'Cold calling' is the common term that refers to the practice of authorised persons or exempt persons contacting people without a prior appointment with a view to communicating a financial promotion to them.

Firms must not cold call unless:

- the recipient has an existing client relationship with the firm and would envisage, or would expect to receive such a call
- the call relates to a generally marketable packaged product, which is neither a higher-volatility fund, nor a life policy linked to such a fund, or

- it relates to a controlled activity relating to a limited range of investments, including deposits and readily realisable investments other than warrants or generally marketable non-geared packaged products.

5.8.3 Overseas Persons

Firms are not permitted to communicate or approve financial promotions for overseas firms, unless the promotion sets out which firm has approved and/or communicated the promotion, and (if relevant) explains:

- that the rules for the protection of investors will not apply
- the extent to which the UK compensation scheme arrangements will be available (and if they will not, that fact), and
- if the communicator wishes to do so, the details of any overseas compensation and/or the deposit protection scheme applicable.

The firm must not communicate and/or approve the promotion unless it has no doubt that the overseas firm will deal with its UK retail clients honestly and reliably.

6. Retail Clients

2.7 Retail Clients

2.7.1 Understand the four elements of Consumer Duty

2.7.2 Know obligations related to the Fair Treatment of Customers (FTOC) for firms outside of the scope of the Consumer Duty

---

–

Chapter 1, section 2 explained the FCA's Principles for Businesses, including the scope and application of the Consumer Duty and also the application of FTOC for firms not subject to the Consumer Duty.

Therefore, the requirements set out in learning objectives 2.7.1 and 2.7.2 are covered in section 2 of chapter 1.

7. Advising and Selling Standards

7.1 The Application of the Rules on Suitability

2.10 Suitability

2.10.1 Understand the purpose of the suitability rules and the requirement for assessing suitability

---

The COBS rules on the suitability requirements apply when firms:

- make personal recommendations (investment advice) relating to designated investments, including recommendations or advice on whether a client should buy, hold or sell a particular financial instrument
- managing investments on behalf of a retail client, and
- managing the assets of an occupational pension scheme, stakeholder pension scheme or personal pension scheme, other than in relation to the firm's MiFID, equivalent third-country or optional exemption business.

There are specific rules relating to the provision of basic advice (personal recommendations on stakeholder products); firms may, if they choose, apply these stakeholder rules instead of the more general rules on suitability when advising on stakeholder products.

For non-MiFID business, the rules only apply to:

- retail clients, or
- where the firm is managing the assets of an occupational, stakeholder or personal pension scheme, other than in relation to any MiFID, equivalent third country or optional exemption business carried out by a firm.

The suitability rules exist to ensure that authorised firms take reasonable steps to ensure that personal recommendations (or decisions to trade) are suitable for their clients' needs.

When a firm makes a personal recommendation, provides investment advice, or is managing a client's investments, it should obtain the necessary information regarding the client's:

- knowledge and experience in the investment field relevant to the specific type of designated investment business being offered to the client
- financial situation, including the client's ability to bear losses, and
- investment objectives and the present risk profile of the clients.

This enables the firm to make the recommendations, or take the decisions, which are suitable for the client.

The suitability requirements, under UK MiFID, are not just limited to the provision by a firm of a personal recommendation to buy a financial instrument, but also extend to capture all decisions whether to trade, including any personal recommendations made to a client on whether to buy, sell or take no action (continue to hold) an investment.

Firms providing portfolio management services act under a mandate agreed with the client which permits the firm to carry out discretionary investment services. Firms providing portfolio management services are required to undertake a suitability assessment ahead of making a personal recommendation or providing investment advice, the nature of which will require the client to alter that mandate. Furthermore, firms that have an ongoing relationship with clients, such as those providing portfolio management services, are required to maintain up-to-date information about the client.

When assessing suitability, firms are required to have policies and procedures in place to ensure that they understand the nature, features (including costs and risks) of instruments selected for clients and that enable the firm to assess whether or not any equivalent financial instruments could meet the client's demands and needs.

The FCA expects firms to:

- consider if their incentive schemes increased the risk of misselling and, if so
- review whether their governance, systems and controls were adequate, and
- take action to address any inadequacies.

The FCA identified common areas where firms may need to do more to manage incentive risks effectively, in particular:

- checking for spikes or trends in the sales patterns of individual advisers in order to identify areas of increased risk
- doing more to monitor poor sales practices in face-to-face sales conversations
- managing the risks in discretionary incentive schemes and balanced scorecards, including the risk that discretion could be misused
- monitoring non-advised sales to ensure staff who are incentivised to sell do not give personal recommendations
- improving oversight of incentives used by appointed representatives, and
- recognising that remuneration which is effectively 100% variable pay, based on sales, increases the risk of misselling and increases the difficulty of managing this risk.

Source: *FCA Website (Conduct of Business Sourcebook)*

7.2 Information Required to Make a Suitability Assessment

2.10 Suitability

2.10.2 Understand the information which a firm must obtain from a client in order to make a suitability assessment; the guidance on assessing suitability

---

In relation to MiFID investment business, if a firm provides investment advice or portfolio management services, MiFID II requires the firm to obtain information:

- in respect of the client's knowledge and experience in the investment field that is relevant to the specific type of financial instrument
- about the client's financial standing, including the client's ability to bear losses, and
- about the client's investment objectives and risk appetite.

In order to carry out a suitability assessment, a firm should gather enough information from its client to understand the essential facts about them ('fact-finding'). It must have a reasonable basis to believe that (bearing in mind its nature) the service or transaction:

- meets their investment objectives
- carries a level of investment risk which the client can bear financially, and
- carries risks that the client has the experience and knowledge to understand.

In terms of assessing the client's knowledge and experience, the firm should gather information on:

- the types of service, transaction and investment with which they are familiar
- the nature, volume, frequency and period of their involvement in such transactions and/or investments, and
- their level of education, profession or relevant former profession.

Firms must not discourage clients from providing this information, because the risk of laying out a particular transaction may result in the risk of the firm not providing the client with the most appropriate advice and the resultant risk of a loss of business to the firm. The firm is, however, entitled to rely on the information the client provides, unless it is manifestly out of date, inaccurate or incomplete.

If a firm does not obtain the information it needs to assess suitability in this way, it must not make a personal recommendation to the client or take a decision to trade for them.

Source: *FCA Website (Conduct of Business Sourcebook)*

7.3 Assessing Suitability – Professional Clients

2.10 Suitability

2.10.3 Know the application of the assessing suitability rules for professional clients

---

A firm is entitled to assume that a professional client (per se and elective professional clients) in respect of UK MiFID has the necessary experience and knowledge in that area. A firm is entitled to assume that a per se professional client is able to financially bear any related investment risks consistent with their investment objectives.

However, firms are not permitted to make this same assumption for elective professional clients.

7.4 Churning and Switching

2.10 Suitability

2.10.4 Understand the application of the rules on churning and switching for MiFID and non-MiFID business

---

'**Churning**' is the activity of over-dealing or trading more frequently for a client in order to generate additional fees or commissions for the firm. It is relevant where, for example, a firm manages a client's portfolio on a discretionary basis.

'Switching' is the activity of selling one investment and replacing it with another.

The FCA's guidance on switching is contained in the COBS rules on suitability. It states that, in the context of assessing suitability, a series of transactions that look suitable in isolation may not be so if the recommendations and/or the trading decisions to make them are so frequent as to be detrimental to the client.

Firms should bear in mind the client's investment strategy when determining how frequently they should deal for them, including determining whether or not it is suitable to switch between packaged products.

7.5 The Suitability Report

2.10 Suitability

2.10.5 Know: the obligation to provide a retail client with a suitability report for MiFID business and non-MiFID business; the timing and contents of a suitability report for MiFID business and non-MiFID business; relevant guidelines for dealing with insistent clients

---

MiFID II extends the requirements under suitability to provide a suitability report to retail clients where a firm provides any investment advice, which now equates to a personal recommendation.

A firm must provide a client with a suitability report if it makes a personal recommendation. This applies to any investment advice to acquire or sell any investment including:

- equities
- derivatives
- structured products, and
- unregulated collective investments.

The requirement also applies to those products that were covered under the previous regime (ie, MiFID) if the recommendation is to:

- acquire a holding in, or sell all or part of a holding in:
    - a regulated CIS
    - an investment trust, where the shares have been or are to be acquired through an investment trust savings scheme, or
    - an investment trust where the shares are to be held in an ISA which has been promoted as the means for investing in one or more specific investment trusts
- buy, sell, surrender, convert or cancel rights under, or suspend contributions to, a personal pension scheme or a stakeholder pension scheme
- elect to make income withdrawals or purchase a short-term annuity, or
- enter into a pension transfer or pension opt-out.

A firm must also provide a suitability report if it makes a personal recommendation in connection with a life assurance policy. There are some exceptions to the requirement to provide a suitability report:

- if a firm, acting as investment manager for a retail client, makes a personal recommendation in connection with a regulated CIS
- if the client is habitually resident outside the UK or is not present in the UK at the time of acknowledging consent to the proposal form to which the personal recommendation relates

- if the personal recommendation is made by a friendly society in connection with a small life policy sold by it, with a premium not exceeding £50 a year or (if payable weekly) £1 a week
- if the personal recommendation is to increase a regular premium to an existing contract, or
- if it is to invest additional single premiums or single contributions to an existing packaged product, to which a single premium or single contribution has previously been paid.

In terms of timing, a suitability report must be provided:

- in connection with a life policy, before the contract is concluded – unless the necessary information is provided orally, or cover is required immediately (in which case the report must be provided in a durable medium immediately after the contract is concluded)
- in connection with a personal pension scheme or a stakeholder pension, if the cancellation rules apply, within 14 days of concluding the contract, or
- in any other case, before the transaction is concluded unless the agreement is concluded using a distant marketing communication and if the client consents as soon as possible after the transaction is effected or executed.

The suitability report must, at least, specify the client's demands and needs, explain any possible disadvantages in relation to the transaction for the client and explain why the firm has concluded that the recommended transaction is suitable for the client, having due regard to the information provided by the client.

If the transaction is the sale of a life policy by telephone and the only contact between the firm and client before the contract is concluded is by telephone, the suitability report must:

- comply with the Distance Marketing Directive (DMD) rules
- be provided immediately after conclusion of the contract, and
- be in a durable medium.

Source: *FCA Website (Conduct of Business Sourcebook)*

7.6 Dealing with Insistent Clients

An insistent client is defined as being one where:

- the firm has given the client a personal recommendation
- the client decides not to enter into a transaction and/or enter into a transaction which is different from that recommended by the firm in the personal recommendation, and
- the client wishes the firm to facilitate the transaction.

Information that Should be Communicated to an Insistent Client

When a firm executes a transaction for an insistent client which is not in accordance with the personal recommendation given by the firm, they should communicate to the insistent client, in a way which is clear, fair and not misleading, and having regard to the information needs of the insistent client so that the client is able to understand the information.

The information which the firm should communicate to the insistent client is:

- that the firm has not recommended the transaction and that it will not be in accordance with the firm's personal recommendation
- the reasons why the transaction will not be in accordance with the firm's personal recommendation
- the risks of the transaction proposed by the insistent client, and
- the reasons why the firm did not recommend that transaction to the client.

7.7 The Application of the Rules on Appropriateness (Non-Advised Sales)

2.11 Appropriateness (Non-Advised Services)

2.11.1 Know the: obligations for assessing appropriateness for MiFID and non-MiFID business; circumstances in which it is not necessary to assess appropriateness for MiFID business and non-MiFID business

---

The rules on non-advised sales apply to a range of MiFID (and some non-MiFID) investment services which do not involve advice or discretionary portfolio management. Specifically, they apply to firms:

- providing MiFID investment services, other than the provision of personal recommendations or the managing of investments (because these services are already covered by suitability rules)
- arranging deals, or dealing, in warrants and derivatives for retail clients, where the firm is, or should be, aware that the client's application or order is in response to a direct offer financial promotion, or
- which assess appropriateness on behalf of other UK MiFID firms.

The purpose of the appropriateness test is to provide a degree of protection for non-advised transactions.

7.7.1 The Obligation to Assess Appropriateness (Non-Advised Sales)

When a firm provides one of the above services, it must ask the client for information about their knowledge and experience in relation to the investment field of the specific type of product or service offered by the firm and/or requested by the client, so that the firm can assess whether the product, or service is appropriate.

In assessing appropriateness, the firm:

- must determine whether the client has the experience and knowledge to understand the risks involved, and
- may assume that a client, classified as a professional client for certain services, or products, has the necessary knowledge and experience in that field for which it is classified as a professional client.

In terms of a client's knowledge and experience, a firm should obtain information (to the extent appropriate to the circumstances) on:

- the types of service, transaction, or investment with which they are familiar
- the nature, volume, frequency and period of their involvement in such transactions and/or investments, and
- the level of education, profession or relevant former profession, as long as the firm continues to be satisfied that the information it has in its possession is still up to date.

The firm must not discourage a client from providing this information.

A firm is entitled to rely on information provided by a client unless it is aware that the information is out of date, inaccurate or incomplete. A firm can use information it already has in its possession. A firm may satisfy itself that a client's knowledge alone is sufficient for them to understand the risk involved in a product or service. Where reasonable, a firm may infer knowledge from experience.

7.7.2 The Obligation to Warn Clients

If a firm believes, based on the above assessment, that the product or service contemplated is not appropriate for the client, it must warn the client of that fact. It may do so in a standardised format.

In addition, if the client declines to provide the information the firm needs to assess appropriateness, the firm must warn them that it is unable to assess the product and/or service's appropriateness for them (and again it may do so in a standard format). If the client then asks the firm to proceed regardless, it is up to the firm to decide whether to do so based on the circumstances.

7.7.3 Circumstances when Assessment is Unnecessary

Firms are not required to ask clients to provide information or assess appropriateness if:

- the service is execution-only, or for the receipt and transmission of client orders, in relation to particular financial instruments, and is at the client's initiative, and
- the client has been clearly informed that the firm is not required to do so in this particular case, and the client will therefore not get the benefit of the protection afforded under the rules on assessing suitability, or
- the firm complies with its obligations regarding conflicts of interest. In addition, it should also be remembered that Principle 8 of the Principles for Businesses states that:

  'a firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client'.

The particular financial instruments are:

- shares listed on a UK or EEA regulated market or an equivalent third country market
- money market instruments, bonds or other forms of securitised debt (provided they do not have embedded derivatives)
- holdings in UCITS funds, and
- other investments meeting a definition of non-complex investments.

A financial instrument is classed as 'non-complex' if:

- it is not a derivative
- there is sufficient liquidity in it
- it does not involve liability for the client which exceeds the cost of acquiring the investment, or
- it is publicly available and there is comprehensive information available on it.

Detailed requirements are noted in FCA COBS 10A.4.1.

Firms do not need to reassess appropriateness each time if a client is engaged in a series of similar transactions or services, but the firm must do so before beginning to provide a new service. If a client was engaged in a course of dealings of this type before MiFID came into effect in 2007, the firm would have been able to assume that the client had the necessary experience and knowledge to understand the risks. (Note this does not mean, however, that the other criteria may necessarily be deemed to have been met.)

Source of information: *FCA Website (Conduct of Business Sourcebook)*

8. Product Disclosure and the Right to Cancel

8.1 The Purpose and Nature of the Rules

2.12 Product Disclosure and the Client's Right to Cancel

2.12.1 Know the purpose of the rules on the sale of packaged products to retail clients; the rules requiring the provision of key features to retail clients; the main features to be explained in the key features; the information about financial instruments (MiFID provisions)

The main purpose of the product disclosure requirements is to ensure that clients are provide with sufficient and relevant information, in order that they are be able to make a decision on whether to undertake an investment – either recommended to them by a firm or on their own research.

Therefore, for certain investment products or services, firms must provide sufficient information to clients.

8.1.1 Key Investor Information Documents (KIIDs)

Authorised fund managers (AFMs) who manage UCITS schemes must produce a key investor information document (KIID).

The KIID must be fair, clear and not misleading, and be consistent with relevant parts of the scheme's prospectus.

It must include appropriate information about the essential characteristics of the UCITS scheme to be provided to investors, enabling investors to reasonably understand the nature and risks of the investment product being offered to them and, therefore, make investment decisions based on an informed choice.

In addition, the firm must provide information on the following essential elements in respect of the UCITS scheme:

a. Identification of the scheme.
b. A short description of its investment objectives and investment policy.
c. A presentation of past performance, or where relevant, performance scenarios.
d. Costs and associated charges.
e. A risk and reward profile of the investment, including appropriate guidance and warnings in relation to the risks associated with the scheme's investments.

KIIDs cover the terms and features of a product in a prescribed level of detail. The exceptions are:

- where another firm has agreed to prepare such a document
- KIIDs are not needed for certain types of schemes, but in some cases information is also not required because it is already provided in enough detail in another document, or
- there are some specific rules for reinsurance and pure protection insurance contracts.

8.1.2 Key Features Documents (KFDs)

The rules on product disclosure requires that a firm prepares a disclosure document, in good time before it needs to, in respect of:

- each packaged product
- cash deposit ISA
- cash deposit child trust fund (CTF), and
- a key features illustration for each packaged product it produces.

Firms must provide particular information on the nature and risks of designated investments to clients for whom they undertake MiFID business. They must also do so for retail clients in relation to certain other business.

8.1.3 Packaged Retail and Insurance-based Investment Products (PRIIPs)

The regulation on key information documents (KIDs, simple documents giving key facts to investors in a clear and understandable manner) for packaged retail and insurance-based investment products (PRIIPs) introduces a KID covering not only collective investment schemes (CISs), but also other 'packaged' investment products offered by banks or insurance companies.

The 'KID' is a simple document giving key facts to investors in a clear and understandable manner, covering not only collective investment schemes, but also other 'packaged' investment products offered by banks or insurance companies.

The aim of the PRIIPs legislation is to help investors to better understand and compare the key features, risks, rewards and costs of different PRIIPs, through access to a short and consumer-friendly KID.

UCITS already has its own KIID and KFD, as noted above in sections 8.1.1 and 8.1.2 of this chapter; they will be subject to a five-year exemption period following the implementation of PRIIPs (the extension period expires on 31 December 2026).

The scope of PRIIPs are distinguished by the broadly comparable functions they perform for retail investors. They typically provide exposure to multiple underlying assets, deliver capital accumulation over a medium- to long-term investment period, entail a degree of

investment risk (although some may provide capital guarantees), and are normally marketed to retail investors.

They can be categorised into four groups:

1. investment funds
2. insurance-based investment products
3. retail-structured securities, and
4. structured term deposits.

Who will it Affect?

The regulation applies to firms that:

- manufacture PRIIPs, and
- advise on/sell PRIIPs.

A PRIIP manufacturer (or anyone who changes an existing PRIIP, such as a distributor) is required to:

- prepare a KID for each PRIIP that they produce, or
- publish each KID on their website.

A person who advises a retail investor on a PRIIP or sells a PRIIP to a retail investor must provide the retail investor with a KID in good time before any transaction is concluded.

Therefore, the regulation would apply to:

- retail investment product providers
- life companies
- discretionary investment management firms
- firms providing services in relation to insurance-based investments
- fund managers
- stockbrokers and other firms that provide advice to retail clients on funds, structured products and derivatives
- financial advisers, and
- firms operating retail distribution platforms.

As the regulation only applies where the PRIIP is made available to retail investors, the definition of a 'retail client' is important. In this context, the term 'retail client' relates to:

- retail clients as defined in the MiFID, or
- customers as referred to in the Insurance Distribution Directive (IDD), where they would not qualify as professional clients under MiFID.

Key Information Documents (KIDs)

The PRIIPs Regulation requires that a KID is a stand-alone, standardised document prepared for each investment. A KID can be up to a maximum of three A4 pages.

Each KID will need to contain the following information, presented in a pre-determined sequence of sections. The sections are as follows:

- What is this product?
- What are the risks and what could I get in return?
- What happens if [name of the PRIIP manufacturer] is unable to pay out?
- What are the costs?
- How long should I hold it and can I take money out early?
- How can I complain?
- Other relevant information.

The Regulation outlines the layout of the KID. The RTSs contain detailed rules on:

- the content and presentation of the KID
- how to calculate some of the information in the KID
- the review, revision and republication of the KID, and
- the timing of delivery of the KID.

Source of information: *FCA Website (Conduct of Business Sourcebook)*

8.2 Cancellation and the Right to Withdraw

Cancellation rights must be provided to retail customers when they transact investment business with a firm. In this respect, the rules on cancellation apply to:

- firms providing retail financial products based on designated investments or deposits, and
- firms entering into distance contracts with consumers, relating to deposits or designated investments.

The cancellation rights and rights to withdraw are intended to ensure that clients entering into the relevant range of investment transactions have the opportunity to reconsider their decision within a certain period of time and are able to cancel the transaction if they change their minds. When a consumer does so, the effect is that the contract is terminated.

In summary, the cancellation periods are:

- **life and pension products** – 30 calendar days
- **cash deposit Individual Savings Accounts (ISAs)** – 14 calendar days
- **non-life and pensions products (advised, non-distance contracts)** – 14 calendar days, and
- **non-life and pensions products (distance contracts)** – 14 calendar days.

For example, should a client who receives a cancellation notice in respect of an advised purchase of an authorised unit trust (AUT) or OEIC wish to exercise their right to cancel, they must do so within 14 days.

The cancellation period starts either from the day the contract concludes, or from the day the client receives contractual information, if this is later.

If cancellation rights apply, firms must tell consumers of their rights in good time before (or where that is not possible, immediately after) the consumer is bound by the contract; and they must do so in a durable medium. They must tell the consumer of:

- the existence of the cancellation/withdrawal right
- its duration
- the conditions for exercising it (including information on any amount the consumer may have to pay)
- what happens if they do not exercise it, and
- practical details of how to exercise it, including the address to which they must send any notification.

A firm need not do this if the consumer is already receiving similar information from it, or another person, under the COBS rules (distance marketing disclosures rules and providing product information).

If a consumer exercises the right to cancel, they must notify the firm; the notification is deemed to have been observed if it is dispatched before the deadline expires. The consumer does not need to give any reason for cancelling.

The record-keeping retention period is:

- indefinitely for pension transfers, pension opt-outs or free-standing additional voluntary contributions (FSAVCs)
- at least five years in relation to a life policy, pension contract, personal pension scheme or stakeholder pension scheme, or
- at least three years in any other case.

Where a client evokes the cancellation rights, they may not get back the amount that they invested or used to purchase a product. For instance, if they invested into a collective investment scheme (unit trust or a UCITS fund), then they will receive back the proceeds following the sale of their holding – which will be impacted by the price movement of the fund's underlying holdings.

Source of information: *FCA Website (Conduct of Business Sourcebook)*

9. Conflicts of Interest

2.13 Conflicts of Interest

2.13.1 Know the rules on managing conflicts of interest; common methods; contents of conflicts policy

---

9.1 The Principles and Rules on Conflicts of Interest

Principle 8 of the FCA's Principles for Businesses state:

'A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client'.

The rules on conflicts of interest are specified in SYSC. They apply to both **common platform firms** in respect of regulated business and for ancillary services which constitute MiFID business, as well as to non-MiFID firms and business.

They require that firms take all appropriate steps to identify, prevent and/or manage conflicts of interest between:

- the firm, including its managers, employees, appointed representatives/tied agents and parties connected by way of control and a client of the firm, and
- one client of the firm and another.

The types of conflicts of interests which may arise include:

- realising a financial gain, or avoiding a financial loss, at the expense of a client
- having an interest in the outcome of a service or transaction that is distinct from the client's interest
- having an incentive to favour one client over others
- carrying on the same business as the client, and
- receiving inducements from someone other than the client, which are over and above the standard commission or fee.

Firms under these obligations should:

- maintain and operate effective organisational and administrative arrangements, designed to prevent conflicts of interest from adversely affecting the interests of their clients, and
- for those producing externally facing investment research, have appropriate information systems and controls in place, and barriers to stop information from these research activities from flowing to the rest of the firm's business.

If a conflict arises, and it cannot be managed, the conflict of interest must be disclosed to the client before undertaking business for the client – let the client decide if they wish to continue with the relationship with the firm. The disclosure must be in a durable medium and be in sufficient detail to allow the client to make an informed decision as to the provision of the service. Note that disclosure alone is insufficient to meet the rules; the firm's arrangements should be designed to prevent conflicts arising in the first place. The firm must:

- prepare, maintain and implement an effective conflicts policy
- provide retail clients and potential retail clients with a description of the conflict of interest policy, and
- keep records of those of its activities where a conflict has arisen.

One type of organisational arrangement for controlling information is to establish 'information barriers' (sometimes referred to as 'Chinese walls'). This is the term given to arrangements whereby information held by an employee in one part of the business is withheld from (or, if this is not possible, at least not used by) the people with or for whom they act in another part of the business.

If a firm establishes and maintains an 'information barrier' it must:

- withhold or not use the information held, and
- for that purpose, permit its employees in one part of the business to withhold the information from those employed in another part of the business but only to the extent that at least one of those parts of the business is carrying on regulated activities or another activity carried on in connection with a regulated activity.

The requirement to maintain information barriers includes taking reasonable steps to ensure that these arrangements remain effective and are adequately monitored.

Example

When a firm establishes and maintains information barriers, it allows the persons on one side of the wall (eg, corporate finance) to withhold information from persons on the other side of the wall (eg, the equity research and/or the market-making arm).

The purpose and effect of the 'information barrier' rule is that the corporate finance department may have plans for a company which will change the valuation of that company's shares. The equity research and/or market-making arm on the other side of the wall should have no knowledge of these plans. The 'information barrier' may be erected to separate and isolate those who make investment decisions from those who are privy to confidential information that could influence the investment decision process, and will therefore avoid sensitive investment information being released into the firm and/or the market until it is necessary, or acceptable to do so. The inability to pass this knowledge on to clients is not seen as a failure of duty to their clients.

9.2 Disclosing Conflicts

When the arrangements that a firm puts in place to prevent or manage potential conflicts of interest are not sufficient to ensure, with reasonable confidence, that the risk of damage to the interest of a client will be prevented, the firm must clearly disclose the general nature and/or source of conflicts of interest to the client before undertaking business for/on behalf of the client. Therefore, the disclosure of a conflict of interest should only be undertaken as a last resort if the firm's internal controls (preventing and/or managing conflicts) will not satisfy the risk of material damage to the client's best interests. Disclosure therefore allows the client to decide if they wish to continue with the service from the firm.

Disclosure must be made in a durable medium and include sufficient detail, taking into account the nature of the client, to enable that client to take an informed decision with respect to the service in the context of which the conflict of interest arises.

Common platform firms should aim to identify and manage the conflicts of interest arising in relation to their various business lines and, when applicable, their group's activities, under a comprehensive conflict of interest policy. The disclosure of conflicts of interest should not exempt firms from the obligation to maintain and operate effective organisational and administrative arrangements under SYSC 10.1.3.

While disclosure of specific conflicts of interest is required under SYSC 10.1.8, an over-reliance on disclosure without adequate consideration as to how conflicts may appropriately be managed is not permitted.

9.3 Conflicts of Interest Policies

As noted in section 9.1 of this chapter, firms are required to have in place effective arrangements for preventing and managing conflicts of interest. Specifically, the rules require firms to have a written conflicts of interest policy which is appropriate to the scale and nature of their business activity.

If a firm is a member of a larger group, the policy should take into account any potential conflicts arising from the structure and/or the business activities of other members of that group.

Firstly, the policy needs to set out the circumstances which may give rise to a conflict, paying particular attention to circumstances where a person performs two or more roles in relation to (for example) investment research and advice, proprietary trading, portfolio management and corporate finance business.

Secondly, the policy needs to state the processes and procedures for preventing and/or managing such conflicts. These procedures should cover:

- control of information to prevent the exchange of information which may harm the interest of one or more clients

- separate supervision of persons who are engaged in activities for different clients whose interests may conflict with each other or those of the firm
- removal of any direct link between remuneration of individuals whose activities may give rise to conflicts
- measures to prevent or limit one person exercising inappropriate influence over another, and
- measures to control an individual's involvement in a series of activities which may give rise to a conflict.

For corporate finance firms who are managing an offering of securities, the policy needs to have particular regard to the offering process (for example, whether the firm might place securities with its investment clients or with its own proprietary book); and it should include specific detail on arrangements for allocation and pricing.

9.4 Investment Research and Research Recommendations

2.13 Conflicts of Interest

2.13.2 Know the rules on managing conflict in connection with investment research and research recommendations

---

There are particular conduct of business rules for managing conflicts of interest when a firm produces investment research. Investment research is information recommending or suggesting an investment strategy, including opinion as to the present or future value, or price of the investments, and is intended for distribution to the public as opposed to just for use within the firm or the firm's group. It has to be clearly labelled as investment research and presented as an objective or independent explanation of the matters which are the subject of the research. It must not be presented by the investment firm in such a way that it constitutes a personal recommendation to a client.

In contrast, investment recommendations are captured under UK MAR, they relate to short-term trade ideas or trading strategies that are provided to one or more clients of firms.

9.4.1 Measures and Arrangements

If a firm produces investment research, it must implement all the measures in relation to managing conflicts of interest set out in SYSC 10.1.11R in relation to the financial analysts involved in producing research, and other relevant persons, particularly if their interests may conflict with those to whom it is disseminated. The arrangements must be such that they prevent dealing ahead, by ensuring that:

- financial analysts and other relevant persons, who know the likely timing or content of investment research which is not yet publicly available or available to

clients and which cannot be inferred from information that is available, do not undertake personal transactions, or trade for others, until the recipient of the investment research has had a reasonable opportunity to act on it. There are certain exceptions, for example, the receipt of an instruction from an execution-only client or a market maker acting in good faith
- in any event, they do not undertake personal account transactions in the investments to which the research relates, without prior approval from the firm's compliance or legal department and then only in exceptional circumstances
- the firm and any person involved in the production of research do not accept inducements from those with a material interest in the subject matter of the research
- they do not promise issuers favourable research coverage, and
- if draft investment research includes a recommendation or target price, no one other than financial analysts may review the draft, other than for the purpose of verifying compliance with the firm's legal obligations.

The firm does not have to comply with the rules on conflict of interest, or with the above arrangements, if it is disseminating investment research on behalf of another person. That is, so long as:

- that person is not in the same group as the firm
- the firm does not substantially amend the research
- the firm does not hold itself out as having produced the research, and
- the firm verifies that the person who has produced the research is subject to the conflicts of interest requirements and the rules on the above arrangements, or has established a policy covering these requirements.

The rules are different if a firm produces non-independent research, which is not presented as objective or independent, and is accordingly considered as marketing communication. This research would, therefore, not comply with the conditions to ensure that it is independent. In this case, research is treated as a financial promotion and the rules of COBS 4 apply. Additionally, the research must include the following aspects:

- It is clearly identified as a marketing communication.
- It contains a clear and prominent statement that it has not been prepared in accordance with the requirements for the independence of investment research and that it is not subject to the prohibitions on dealing ahead that apply to investment research.

There is a high-level requirement to take reasonable steps to identify and manage conflicts of interest which may arise from the production of non-independent research; for example, research that is intended firstly for internal use by the firm and then later publication to clients. Firms which prepare or disseminate research recommendations have to comply with detailed standards in relation to the presentation and disclosure of certain information. In summary, these are to:

- ensure that a research recommendation is fairly presented
- disclose the firm's interests in, or any conflicts of interest concerning, the investments that are the subject of the research recommendation
- give the name of the firm and its regulator
- give the identity and job title of the person who prepared the research recommendation
- ensure that facts are clearly distinguished from interpretation, estimates and opinion
- ensure that sources are reliable or, if there is any doubt, this is indicated
- ensure that projections, forecasts and price targets are clearly labelled and include the main assumptions, and
- ensure that the research recommendation can be substantiated as reasonable, if so requested by the FCA.

Fair presentation requires that:

- material sources are indicated, including the issuer (where relevant) and whether the recommendation has been disclosed to the issuer and amended prior to dissemination
- basis of valuation for setting price targets is adequately summarised
- the meaning of buy, sell, and hold, including time horizons, are adequately explained and include risk warnings and sensitivity analysis of the relevant assumptions
- reference is made to planned frequency of updates to the research recommendation (if any) or any changes to coverage policy previously announced
- the date of first release of the research recommendation, and the date and time of any prices, are given, and
- any substantive difference between this and a research recommendation issued during the previous 12 months has to be clearly indicated, specifying the change and the date of the change.

The standards for disclosure of interests and conflicts of interest are:

- all relationships of the firm or affiliated company that may impair the objectivity of the research recommendation, including relationships with, or conflicts of interests with, issuers
- relationships of legal and natural persons within the firm who were involved in the preparation of the research recommendation, including whether their remuneration is linked to investment banking transactions by the firm or affiliated company

- any interests that may be accessible, prior to dissemination, by persons producing the research recommendation, or by any other person who could reasonably have had access to the information (other than those responsible for compliance)
- disclosures concerning a firm's (or affiliated company's) shareholdings in excess of 5% in an issuer, and any other financial interests
- statements indicating (where relevant) that the firm is a market maker, liquidity provider, lead manager; or concerning any investment banking services, or research recommendation services, provided for the issuer
- disclosure of the firm's arrangements for preventing conflicts of interest, including information barriers, and
- if shares are acquired by a person involved in the research recommendation, the price and date of acquisition.

If compliance with the disclosure standards is disproportionate to the length of the research presentation, the firm can indicate where the information may be found, eg, on a specific website page.

The following information would need to be published quarterly, and made available to clients, as well as being disclosed in research recommendations:

- The proportion of research recommendations published during the quarter that are buy, hold and sell.
- The proportion of investments, in each category, issued by issuers to which the firm supplied material investment banking services during the previous 12 months.

If a firm disseminates research recommendations produced by a third party, it must:

- state the identity of the firm and its regulator
- ensure that any summaries of third-party recommendations are fair, clear and not misleading
- identify the source research recommendation and identify where the third party's disclosures are accessible, and
- ensure that the detailed disclosures above are made as though it had produced the recommendation itself.

If a firm materially amends a third-party recommendation prior to its dissemination, it must:

- give a description of any alterations made by the firm prior to dissemination if there is a change of direction (eg, buy to sell) or comply with the disclosure rules concerning time horizons as though it had produced the research recommendation, and
- maintain a written policy providing for recipients of this information to be directed to where they can access the third-party producer, the original recommendation and the third party's disclosures.

10. Inducements and Payment for Research

2.14 Inducements and Payment for Research

2.14.1 Know the rules on inducements relating to: MiFID business; the provision of independent advice, restricted advice and portfolio management services to retail clients; the provision of independent advice and portfolio management services to retail clients outside the UK or to professional clients

2.14.2 Know the rules regarding acceptable minor non-monetary benefits

---

–

10.1 Inducements

The inducements rules should be seen as payment rule, as it prohibits any payment, unless expressly permitted. The rules on inducements apply to firms carrying on designated investment business which is MiFID business as well as non-MiFID business. The rules only apply to professional clients and retail clients; therefore, investment firms undertaking ECP business will not be subject to the detailed inducement provisions.

These requirements also cover where a firm provides independent advice, restricted advice and portfolio management services to a retail client – although minor non-monetary benefits are permitted to be received.

A minor non-monetary benefit is one which:

- is clearly disclosed prior to the provision of the relevant service to the client
- is capable of enhancing the quality of service provided to the client
- is of a scale and nature that it could not be judged to impair the firm's compliance with its duty to act honestly, fairly and professionally in the best interests of the client
- is reasonable, proportionate and of a scale that is unlikely to influence the firm's behaviour in any way that is detrimental to the interests of the relevant client and consists of:
    - information or documentation relating to a financial instrument or an investment service, that is generic in nature or personalised to reflect the circumstances of an individual client
    - written material from a third party that is commissioned and paid for by a corporate issuer or potential issuer to promote a new issuance by the company

    - participation in conferences, seminars and other training events on the benefits and features of a specific financial instrument or an investment service
    - hospitality of a reasonable *de minimis* value, such as food and drink during a business meeting or a conference, seminar or other relevant training events.

In relation to MiFID business, firms are prohibited from paying or accepting any fees or commissions, or providing or receiving non-monetary benefits, other than:

- fees, commissions or non-monetary benefits paid to or by the client, or someone on their behalf (eg, management fees)
- proper fees which are necessary for the provision of the service (eg, custody costs, legal fees, settlement fees) and which cannot, by their nature, give rise to conflicts, or
- fees, commissions or non-monetary benefits paid to or by a third party (or someone on their behalf).

These are permissible only if they:

- do not impair compliance with the firm's duty to act in the client's best interests
- are designed to enhance the quality of the service to the client, and
- are disclosed in accordance with set standards prior to the provision of the service to the client.

Firms can satisfy their disclosure obligations under these rules if they:

- disclose the essential arrangements for such payments/benefits in summary form
- undertake to their client that further details will be disclosed on request, and
- do, in fact, give such details on request.

Firms must also keep full records of such payments/benefits made to other firms, for all UK MiFID business. The inducements provisions have not been fully implemented for non-MiFID firms/business. In relation to third party payments, these firms will only have to comply with the does not impair compliance test; the other two tests (disclosure and enhancement) do not apply. Retail non-MiFID business for the sale of packaged products is subject to the disclosure requirements of the inducement provisions.

The extension of the provision does not, however, expect firms to disclose details of reasonable non- monetary benefits for non-MiFID business.

10.2 Inducements and Research

UK regulated firms which produce research must apply a separately identifiable charge for research when providing it to an entity that is not permitted to receive research for free (ie, a regulated firm that is either providing portfolio management services or provides either independent or restricted advice to a retail client and/or a professional client).

In scope firms may only receive (consume) research if it pays for it using one of two methods:

1. Directly from its own resources.
2. From a research payment account (RPA) controlled by the firm funded by a specific charge to its clients.

However, these provisions do not apply to non-UK regulated bodies that produce research and firms located outside the UK who consume research.

On implementing the MiFID II text into its Handbook, the FCA gold-plated (went beyond the Directives requirements) some of the requirements. It did not apply the requirements to AIFs and CISs, whose core investment policy does not generally involve investing in MiFID financial instruments. This means that private equity business (investing in companies) and collective investment funds investing in commercial property would not be captured by the prohibition on receiving research for free – as these investments are not designated MiFID financial instruments.

In 2021, the FCA made some changes to UK MiFID conduct and organisational requirements. With respect to the provision of research, the following new rules came into effect in 2022:

Exemption from the Inducement Rules for SME Research

- Research on companies with a market capitalisation of less than £200 million are exempt – meaning that UK-based fund managers do not have to pay for this research.
    - The drafting of the rules means that UK asset managers can continue to pay for this research if they so wish – due to operational limitations.
- The exemption will be assessed by the FCA three years (1 March 2025) after implementation.

Exemption for 'FICC' Research

- The FCA has applied the exemption of fixed income, currency and commodity (FICC) research based on underlying financial instruments and not concerning an investment strategy that primarily relates to FICC instruments.

Independent Research Providers

- There is an exemption for research to be paid for when it is provided by research providers who are not engaged in execution services and is not part of a financial services group that includes an investment firm providing execution or brokerage services.

- The list of minor non-monetary benefits has been updated, although the word 'independent' was removed.

Openly Available Research

- The FCA clarified that research that is openly made available to firms, and the general public, can be received free of charge by UK asset managers.
    - The list of non-monetary benefits has been updated to reflect this.

The FCA's rules mean that UK asset managers must continue to pay for macro-economic research, as this does not meet the definition of 'FICC' research.

10.3 Research Payment Account (RPA)

The RPA must only be funded by a specific research charge to clients, agreed with clients, developed by the firm as its research budget for the purpose of establishing the amount needed for third party research in respect of investment services provided to its clients.

The RPA must only be used to pay for research, and not goods and/or services that do not fall into the definition of research. The following is a non-exhaustive list of goods and services that the FCA does not consider constituting research:

- post-trade analytics
- price feeds or historical price data that have not been analysed or manipulated in order to present the firm with meaningful conclusions
- seminar fees
- corporate access service
- order and execution management services, or
- administration of an RPA.

There has been much debate over the use of RPA and fund managers charging clients for research. A number of fund managers took the decision to pay for research themselves, taking steps to reduce the amount of research that they receive (and pay for) and focus on relevant and appropriate research which will add value to their investment decision making. This also means that research received can be used to benefit all clients of the firm.

From August 2024 UK buyside firms (in scope firms) have been provided with greater flexibility on how they can purchase investment research. They are permitted to bundle payments for third-party research and execution services, provided that they meet relevant requirements around the execution and research costs.

10.4 Payment Optionality

The FCA introduced changes to the existing rules governing how payments for investment research are made. In the UK buy side firms (asset managers, pension schemes

and fund managers – managers of collective investment schemes) have been provided with greater flexibility on how they can purchase investment research. They are permitted to 'bundle' payments for third-party research and execution services, provided that they meet relevant requirements around the execution and research costs.

11. Dealing and Managing

11.1 The Application of the Rules on Dealing and Managing

2.16 Dealing and Managing

2.16.1 Know the application of the rules on dealing and managing

The COBS rules on dealing and managing are:

- Best execution (COBS 11.2, 11.2A, 11.2B and 11.2C)
- Client order handling (COBS 11.3)
- Client limit orders (COBS 11.4)
- Record keeping, client orders and transactions (COBS 11.5A)
- Personal account dealing (COBS 11.7)
- Recording telephone conversations and electronic communications (SYSC 10A).

The above topics are covered in this section.

The rules on dealing and managing (aside from those on personal account dealing) apply generally to authorised firms; there are some variations in their application, depending on the nature of business and location of the firm.

- Certain provisions (those provisions which are marked in the FCA Handbook) apply to non-MiFID firms as if they were rules.
- The rules on personal account dealing (see section 11.8) apply to the designated investment business of an authorised firm, in relation to the activities it carries on from an establishment in the UK.

11.2 Best Execution

11.2.1 The Requirement for Best Execution

2.17 Best Execution

2.17.1 Understand the requirements of providing best execution for MiFID business and Non-MiFID business

---

–

The rules on best execution apply to MiFID and non-MiFID firms and their business. Within the COBS sourcebook, the requirements for 'Best Execution' are split into three sections:

- **COBS 11.2** relating to alternative investment fund managers (AIFM) and residual collective investment scheme (CIS) operators
- **COBS11.2A** MiFID investment firms
- **COBS 11.2B** UCITS management companies.

The best execution rules under COBS require firms to execute orders on the terms which are most favourable to their client. Broadly, they apply if a firm owes contractual or agency obligations to its client and is acting on behalf of that client.

Firms are specifically required to take all sufficient steps to obtain, when executing orders, the best possible result for their clients, taking into account the execution factors. AIFMs and residual CIS operators continue to operate under the previous FCA obligation to take all reasonable steps to obtain best execution, which is a slightly lesser burden than the MiFID II obligation of 'all sufficient steps'.

The execution factors are price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of an order. The relative importance of each factor will depend on the criteria, characteristics and circumstances of:

- the client, including their categorisation
- the client order
- the financial instruments involved, and
- the execution venues to which that order can be directed.

Best execution is not merely achieving the best price. Any of the other factors mentioned above should be considered and, depending on the criteria, characteristics, or circumstances, could be given precedence. For some transactions, for example, the likelihood of execution (and settlement) could be given precedence over the speed of execution. In other transactions, the direct and/or implicit execution costs of a particular venue could be so high, as to be given precedence over the price of the instrument of this venue. The Best execution requirements do not apply to firms classified as eligible counterparties.

The obligation to take all reasonable steps to obtain the best possible results for its clients applies to a firm which owes contractual or agency obligations to the client. The obligation to deliver the best possible result when executing client orders applies in relation to all types of financial instruments. Given the differences in market structures or the structure of financial instruments however, it may be difficult to identify and apply a uniform standard procedure for best execution which is effective and appropriate for all classes of instrument. Therefore, best execution obligations should be applied in a manner which takes into account all the different circumstances associated with the execution of orders related to particular types of financial instruments.

For each transaction it engages in, an investment firm must assess (this is called the four-fold test) if the client is placing a legitimate reliance on the firm and/or the firm is using its discretion. In relation to over-the-counter (OTC) transactions, when a duty of best execution exists, investment firms should have processes in place to consistently check the fairness of the pricing they provide and retain any relevant market data to allow them to justify their pricing decisions.

The 'four-fold' test, noted below, identifies the level to which the client places reliance on the firm to achieve best execution. Firms must assess each of the tests on a cumulative basis to determine whether they owe the client a duty to ensure best execution.

The fourfold test:

- Did the investment firm initiate the transaction?
- Does the client only ask you for a quote (ie, it does not 'shop around' for quotes)?
- Will the client be unable to identify the relative levels of price transparency within a market?
- Has the client confirmed that they place reliance with the investment firm?

Given the differences in the structures of financial instruments, it may be difficult to identify and apply a uniform standard of, and procedure for, best execution that will be effective and appropriate for all classes of instruments. Therefore, best execution obligations should be applied in a manner that takes into account all the different circumstances associated with the particular types of financial instruments.

The Role of Price

For retail clients, firms must take into account of the total consideration for the transaction, ie, the price of the financial instrument and the costs relating to the execution, including all expenses directly related to it, for example, the execution venue fees, clearing and settlement fees, and any fees paid to third parties.

Best Execution Where There are Competing Execution Venues

If a firm can execute the client's order on more than one execution venue, the firm must take into account both its own costs and the costs of the relevant venues in assessing which will give the best outcome. Its own commissions should not allow it to discriminate unfairly between execution venues and a firm should not charge a different commission

or spread to clients for execution in different venues, if that difference does not reflect actual differences in the cost to the firm of executing on those venues.

11.3 Order Execution Policies

2.17 Best Execution

2.17.2 Understand: the requirements for an order execution policy, its disclosures, the requirements for consent and review for MiFID and Non-MiFID business

2.17.4 Understand the rules on: monitoring the effectiveness of execution arrangements and policy; demonstrating compliance with the execution policy; the duties of portfolio managers and receivers and transmitters to act in a client's best interest; information provision for MiFID business and Non-MiFID business

---

–

Firms are required to establish an order execution ('best execution') policy to enable them to obtain, and to demonstrate how they obtain, the best possible results for their clients. Firms conducting MiFID investment business are subject to stringent requirements that set out what information should be contained in an order execution policy.

Firms are not expected to obtain explicit consent from clients to the best execution policy. Rather, this policy should be provided to clients at the onboarding stage and added to the firm's website (MiFID disclosures). A clients continued relationship with the firm will confirm that they have no issues with the policy.

If a client does not consent to the policy, then they will simply cease to undertake business/ enter into transactions with the firm.

Order Execution Policy: MiFID Investment Business

MiFID II requires firms to have an order execution policy in place which clearly articulates to clients how it seeks to obtain the best possible result for them. Firms are required to disclose the order execution policy to a client prior to undertaking any MiFID investment business for that client and to obtain prior consent from the client to the order execution policy. Firms are permitted to obtain consent either by way of a general agreement with the client or consent in respect of individual transactions.

Firms must ensure they review the ongoing appropriateness of both the order execution policy and their order execution arrangements on at least an annual basis or when there are material changes that affect the firm's ability to continue to obtain the best possible result for clients.

UK MiFID is quite prescriptive in terms of the content of the order execution policy. Details are listed in the FCA Handbook, in COBS, chapter 11 (Best execution – MiFID provisions) https://www.handbook.fca. org.uk/handbook/COBS/11/2A.html.

The order execution policy should be proportionate to the firm's business model and the complexity of their arrangements.

Where a firm identifies that it needs to make amendments to its order handling policy (eg, in the event that an execution venue is no longer able to guarantee the best possible result for clients) firms are required to update their policies and notify clients of such updates.

Order Execution Policy: Non-MiFID Investment Business

A firm's order execution policy must include, for each class of financial instrument in which the firm deals, information about the different execution venues where the firm executes its client orders, and the factors that will affect the choice of venue used.

The policy must include those venues which enable the firm to consistently obtain the best possible result for its client.

Firms must give their clients appropriate information about their execution policies; this needs to be more detailed for retail clients. Firms must obtain their clients' consent prior to their order execution policies (although this can be implied consent where the client continues to trade with the firm after they have been provided with the firms MiFID Terms of Business).

Firms must review their order execution policies whenever a material event occurs, but at least annually. Firms must notify clients of any material changes to their order execution arrangements or execution policy. The FCA does not, however, define the term material change.

Compliance with Policies, and the Obligations on Portfolio Managers and Firms Receiving/ Transmitting Orders

Firms must monitor the effectiveness of their execution arrangements and policies, to identify and (if need be) correct any deficiencies. In addition, they must be able to demonstrate to their clients, on request, that they have executed their orders in accordance with their execution policy. Portfolio managers must act in their clients' best interests when placing orders for them, on the basis of the firm's investment decisions.

Firms receiving and transmitting orders for clients must also act in their clients' best interests when transmitting those orders to other parties (eg, brokers) to execute. This means taking into account the execution factors listed in section 6.4.1 (unless the client has given specific instructions, in which case these must be followed).

Portfolio managers, receivers, or transmitters of orders, must also maintain order execution policies, but as noted above, they do not need to obtain consent. The policy must identify the entities with which the orders are placed or to which they transmit orders for execution, in respect of each class of instruments. The entities must have execution arrangements which enable the firm to comply with its obligations under the

best execution requirements, when it places an order with or transmits an order to the entity for execution.

11.4 Specific Client Instructions

2.17 Best Execution

2.17.3 Understand the rules on following specific instructions from a client

---

Whenever a firm receives a specific instruction from a client, it must execute the order as instructed. It will be deemed to have satisfied its obligation to obtain the best possible result if it follows such specific instructions, but only in relation to the part or aspect of the order related to the client's instructions. Firms should adhere to the client's instructions even if an alternative means of executing the order would have given a better result.

If a client's specific instruction only relates to one part or aspect of an order, then the firm will still be required to adhere to the best execution principles in relation to any other parts or aspect of the client order that were not subject to specific instructions.

Firms should not induce clients to instruct an order in a particular way, by expressly indicating or implicitly suggesting the content of the instruction to the client, if they know that any instruction to the client will have the likely effect of preventing them from obtaining the best possible result for the client.

11.5 Client Order Handling

2.18 Client Order Handling for MiFID and Non-MiFID Business

2.18.1 Understand the rule on client order handling and the conditions to be satisfied when carrying out client orders

---

Firms must apply procedures and arrangements which provide for the prompt, fair and expeditious execution of client orders, relative to the other orders or trading interests of the firm. (Note, you should see that this rule is also consistent with the need for firms to avoid conflicts of interests).

In particular, these should allow comparable client orders to be executed in the order in which they are received.

Firms should ensure that:

- executed client orders are promptly and accurately recorded and allocated

- comparable orders are executed sequentially and promptly, unless this is impracticable or client interests require otherwise
- retail clients are informed of any material difficulty in the prompt execution of their order, immediately on the firm becoming aware of this, and
- if the firm is responsible for overseeing or arranging settlement, the assets or money must be delivered promptly and correctly.

Firms must not misuse information relating to client orders and must also take steps to prevent its abuse (eg, in order to profit by dealing on its own account).

11.6 Aggregation and Allocation

Firms must only aggregate their deals with those of a client, or aggregate two or more clients' deals, if:

- this is unlikely to disadvantage any of the aggregated clients
- the fact that **aggregation** may work to their disadvantage is disclosed to the clients, and
- an order **allocation** policy has been established which provides (in sufficiently precise terms) for the fair allocation of transactions. This must cover how the volume and price of orders will affect allocation; it must also cover how partial allocations will be dealt with.

If an aggregated order is only partly executed, the firm must then allocate the trades in order with the allocation policy.

If a firm has its own-account orders aggregated order along with those of its clients, it must not allocate them in a way which is detrimental to the clients. In particular, it must allocate the client orders in priority over its own, unless it can show that, without the inclusion of its own order, less favourable terms would have been obtained. In these circumstances, it may allocate the deals proportionately.

A firm must, as part of its allocation policy, put in place procedures to prevent the reallocation, in a way that is detrimental to the client, of transactions for their own-account which are executed in combination with client orders.

11.7 Client Limit Orders

2.19 Client Limit Orders

2.19.1 Know: the rules on client limit orders; the obligation to make unexecuted client limit orders public for MiFID and Non-MiFID business

---

Unless the client instructs otherwise, a firm which receives a client limit order for shares listed on a regulated market and which cannot immediately execute it under the prevailing market conditions must make the limit order public (in a manner easily accessible to other market participants). This should be done immediately, so that it can be executed as soon as possible. The firm need not do so, however, for orders over normal market size. It may do this by:

- transmitting the order to a regulated market or MTF operating an order book trading system, or
- ensuring the order is made public and can be easily executed as soon as market conditions allow.

11.8 Personal Account Dealing

2.15 Client Limit Orders

2.15.1 Understand: the purpose and application of the personal account dealing rule; the restrictions on personal account dealing for MiFID business and Non-MiFID business

2.15.2 Know: the arrangements required to comply with the personal account dealing rules including the notification requirements; exceptions regarding personal account dealing for MiFID business and Non-MiFID business

---

11.8.1 The Application and Purpose of the Personal Account Dealing Rules

Firms must have arrangements in place to prevent their employees who are relevant persons (directors, partners of the firm or its appointed representatives, or other personnel involved in regulated activities either directly or via an outsourcing arrangement) from:

1. entering into a personal transaction that is contrary to UK MAR, which involves misuse or improper disclosure of confidential information, or conflicts with the firm's duties to a customer
2. improperly advising or procuring that anyone else enters into a transaction which (if it had been completed by the employee themselves) would have fallen foul of point 1 above, or of a relevant provision, or

3. improperly disclosing, other than in the normal course of their employment or contract for services, any information or opinion to any other person if the relevant person knows, or reasonably ought to know, that as a result of disclosure the other person will or would be likely to take either of the following steps to:

    a. enter into a transaction in designated investments which, if a personal transaction of the relevant person, would be covered by (1) or a relevant provision, or
    b. advise or procure another person to enter into such a transaction.

The relevant provisions are:

- the rules on personal account transactions undertaken by financial analysts
- the rules on the misuse of information relating to pending client orders.

Firms must keep records of all personal transactions notified to them, and of any authorisation or prohibition made in connection with them.

11.8.2 Compliance with, and Exceptions to, the Personal Account Dealing Rules

The arrangements must ensure that the affected employees are aware of the restrictions on personal transactions and aware also of the firm's procedures. The procedures must be such that the firm is informed promptly of any such personal transaction, either by notification or some other method enabling the firm to identify the transaction.

If outsourcing takes place, the arrangements must be such that the outsourcing firm maintains a record of personal transactions undertaken by any relevant person and provides it to the firm promptly on request.

The rules on personal account dealing do not apply to:

- deals under a discretionary management service, if there is no prior communication between the portfolio manager and the relevant person (or any other person for whose account the transaction is being executed) about the deal, or
- deals in units, and/or shares in certain classes of fund (UCITS, OEICs or unit trusts), where the relevant person (and any other person for whom the deals are effected) is not involved in the management of the fund, or
- personal transactions in life policies.

Personnel (other than directors or partners of a firm or its appointed representatives) are only subject to the personal account dealing rules to the extent which they are involved in the provision of the firm's investment or portfolio management services.

The restrictions do not apply separately to each transaction in a succession which is being carried out in accordance with a prior instruction, unless the instruction is changed or a new instruction is issued. Nor do they apply, if the instruction is withdrawn, so as long as

the investments which had been acquired are not disposed of at the same time as the instruction is withdrawn.

12. Reporting of Transactions

2.20 Transaction and Trade Reporting

2.20.1 Know the definition of a reportable transaction

2.20.2 Know the rule and purpose of reporting: transaction (UK MiFIR); trade (UK MiFIR); UK EMIR, short selling; UK SFTR

2.20.3 Know which party to a trade is responsible for reporting including trades carried out by overseas branches

---

12.1 Reportable Transactions

Reportable transactions encompass the following types of transactions carried out by regulated investment firms:

1. Financial instruments are admitted to trading or traded on a trading venue, or for which a request for admission to trading has been made
2. Financial instruments where the underlying is a financial instrument traded on a trading venue, and
3. Financial instruments where the underlying is an index or a basket composed of financial instruments treaded on a trading venue.

The obligation to report these transactions applies irrespective of whether they were carried out on trading venues in the UK, Gibraltar, or the EU. Transactions also need to be reported if the transaction has not taken place on a trading venue. Complete and accurate details of the transactions need to be reported to the FCA as soon as possible, and no later than the close of the next business day.

It is the responsibility of UK investment firms to determine if an instrument they have traded is a reportable financial instrument.

Note that a UK investment firm is defined as:

> *'any person whose regular occupation or business is the provision of one or more investment to third parties or the performance of one or more investment activities on a professional basis'.*

A number of exemptions from the obligation to report have been defined in the regulations, which are outside the scope of this workbook.

12.2 The Role and Purpose of Trade and Transaction Reporting

The role and purpose of trade and transaction reporting is defined in UK MiFIR, UK EMIR and UK SFTR.

12.2.1 UK MiFIR

Under UK MiFIR, Transaction reporting is carried out to provide information to the regulator, enabling review of transactions after the fact. The information is used by the regulator to monitor for market abuse, including insider dealing, and to aid the general surveillance of the market. In the UK, the FCA's Transaction Monitoring Unit (TMU) monitors compliance with the requirements for authorised firms to report their transactions, as well as approving the reporting mechanisms that can be used. The Approved Reporting Mechanisms (ARMs) include, for example, UnaVista and TRAX.

Reporting must be undertaken by regulated firms on a Trade date +1 basis. Ie, the transactions need to be reported (no later than the day after the trade was executed).

Trade reporting is a mechanism to feed back to the marketplace on market depth and liquidity – a measure of market transparency - and assists in price formation. Trade reporting is single-sided meaning that it only shows the side of the reporting institution. To the contrary, Transaction reporting can be dual-sided reporting meaning both counterparties to the transaction are in scope (ie, both UK financial counterparties).

MiFID II introduced additional pre-trade and post-trade transparency reporting obligations for investment firms and market operators. The biggest change related to post-trade reporting is that it covers not just equities, but also non-equity financial instruments that are admitted to trading on regulated trading venues (Regulated Markets, MTFs and/or OTFs).

Unless waivers and/or deferrals apply, reporting must be undertaken by regulated firms within:

- 1 minute for equity transactions, and
- 5 minutes for in scope non-equity financial instruments .

New requirements for non-equity post-trade reporting remove a lot of post-trade reporting requirements as they did not provide full transparency to the market when certain instruments were deemed to be illiquid.

12.2.2 UK EMIR

Under the **UK European Market Infrastructure Regulation (UK EMIR)**, all trades in relation to derivatives contracts must be reported to a trade repository.

UK counterparties report under UK EMIR, and EU counterparties report under EU EMIR, even if one of them is not a financial institution. Although there are some exceptions for mandated reporting by financial counterparties, both counterparties must report each trade. By prior arrangement, one party can report on behalf of both counterparties. Where one report is made on behalf of both counterparties, this must be indicated in the report.

Under UK EMIR, non-UK entities do not have a reporting obligation. This includes UK branches of third-country firms such as the London branch of a Canadian bank.
Either counterparty to the trade may delegate reporting to a third party such as a central counterparty (CCP), a trading venue/platform, or their counterparty bank.

12.2.3 UK EMIR

The Short Selling Regulations (SSR) introduced a private and public notification regime for investors who hold net short positions in certain financial instruments. It gives the FCA powers of intervention during adverse market conditions that pose a serious threat to financial stability or market confidence. These powers may extend to:

- Extending the scope of the notification and disclosure regime to include additional financial instruments.
- Requiring lenders of financial instruments to notify any significant change in their fees.
- Restricting short selling, or other transactions that confer a financial advantage in the event of a decrease in price of a financial instrument, across classes of instruments or all instruments.
- Restricting, or limiting, entering into sovereign credit default swap transactions.

Firms must notify the FCA, via their Electronic Submission System, by 3.30pm on the trading day after the day the position was reached. All calculations must be made as at midnight on the trading day the position was reached.

Market makers and authorised primary dealers can obtain exemption from the UK SSR disclosure requirements.

12.2.4 UK SFTR

The reporting obligations of the **UK Securities Financing Transactions Regulation (SFTR)** aims to enhance transparency and enable regulators to monitor risk by introducing:

- reporting requirements for securities finance transactions (SFT) similar to those already in place for derivatives transactions under UK EMIR, and
- limitations on the reuse of collateral.

Reporting can be dual-sided when both parties to the transaction are deemed to be in scope, and is made by firms to a trade repository which submit the information to the FCA.

Under UK SFTR non-financial counterparties (ie, corporate companies) are exempted by HM Treasury from having to report their securities financing transactions under UK SFTR.

12.3 Reporting Channels and Responsibility to Report for UK and Non-UK Entities

In this section, two systems run by the LSE are mentioned:

- Stock Exchange Electronic Trading Service (SETS)
- International Order Book (IOB).

Trade reporting is automatic for all trades executed on the LSE's electronic order books – embracing UK equities traded on SETS and depositary receipts traded on the IOB. Since the trades are executed automatically on the order books, they will generate automatic trade reports and there is no need for participants to report the trades manually.

Off-order book transactions are trades executed by one or more member firms in securities (including gilts) traded away from the order book, often over the telephone. Such trades need to be reported by the member firm to the exchange as close to real time as possible, and in any case within three minutes of execution by reference to the trade reporting period.

The trade reporting period is the period when the LSE system is able to accept trade reports. It runs from 7.15am to 5.15pm every business day:

- If a trade is executed between 7.15am and 8.00am, the report must be submitted before 8.00am or within three minutes, if later.
- If a trade is executed within the last three minutes of the trade reporting period, it should be submitted before 5.15pm.
- If a trade is executed outside the trade reporting period, it must be submitted before the start of the next trade reporting period.

Trade reporting is only required from member firms and the responsibility for trade reporting rests with the more senior party to the trade, ie, the market maker member firm. If the two parties to the trade are of the same seniority, it is the selling member firm that reports the trade.

The main details that need to be included within the trade report are:

- identity of the reporting member and their counterparty
- date and time
- whether the trade is a purchase or sale
- dealing capacity (for example agency or principal)
- security and quantity traded
- price
- settlement due date, and
- any special conditions (such as ex-dividend trades).

The Exchange is then free to publish trade details as it chooses and there are a variety of reports that are made available. Among these is the Daily Official List (DOL), which is a daily publication of closing prices and widely used for portfolio valuation purposes.

For domestic transactions on systems run by the LSE, transaction reports for settlement purposes are also required via CREST by a deadline on each business day of 8.00pm on the day of trade. For international equities, an online trade confirmation service provided by an organisation called Omgeo (a subsidiary of the US Depository Trust & Clearing Corporation (DTCC)), can be used for settlement reporting, with transactions reported by both participants by 9.00pm on the day of the trade.

Following Brexit, UK branches of EEA firms have been required to report transactions they execute to the FCA, as well as their home regulator. Similarly, EEA based branches of UK firms are required to report their transactions to the home regulator as well as the FCA.

Transactions made by UK branches of third-country firms do not have to be reported to the FCA when they have been executed outside the UK.

However, there may be exceptions to this based on whether an individual based in the UK (ie, employed by the UK Branch) was involved with either the execution/pricing of the transaction or engaging with the client.

12.4 Reporting to Clients

12.4.1 Confirmation of Transactions and Periodic Statements

2.21 Reporting to Clients

2.21.1 Know: general client reporting and occasional reporting requirements; the provision of dealing confirmations and periodic statements to retail and professional customers; exceptions to the requirements and the record-keeping requirements in respect of MiFID and Non-MiFID business

---

Firms are required to ensure that clients receive adequate reports on the services they provide to them. These must include any associated costs. If a firm (other than one managing investments) carries out an order for a client, it must:

- provide the essential information on it, promptly, and in a durable medium (if the transaction relates to derivatives and options)
- provide clients with information about the status of their orders on request, and
- send a notice confirming the deal details as soon as possible (but no later than on the next business day); when the confirmation is received from a third party, the firm must pass the details on no later than the business day following receipt.

The notice to be provided to the client must include the following information:

- The identification of the firm.
- The name and/or designation of the client.
- The trading day and time.
- The type of order (ie, limit order/market order/client-specific instructions).
- The venue where the transaction was executed.
- The financial instrument.
- The buy/sell indicator.
- The nature of the order if other than buy/sell (ie, exercise of an option).
- The unit price.
- The total consideration.
- Total of the commissions, expenses and any mark up/down applied to the transaction.
- Rate of exchange where the transaction involves the conversion of funds from one currency to another in order to settle the transaction in the client's base currency.
- The client's responsibility in respect of settlement of the transaction.

Firms must keep copies of all confirmations sent to clients, under the following record-keeping requirements:

- UK MiFID business, for at least five years from the date of dispatch, or
- other business, for at least three years from the date of dispatch.

For the purpose of calculating the unit price in trade confirmation information, particularly when the order is executed in tranches, firms may supply clients with the information about the price of each tranche or use the average price.

Source: *FCA Website (Conduct of Business Sourcebook)*

Periodic Reporting

The reporting rules for firms providing investment management services are addressed in the FCA's periodic reporting rules. Investment managers must provide retail and professional clients with periodic statements, unless another party provides these.

For clients, the statement must contain prescribed periodic information as follows (periodic information), being:

- the name of the firm
- the name and/or designation of the retail client's account
- the contents and valuation of the portfolio, including each investment and its value, cash balance at the beginning and end of the period, and its performance
- total amount of charges, itemised to show management fees and execution costs, together with a note detailing that a more detailed breakdown can be provided on request
- a comparison of the firm's performance against the relevant benchmark(s)
- total amount of dividends, interest and other payments received, and

- information about corporate actions.

Periodic statements must be sent to the client at least quarterly, with the following exceptions:

- if the client receives deal-by-deal confirmations, and certain higher-risk investments are excluded, the statement may be sent every 12 months, or
- if the client has authorised that their portfolio be leveraged, the statement must be provided monthly.

If a client elects to receive deal-by-deal confirmation, the investment manager must comply with the transaction reporting rules above for the prescribed content and timing of the report.

Record Keeping Requirements

Firms must produce and retain a copies of both periodic statements and execution notices, under the following record-keeping requirements:

- UK MiFID business, for a period of at least five years
- Other business, for a period of at least three years.

There are exceptions for certain overseas customers and in respect of Junior ISAs (JISAs).

If firms manage investments for retail clients, or operate certain types of account for them, for example, uncovered open positions, they must report any losses over a pre-agreed limit to the client. They must do so by the end of the business day on which the limit is breached; if this happens on a non-business day, by the end of the next full business day.

Additionally, a firm that is carrying on the service of portfolio management must provide a depreciation notification to the client if their portfolio were to fall 10% or more since the last valuation, and multiples of 10% thereafter. It will also be required to provide a similar notification at an investment level for any holding of contingent liability or leveraged investments from the initial value. Following the publication in 2022 by HM Treasury of the Markets in Financial Instruments (Investor Reporting) (Amendment) Regulations, from 7 June 2023 firms do not have to provide this notification to clients.

Source: *FCA Website (Conduct of Business Sourcebook)*

13. Client Assets

13.1 The Purpose of the Client Money and Custody Rules

2.22 Client Assets

2.22.1 Know: the purpose of the client money and custody rules (CASS); exemptions

---

The rules relating to the custody and safeguarding of **client money** and client assets are contained in the Client Assets Sourcebook (CASS). These requirements ensure that firms take adequate steps to protect those client assets for which they are responsible.

CASS, in general, applies to every firm, with some specific exemptions (see section 8.3). CASS applies directly in respect of activities conducted with or for all categories of client, ie, retail clients, professional clients and ECPs.

Within CASS, there is a requirement to segregate client money from any other money held by the firm. This ensures that, if the firm fails, money will not be used to repay the firm's creditors. Usually, this is done by ensuring that the client's money is placed promptly in a separately designated client money account with a bank; the firm then ensures that the bank treats this money separately from the firm's own funds. This is achieved by the firm holding the client money in trust. The trust is a statutory trust, created by the rules laid down in CASS 7.17.2R.

CASS 6 contains the custody rules which apply when a firm holds financial instruments of a client in the course of MiFID business and when the firm is safeguarding and administering investments in the course of non-MiFID business.

CASS 7 (Client Money and Distribution Rules) applies to a UK MiFID investment firm either:

- when it holds client money in the course of its MiFID business or in respect of any investment agreement entered into, with or for a client
- when, in the course of non-MiFID business, the firm opts to comply with the MiFID client money rules, or
- it holds money in respect of which CASS 5 (client money – insurance mediation activity) applies and the firm elects to apply the provisions of CASS 7.

When holding safe custody assets belonging to clients, firms must make adequate arrangements, in order to safeguard a client's ownership rights, especially in the event of the firm's insolvency and to prevent the client's safe custody assets being used on the firm's own account, except with the client's express consent. Firms must also introduce adequate organisational arrangements to minimise the risk of loss or diminution of client's safe custody assets.

Firms must register the correct legal title to the assets in the name of the client, nominee or other authorised person as appropriate to the nature of the service being provided. If a firm owns a nominee, it must accept the same level of responsibility for the nominee as though the firm held the assets itself.

Firms must have robust organisational arrangements to prevent the misuse or loss of client money.

When a client bank account is opened, the firm must send a notice to the bank, advising them that the bank must not combine money in the client account with any other accounts held in the name of the firm. The title of the client account must distinguish it from any other account held by the firm. In the case of client bank accounts held in the UK, the bank must acknowledge this arrangement (of trustee status) within 20 days, otherwise the firm must withdraw the money and deposit it with another bank as soon as possible.

While not a new requirement to achieve trust status, firms must obtain an acknowledgement letter for all client bank accounts (not just those located in the UK), and also imposes a requirement to remove the 20 business days' grace period for firms to obtain a duly countersigned acknowledgement letter, (in effect, prohibiting the placement of client money into an account until the relevant acknowledgement letter has been signed and returned to the firm).

There are a number of circumstances in which the client money rules will not apply, for example, where money is held in connection with a delivery versus payment (DvP) transaction (unless the DvP does not occur by the close of business on the third business day following the date of payment of a delivery obligation), or where it becomes due and payable to the firm.

The current rules address the need to balance the speedy return of client assets with the need to ensure accurate distribution. Upon the failure of a firm, the initial distribution of client assets should be allowed on the basis of the firm's own records, from an initial client money pool. Any residual money after initial distribution would go into a second pool, which would then be distributed by the firm on the basis of its own claims process.

13.2 The Exemptions from CASS

CASS does not apply to:

- investment company with variable capitals (ICVCs)
- UCITS-qualifying schemes
- a credit institution (eg, a deposit-taking institution – 'bank') in relation to deposits held with themselves as 'banker' and not as 'trustee'
- coins held for the value of their metal
- money held in connection with a DvP transaction (unless payment does not occur after three business days)
- money due and payable to the firm

- cases where firm carries on business in its own name, but on behalf of the client where this is required by the very nature of the transaction, and the client is in agreement, or
- the custody rules (CASS 6) and the client money rules (CASS 7) do not apply if a client transfers full ownership of a safe custody asset or client money to a firm for the purpose of securing or otherwise covering present or future, actual contingent or prospective obligations.

Specific rules within CASS may be disapplied depending on the nature of a firm's activities; the details are set out within the individual rules.

End of Chapter Questions

Think of an answer for each question and refer to the appropriate section for confirmation.

1. **What is the impact of location on the application of the COBS rules?**
   Answer Reference: Section 1.1

2. **What activities are subject to the COBS rules?**
   Answer Reference: Section 1.2

3. **Which COBS rules are disapplied for firms undertaking ECP business?**
   Answer Reference: Section 1.2

4. **Do appointed representatives have to comply with the COBS rules?**
   Answer Reference: Section 2

5. **How will a MiFID firm classify its client in relation to non-MiFID business?**
   Answer Reference: Section 3.1

6. **What are the client categories?**
   Answer Reference: Section 3.1.2

7. **Who are eligible counterparties?**
   Answer Reference: Section 3.1.2

8. **What are the notification requirements to clients on their client categorisation?**
   Answer Reference: Section 3.4

9. **When is a firm required to provide a client agreement?**
   Answer Reference: Section 4

10. **What information must be disclosed prior to providing services?**
    Answer Reference: Section 4.2

11. **What is the purpose of the financial promotion rules?**
    Answer Reference: Section 5.1

12. **Which Principles for Businesses are amplified by the financial promotion rules?**
    Answer Reference: Section 5.1.1

13. **What types of communication are subject to the fair, clear and not misleading rule?**
    Answer Reference: Section 5.1.2

14. **List the main exceptions to the financial promotion rules.**
Answer Reference: Section 5.2

15. **When do the prospectus advertisements rules apply?**
Answer Reference: Section 5.3

16. **When is a firm permitted to undertake an unsolicited communication with a retail client?**
Answer Reference: Section 5.8.2

17. **What is the purpose of the suitability rules?**
Answer Reference: Section 7.1

18. **What are the rules on churning and who they do they apply to?**
Answer Reference: Section 7.4

19. **What is the appropriateness test?**
Answer Reference: Section 7.7

20. **What is the purpose of the cancellation rights?**
Answer Reference: Section 8.2

21. **State the steps firms could take to prevent or manage conflicts of interest.**
Answer Reference: Section 9.1

22. **What is the difference between investment research and research recommendations?**
Answer Reference: Section 9.4

23. **What payments are permitted under the inducements rules?**
Answer Reference: Section 10.1

24. **What is the purpose of the best execution requirements?**
Answer Reference: Section 11.2.1

25. **What is an order execution policy?**
Answer Reference: Section 11.3

26. **What is the purpose of the personal account dealing rules?**
Answer Reference: Section 11.8.1

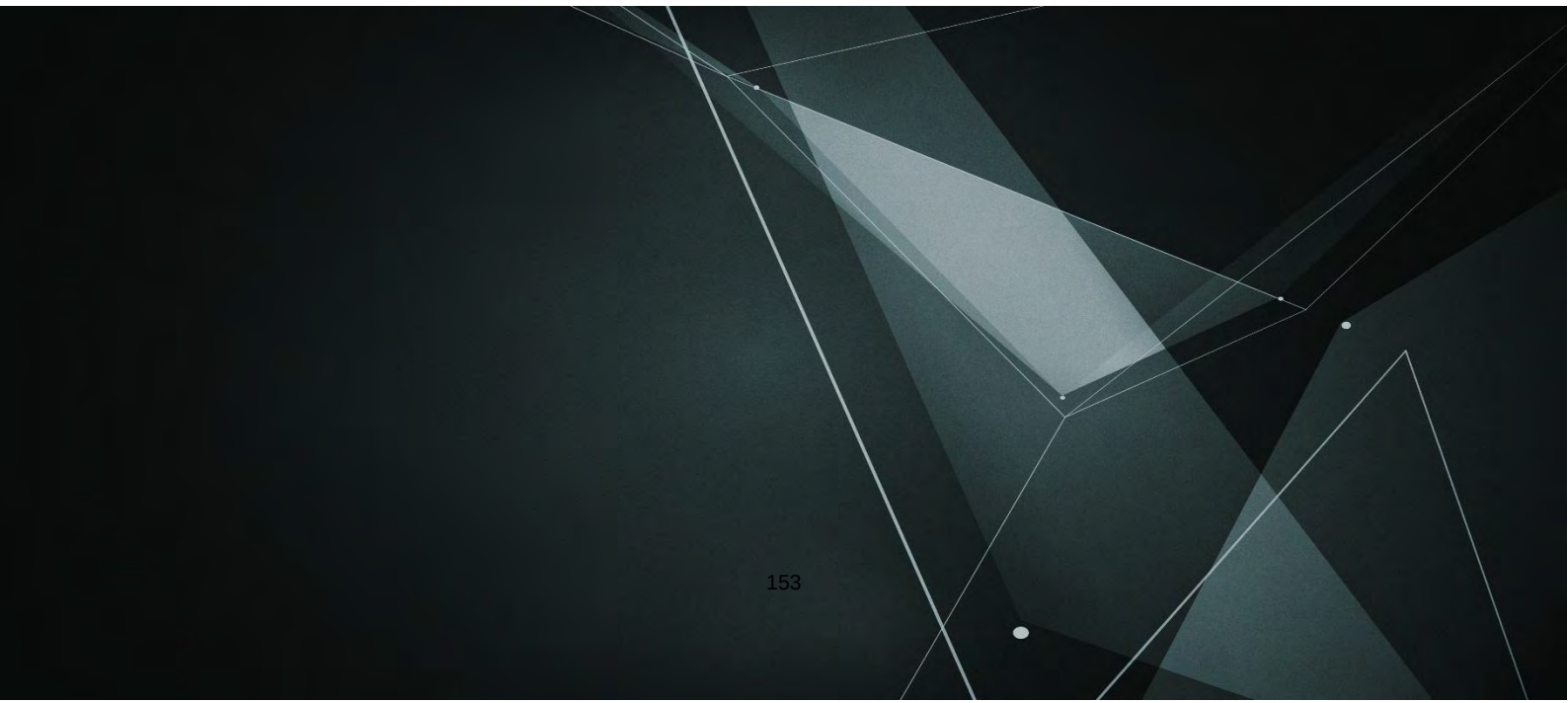
27. **How frequently must a periodic statement be sent to a retail client?**
Answer Reference: Section 12.4.1

28. **What is the purpose of the client money segregation and trust rules?**
Answer Reference: Section 13.1

Chapter Three
Enhancing Market Integrity

Section 1	Market Abuse
Section 2	Insider Dealing
Section 3	Market Manipulation
Section 4	Money Laundering and Financial Crime
Section 5	Record-Keeping Requirements
Section 6	The Bribery Act
Section 7	Fraud and Economic Crime
Section 8	The Disclosure and Transparency Rules (DTR)

This syllabus area will provide approximately 19 of the 75 examinations questions



1. Market Abuse

1.1 The Statutory Offence

3.1 Market Abuse

3.1.1 Understand the scope and status of the UK Market Abuse Regulation

---

Market abuse is a statutory offence that covers financial market manipulation and insider dealing. It is a serious offence that damages investor confidence and the integrity of financial markets.

The UK's market abuse regime (an offence under the Financial Services and Markets Act (FSMA)) came into force in 2001.

1.1.1Implementation of the Market Abuse Regulation (MAR)

The Market Abuse Regulation (MAR) came into effect in 2016, updating and enhancing the then existing EU Market Abuse Directive (MAD). It did this, for example, by extending its scope to include financial instruments traded on platforms other than regulated markets (ie, traded bilaterally or over-the-counter (OTC), and adapting rules to accommodate new technology and specific behaviours. The 'MAR' clarifies that market abuse occurring across spot commodity and related derivative markets is prohibited and reinforced cooperation between financial and commodity regulators. The MAR includes measures to ensure regulators have the information they need to detect and sanction market abuse. To ensure the costs of legislation do not create a barrier for small- and medium-sized enterprises (SMEs) to access financial markets, MAR also tailors the rules for SME issuers in several respects.

Following implementation of the MAR, the FCA updated its Handbook to provide guidance on matters governed by the MAR and does not take the form of binding rules as it did previously. The Handbook only provides guidance where the FCA decided it was appropriate, so the Handbook will not be the sole source for provisions relating to market abuse. Following Brexit the UK 'onshored' (also referred to as 'retained' or 'assimilated' EU Law) the EU MAR into the UK statute book. The provisions within the EU MAR remain largely unaltered; however, MAR is now referred to as the UK MAR.

While the Market Abuse (Amendment) (EU Exit) Regulations 2019 ensures similar EU MAR requirements and protections are in place after Brexit, there were three key amendments:

- There is no obligation to share information with EU authorities without a guarantee of reciprocity.
- The Financial Conduct Authority (FCA) took over the regulatory responsibilities previously held by the European Securities and Markets Authority (ESMA) and the European Commission (EC).
- The creation of any supplementary legislation is subject to the HM Treasury instead of the EC.

1. The FCA Market Conduct Handbook Guidance

3.1 Market Abuse

3.1.2 Understand the civil and criminal regime for market abuse and insider dealing

The first two behaviour types which are potentially market abuse, namely insider dealing and improper disclosure, are behaviours which are likely to give a false or misleading impression of the supply, demand or value of the investments concerned. They are, to an extent, already covered by the UK legislation relating to insider dealing (**Criminal Justice Act (CJA)**, see section 2 of this chapter) and the legislation relating to **misleading statements** and practices in Sections 89–92 of the Financial Services Act 2012.

The Financial Services Act 2012 introduced three offences relating to the making or carrying on of misleading statements and practices – replacing Section 3.97 of FSMA with:

- making misleading statements (Section 89)
- creating false or misleading impressions (Section 90), and
- making misleading statements in relation to benchmarks (Section 91).

There are three potential defences to a charge under Sections 89–91:

1. The person reasonably believed that their act or conduct would not create an impression that was false or misleading.
2. The actions, statements or forecasts are made in conformity with the price stabilisation rules of the FCA. These allow market participants, such as investment banks, to support the price of a new issue of securities for their clients, with the aim of preventing the market from being excessively volatile. The rules themselves require certain disclosures to investors considering investing in the stabilised security, and restrict the support operation to a particular period.
3. The actions, statements or forecasts were made in conformity with the control of information rules of the FCA. These rules relate to statements, actions or forecasts being made on the basis of limited information. The remainder of the information may be known to the firm, but it rests behind so-called **information barriers**, and is not known to the relevant individual.

The Financial Services Act 2021 introduced new maximum sentences for insider dealing and financial services offences (ie, misleading statements as per the Financial Services Act 2012). The penalties for breaching any of the requirements under Section 89–95 of the Financial Services Act 2012 are as follows:

- On summary conviction, a fine not exceeding the statutory amount or a jail sentence not exceeding 12 months, or both.
- On conviction on inducement, a jail sentence not exceeding ten years or a fine, or both for offences committed after 1 November 2021.
- Offences committed up to 31 October 2021 were subject to a jail sentence not exceeding seven years.

Firms and individuals participating in the financial markets are required to observe certain standards of conduct. The FCA's Market Conduct Sourcebook (which is known as 'MAR'), set out these standards. The MAR includes requirements relating to market abuse (in MAR 1) and the price stabilising rules (in MAR 2). The FCA's 'MAR' Sourcebook provides guidance on the UK MAR in terms of what does and does not amount to market abuse and the factors that are taken into account in the determination of whether market abuse has occurred.

The 'MAR' Sourcebook includes aspects of insider dealing as well as expanding on behaviours that constitute market abuse and specifies the civil actions available to the FCA in respect of firms, which also may be taken against senior managers of firms as well as other individuals. These penalties range from the issuance of financial penalties through to issuing a public censure. Public censure assists in promoting high standards of regulatory or market conduct both by deterring firms or individuals from committing further breaches and also serving as a warning to others. This helps the FCA in meeting its statutory objectives.

In making the determination as to whether to apply a financial penalty or to resort to public censure, the FCA will take account of such factors as:

- whether the breach was deliberate or reckless
- the duration and frequency of the breach
- the amount of benefit gained or loss avoided
- whether the breach was indicative of systematic failures in management systems or internal controls
- the impact on the orderliness of markets
- the risk of loss to consumers
- the extent of any financial crimes facilitated by the breach, and
- the number of smaller incidents which, when taken in aggregate, would justify action.

The FCA will also consider other elements, including:

- the speed that the matter was brought to its attention
- the cooperation extended to the FCA during its investigation
- the likelihood of a recurrence if no action is taken

- whether the person had complied with the rulings of another regulatory body such as The Takeover Panel, and
- the nature or extent of any false or inaccurate information provided.

The FCA will take into account the person's previous disciplinary record as part of its determination.

When deciding to take any action in regard to market abuse it may also consider additional factors, such as:

- the degree of sophistication of the users of the market in question, and
- the impact that a financial penalty or public censure may have on the financial markets or the interests of consumers.

Similar criteria are also detailed in the Enforcement Guide and the FCA will apply the principles set out in the Code for Crown Prosecutors in deciding whether to commence criminal proceedings rather than imposing sanctions for market abuse as well as considering factors, such as:

- the seriousness of the misconduct and the possible severity of the sentence
- whether there are victims who have suffered loss, in the absence of which a prosecution would be unlikely
- the extent of the loss suffered
- the effect of the misconduct on the market and the level of market distortion resulting from the offence
- the extent of profits made or losses avoided
- if there is any likelihood of the offence continuing or being repeated
- whether the person has previously been cautioned, convicted or had a civil penalty imposed
- the extent to which those that have suffered loss have been compensated and the steps that have been taken to remedy failures in systems and controls
- the effect that taking a criminal prosecution may have in securing compensation for those that have suffered loss, or where there may be an adverse impact on the solvency of the firm
- the voluntary cooperation provided by the offenders, although merely fulfilling a statutory obligation will not help defendants avoid prosecution
- if the offence involved dishonesty or a misuse or abuse of trust
- where a group of people has been involved in the offence then the lead individual may be deemed appropriate for criminal prosecution; however, where one individual provides information or full assistance to the FCA in the prosecution this will be considered when deciding whether to bring a criminal prosecution, and
- the personal circumstances of the individual.

The FCA's policy is not to have 'two bites of the cherry' and, therefore, will not impose sanctions for market abuse where a person is being prosecuted for market misconduct. Similarly the FCA will not bring a prosecution where it is looking to bring, or has brought, disciplinary proceedings for substantially the same offence.

Source: *UK MAR*

1.3 Prevention and Detection of Market Abuse

3.1 Market Abuse

3.1.3 Understand the requirement to prevent and detect market abuse including the obligation on firms to make suspicious transaction and order

---

1.3.1 Prevention and Detection of Market Abuse and Market Manipulation

UK MAR does not only apply to executed trades, it also applies to unexecuted orders and requests for quotes (RFQs). Therefore, firms who undertake automated surveillance based on transactions need to consider the impact of unexecuted orders and RFQs on their ability to undertake appropriate surveillance.

Market operators and investment firms that operate trading venues will need to establish and maintain effective arrangements, systems and procedures aimed at preventing and detecting insider dealing, market manipulation, attempted insider dealing and market manipulation. They must report orders and transactions, including any cancellation or modification thereof, that could constitute insider dealing, market manipulation, attempted insider dealing or market manipulation to the competent authority of the trading venue without delay.

Firms arranging or executing transactions (ie, not operating trading venues) are required to establish and maintain effective arrangements, systems and procedures to detect and report suspicious orders and transactions. They must be proportionate to the scale and complexity of the business activity undertaken by the firm. Therefore, the arrangements and required systems and controls would be different for large investment banks when compared to smaller firms, as well as to asset managers and wealth managers.

Where firms have a reasonable suspicion that an order or transaction in any financial instrument, whether placed or executed on or outside a trading venue, could constitute insider dealing, market manipulation, or attempted insider dealing or market manipulation, they are required to report this to their regulator without delay (ie, the FCA in the UK). The requirements around 'establish and maintain effective arrangements, systems and procedures to detect and report suspicious orders and transactions' include the following obligations on firms. The arrangements, systems and procedures should:

- be appropriate and proportionate in relation to the scale, size, nature and complexity of their business activity

- be regularly assessed, at least through an annually conducted audit and internal review, and updated when necessary
- be clearly documented in writing, including any changes or updates to them, and the documented information should be maintained for a period of five years
- allow for the analysis, individually and comparatively of each and every transaction executed and order placed, modified, cancelled or rejected in the systems of the trading venue as well as transactions executed outside a trading venue
- produce alerts indicating activities requiring further analysis for the purposes of detecting potential insider dealing or market manipulation, or attempted insider dealing or market manipulation, and
- cover the full range of trading activities undertaken.

Therefore, firms should:

- put in place and maintain arrangements and procedures that ensure an appropriate level of human analysis in the monitoring, detection and identification of transactions that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation upon request
- provide the competent authority with the information to demonstrate the appropriateness and proportionality of their systems in relation to the scale, size and nature of their business activity, including the information on the level of automation put in place in such systems, and
- provide effective and comprehensive training to the staff involved in the monitoring, detection and identification of orders and transactions that could constitute insider dealing, market manipulation, or attempted insider dealing or market manipulation. This training should be provided on a regular basis and be appropriate and proportionate in relation to the scale, size and nature of the business.

Source: *UK MAR*

In practice, this means that firms must undertake market abuse surveillance by having systems in place to spot market abuse activities occurring. Many organisations use third party vendor solutions which are automated compliance tools that monitor employee activities and alert relevant teams to potential violations.

1.3.2 Suspicious Transaction and Order Reporting (STOR)

Where a person has reasonable suspicion regarding an order or a transaction in any financial instrument whether placed or executed on a trading venue or outside a trading venue (ie. bilateral/OTC), that it may constitute market manipulation or insider trading, they should notify the FCA without delay. The requirement extends to attempts to commit these offences, ie, where no execution has taken place but there was intent to distort the market ('attempted market abuse').

Firms must report directly to the FCA, in a timely manner, once a full investigation has been undertaken to assess whether an event is considered to be suspicious and required to be reported.

Firms must report activities that they would consider to be suspicious, rather than second-guess whether FCA would consider the event to be suspicious.

The content of a STOR report is outlined in UK MAR, and includes the following information:

- Identification of the person submitting the 'STOR', the capacity in which the person submitting the STOR operates, in particular, when dealing on own account or executing orders on behalf of third parties.
- Description of the order or transaction, including:
    - the type of order and the type of trading, in particular, block trades, and where the activity occurred, and
    - price and volume.
- Reasons for which the order or transaction is suspected to constitute insider dealing, market manipulation, or attempted insider dealing or market manipulation.
- Means of identifying any person involved in the order or transaction that could constitute insider dealing, market manipulation, or attempted insider dealing or market manipulation, including the person who placed or executed the order and the person on whose behalf the order has been placed or executed.
- Any other information and supporting documents which may be deemed relevant for the competent authority for the purposes of detecting, investigating and enforcing insider dealing, market manipulation, and attempted insider dealing and market manipulation.

Firms may submit a STOR, or they may submit a market observation, this is for suspicious activity which may not fall under the defined requirements of a STOR. Market observations are, for example used when a firm or trading has observed a suspicious activity but is not involved in the activity itself and therefore does not have complete information.

Source of information: *UK MAR*

2. Insider Dealing

3.2 Insider Dealing

3.2.1 Know the main concepts of: inside information; insider dealing; unlawful disclosure of inside information and insider lists

3.2.4 Understand: disclosure requirements for inside information; the requirement for insider lists

---

2.1 Inside Information and Insider Dealing

For the purposes of UK MAR, **inside information** comprises the following types of information:

- Information of a precise nature, which has not been made public, relating, directly or indirectly, to a financial instrument and which, if it were made public, would be likely to have a significant effect on the price of the financial instrument or on the price of related derivative financial instruments.
- In relation to commodity derivatives, information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more such derivatives or relating directly to the related spot commodity contract, and which, if it were made public, would be likely to have a significant effect on the prices of such derivatives or related spot commodity contracts, and where this is information which is reasonably expected to be disclosed or is required to be disclosed in accordance with legal or regulatory provisions at the national level, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets.
- For persons charged with the execution of orders concerning financial instruments, it also means information conveyed by a client and relating to the client's pending orders in financial instruments, which is of a precise nature, relating, directly or indirectly, to financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments, the price of related spot commodity contracts, or the price of related derivative financial instruments.

Information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur, where it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the financial instruments or the related derivative financial instruments, the related spot commodity contracts, or the auctioned products based on the emission allowances.

Under UK MAR, insider dealing is defined as occurring in the following circumstances:

- Where a person possesses inside information and uses that information by acquiring or disposing of, for its own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates.
- The use of inside information by cancelling or amending an order concerning a financial instrument to which the information relates where the order was placed before the person concerned possessed the inside information.
- Recommending that another person engages in insider dealing, or inducing another person to engage in insider dealing, arises where the person possesses inside information and recommends, on the basis of that information, that another person acquires or disposes of financial instruments to which that information relates, or induces that person to make such an acquisition or disposal.
- Recommending, on the basis of that information, that another person cancels or amends an order concerning a financial instrument to which that information relates, or induces that person to make such a cancellation or amendment.

An individual in possession of price-sensitive information is an insider if they know that it is inside information and that the information has been knowingly acquired from an inside source. They would have obtained the sensitive information from an inside source if they have got it because:

- they are an inside source themselves (for example, a director, employee or shareholder of an issuer of securities and this need not necessarily be the company whose securities are the subject of the insider dealing)
- they have access to the information by virtue of their employment, office or profession (and, again, this need not necessarily be in relation to the company to which the information relates). An example might be the auditor, legal adviser or corporate finance adviser to a company, or
- they have access to the information directly or indirectly from a person who was either an inside source themselves or had access to the information by virtue of their employment. For example, a director's husband or wife will have information from an inside source if they see confidential information at home about a takeover bid and then buy shares in the listed company which is the subject of the takeover target.

Source: *UK MAR*

2.1.1 Public Disclosure of Inside Information

Issuers have obligations to inform the public as soon as possible of inside information which directly concerns the issuer. The information must be made public in a manner which enables fast access and complete, correct and timely assessment. This ensures that all investors are able to base their investment decision-making and investment opportunities on information in the public domain – helping to keep clean markets.

Issuers should utilise a Regulatory Information Service (RIS) for disseminating this information.

2.1.2 Public Disclosure of Inside Information

Issuers and persons acting on their behalf are required to maintain an insider list of all persons who have access to inside information, including where they are working for them under a contract of employment, or otherwise performing tasks through which they have access to inside information, such as advisers, accountants or credit rating agencies. The list must be promptly updated where there is a change (ie, in the reason for including a person already on the list, where there is a new person who has access to inside information and needs to be added to the list or where a person ceases to have access to inside information).

Therefore, under the UK MAR there is an obligation on issuers and those advising them to maintain 'insider lists' so that the knowledge of such price sensitive information can be traced by the FCA if they undertake an investigation in adverse movement in a company's share price before a formal announcement is made.

Firms are required to maintain separate insider lists for each transaction and one for permanent insiders.

2.1.3 Unlawful Disclosure of Insider Information

Under the UK MAR unlawful disclosure is the sharing of 'inside information' with another person, unless the disclosure is part of the *'normal exercise of an employment, a profession, or duties'*.

This means it is an offense to disclose non-public, price-sensitive information that is specific and likely to affect an instrument's price.

There are exceptions for legitimate disclosure, which include sharing information to facilitate a transaction or for professional advice, often with confidentiality requirements.

Breach of these requirements can result in unlimited fines or injunctions, it is also considered a criminal offence.

As already discussed, permitted disclosure includes:

- **Normal duties** – the disclosure is made in the normal exercise of an employment, profession, or duties.
- **Market soundings** – it is part of a market sounding, for example, to raise capital.
- **Confidentiality** – the disclosure is reasonable and accompanied by confidentiality requirements to facilitate a transaction, seek advice, or fulfil a legal obligation.
- **Professional advice** – it is shared with a professional adviser, such as a lawyer or auditor.
- **Takeover bids** – it is made to facilitate or seek commitment for a takeover bid under the Takeover Code.

2.2 Inside Information and the Insider

3.2 Insider Dealing

3.2.2 Know offences described in UK legislation and the instruments covered by the Criminal Justice Act 1993

Insider dealing can be defined as the deliberate exploitation of information by dealing in financial instruments, having obtained this information by virtue of some privileged relationship or position. The legislation setting out the UK's current criminal law is Part V of CJA 1993.

The CJA 1993 has been updated and amended by the Insider Dealing (Securities and Regulated Markets) Order 2023, which came into effect on 15 June 2023, and updated the list of Regulated Markets for the purpose of Part V of the CJA 1993.

Section 52 of the CJA outlines three ways of committing the offence of insider trading:

- Dealing in the security.
- Encouraging another to do so.
- Disclosing inside information to another.

Inside information, as defined in Section 56 of CJA, is information which:

a. relates to securities traded on, admitted to trade on or a request to admit to trading, has been made, on a UK, EEA, or Gibraltar Regulated Market, MTF or OTF
b. relates to securities traded on, admitted to trade on or a request to admit to trading, has been made on Nasdaq, SIX Swiss Exchange and the New York Stock Exchange (NYSE)
c. relates to securities not covered by point (a) or (b), the price of which depends on, or has effect on, the price or value of a security referred to in those points
d. is specific or precise
e. has not been made public, and
f. is price-sensitive (ie, if it were made public, would be likely to have a significant effect on the price of any security).

The CJA uses the term security, rather than financial instrument. However, as noted above, in 2023 this was updated to be consistent with the definition of a financial instrument in UK MiFID. Therefore, the CJA now covers the following:

1. Transferable securities.
2. Money-market instruments.
3. Units in collective investment undertakings.
4. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission

allowances or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash.

5. Options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (other than by reason of a default or other termination event).
6. Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided they are traded on a UK regulated market, a UK MTF or a UK OTF, except for wholesale energy products traded on a UK OTF that must be physically settled.
7. Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in paragraph 6 and not being for commercial purposes or wholesale energy products traded on an EU OTF that must be physically settled, which have the characteristics of other derivative financial instruments.
8. Derivative instruments for the transfer of credit risk.
9. Financial contracts for differences.
10. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates or inflation rates, or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this schedule, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a UK regulated market, a UK OTF, or a UK MTF.
11. Emission allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme) or allowances created under article 18 of the Greenhouse Gas Emissions Trading Scheme Order 2020.

Some of the criteria for what is inside information or insider dealing may seem quite subjective; for example, what is specific or precise? In practice, the meaning will be determined by the courts when cases come before them.

The CJA does give some assistance in interpretation; for example, it includes a (non-exhaustive) list of what 'made public' means (from which can be decided when information has not been made publicly available). For example, information comes into the public domain when it is:

- published to investors in accordance with the rules of a regulated market, eg, a UK-listed company publishing price-sensitive news through the LSE's Regulatory News Service (RNS), or
- contained within records open to public scrutiny (eg, a new shareholding which is reflected in the company's register of shareholders), or
- readily available to those likely to deal in securities to which the information relates, or the securities of an issuer to which the information relates.

Under these circumstances, such information need not actually be published, it just needs to be readily available to someone who exercises diligence or expertise in finding the information. In other words, you might have to look quite hard for it. It may also be regarded as being made publicly available, even if the information has to be paid for (ie, by subscription).

2.3 Market Manipulation and Market Soundings

3.2 Insider Dealing

3.2.3 Understand market soundings and market manipulation

2.3.1 Market Manipulation

UK MAR notes that a person shall not engage in or attempt to engage in market manipulation. Market manipulation is defined as the following activities:

- Entering into a transaction, placing an order to trade or any other behaviour which:
    - gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument or a related spot commodity contract
    - secures, or is likely to secure, the price of one or several financial instruments, or a related spot commodity contract at an abnormal or artificial level unless the person entering into a transaction, placing an order to trade or engaging in any other behaviour establishes that such transaction, order or behaviour has been carried out for legitimate reasons, and conforms with an accepted established market practice.
- Entering into a transaction, placing an order to trade or any other activity or behaviour which affects or is likely to affect the price of one or several financial instruments or a related spot commodity contract which employs a fictitious device or any other form of deception or contrivance.
- Disseminating information through the media, including the internet, or by any other means, which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument, or a related spot commodity contract and secures, or is likely to secure, the price at an abnormal or artificial level, including the dissemination of rumours, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading.
- Transmitting false or misleading information or providing false or misleading inputs in relation to a benchmark where the person who made the transmission or provided the input knew or ought to have known that it was false or misleading, or any other behaviour which manipulates the calculation of a benchmark.

UK MAR states that the following behaviour shall, inter alia, be considered as market manipulation:

- The conduct by a person, or persons acting in collaboration, to secure a dominant position over the supply of or demand for a financial instrument.
- The buying or selling of financial instruments, at the opening or closing of the market, which has or is likely to have the effect of misleading investors acting on the basis of the prices displayed, including the opening or closing prices.
- The placing of orders to a trading venue, including any cancellation or modification thereof, by any available means of trading, including by electronic means, such as algorithmic and high-frequency trading strategies having the effects referred to above or by:

    - making it more difficult for other persons to identify genuine orders on the trading system of the trading venue.
    - creating or being likely to create a false or misleading signal about the supply of, or demand for, or price of, a financial instrument.

- Taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a financial instrument (while having previously taken positions on that financial instrument) and profiting subsequently from the impact of the opinions voiced on the price of that instrument without having disclosed that conflict of interest to the public in a proper and effective way.

Source: *UK MAR*

2.3.2 Market Soundings

A market sounding is where an adviser or investment bank undertakes discussions with clients and/or market participants (investors) to determine their appetite for a new issuance, on behalf of an issuer (ie, corporate company). The purpose would assess the expected return that investors would require (coupon) and the potential size of the new issue.

A market sounding can include the disclosure of non-public information which is sensitive and considered to be insider information – for this reason, the disclosing firm has to comply with the following obligations:

- Obtain the consent of the person receiving the market sounding to receive inside information.
- Inform the person receiving the market sounding that they are prohibited from using that information, or attempting to use that information, by acquiring or disposing of financial instruments relating to that information.
- Inform the person receiving the market sounding that they are prohibited from using that information, or attempting to use that information, by cancelling or amending an order which has already been placed concerning a financial instrument to which the information relates or through personal account

dealing/encouraging another person to invest or divest in the underlying financial instrument.
- Inform the person receiving the market sounding that, by agreeing to receive the information, they are obliged to keep the information confidential.
- Maintain a record of all information given to the person receiving the sounding.
- Maintain a record of recipients who did not consent to being provided with such inside information.
- Advise the recipients of inside information when that information ceases to be considered as inside information.

The market soundings provisions also place an obligation on the recipient of a market sounding – they are required to assess for themselves whether the information provided by the other firm is 'inside information' – as they may have additional information that would mean that this information is not deemed to be inside information.

2.4 Inside Information and the Insider

3.2 Insider Dealing

3.2.5 Understand general defences relating to insider dealing

3.2.6 Understand Special defences: market makers acting in good faith; market information; price stabilisation; legitimate behaviour

2.4.1 General Defences

The defences available to the defendant in an insider dealing case are as follows.

For the offence of insider dealing, or for encouraging another to deal, the defences are that the defendant:

- did not expect the dealing to result in a profit (or avoid a loss) due to the information
- believed, on reasonable grounds, that the information had been sufficiently widely disclosed to ensure none of those taking part in the dealing would be prejudiced by not being aware of the information, or
- would have acted in the same way regardless of being in possession of the information.

For the offence of disclosing only, the defences are:

- the defendant did not expect any person to deal, or
- although the defendant may have expected a person to deal, the defendant did not expect the dealing to result in a profit (or avoid a loss) due to the information.

2.4.2 Special Defences

There are further defences available to defendants in particular circumstances (special defences). These are for market makers, in relation to market information and to **price stabilisation** activities, which are explained in further details below:

Market Makers

If the market maker can show that they acted in good faith in the course of their business as a market maker, they will not be deemed guilty of insider dealing or encouraging another to deal. So, a market maker (or their employee) can have unpublished price-sensitive information as an insider and continue to make a market in that security.

A further defence is available if the market maker can show that they were acting in connection with an acquisition or disposal where the price was under negotiation and they acted in order to facilitate the deal. The defendant will therefore have to show that the information was market information arising directly out of the negotiations.

Market Information

Market information includes, for example, information in relation to the sale of a block of securities under consideration, or the price at which such a transaction is likely to be completed.

An insider is not guilty of dealing or encouraging others to deal if they can prove that the information held was market information and it was reasonable for the defendant to act as they did despite having the information as an insider at the time. Whether or not the action was reasonable depends on the:

- content of the information
- circumstances in which the defendant first had the information and in what capacity, and
- the capacity in which the defendant now acts.

A further defence is where the individual can show that their dealing or encouragement of another person was in connection with an acquisition or disposal that was the subject of negotiation, with a view to facilitating the acquisition or disposal; and that the market information in their possession arose directly out of the acquisition or disposal.

Example

A client had been discussing the possibility of purchasing a block of 10,000 shares in XYZ plc with their broker. The client instructs the broker to buy. Clearly, the broker has the unpublished information that the buy order exists before they deal. However, this is market information and is a specific defence against a charge of insider dealing.

The defence would apply equally if it was market information relating to a client's planned disposal of securities.

What needs to be considered is the size of the order and whether the order size is significant enough to move the underlying share price.

Price Stabilisation

The price stabilising rules allow stabilising managers and their agents to support the price of new issues of securities by buying the securities in the secondary market for a limited time after their issue. The rules therefore provide a defence to possible allegations of market abuse, such as insider dealing or price manipulation. The rules can be found in Chapter 2 of the FCA's Market Conduct Sourcebook.

Legitimate Behaviour

UK MAR acknowledge that, in relation to insider trading, there is certain behaviour that is considered legitimate, and as such will not constitute an offence.

This starts from the premise that it shall not be deemed from the mere fact that a person is in possession of insider information that they have used that information during the buying or selling of an investment. But they should have demonstrated that they had established appropriate systems and controls, or were carrying on specific activities, such as the following:

- there were effective internal arrangements to ensure that the person who carried out the transaction did not have access to the information in possession of another in the organisation; this is also referred to as 'information barriers'
- acting as a market maker
- executing orders on behalf of third parties
- where an order or transaction was concluded before that person came into possession of inside information
- where an order was carried out to satisfy a legal obligation before coming into possession of inside information
- a person will not be considered an insider where the information arises from their conduct in a merger or takeover, providing that all relevant information is made public at the point of approval of the merger or takeover, and
- it will not apply to stake building activity and their own knowledge of the decision to acquire, or dispose of, a position.

3. Market Manipulation

3.1 General Prohibition

3.3 Market Manipulation

3.3.1 Know the four forms of market manipulation: manipulating transactions; manipulating devices; dissemination; benchmark manipulation

---

UK MAR states that a person shall not engage or attempt to engage in such activity. Market manipulation can cause distortion of financial markets such that users of those markets may be given a misleading impression and undermine investor trust in those markets. There are four main forms of market manipulation; manipulating transactions; manipulating devices; dissemination and benchmark manipulation.

Dissemination, or the spreading of false or misleading information, is probably the one that is particularly harmful to investors because it could mean that they are making investment decisions based on incorrect or distorted information. More detail on these offences is set out below:

1. **Manipulating transactions** – where the behaviour consists of effecting transactions or orders to trade that are not for legitimate reasons and in conformity with accepted practices on the relevant market, and which give, or are likely to give, a false or misleading impression as to the supply or demand for, or the price of, the qualifying investment, or secure the price of such investments at an abnormal or artificial level.
2. **Manipulating devices** – behaviour that consists of effecting transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance.
3. **Dissemination** – where the behaviour consists of the dissemination of information by any means which gives, or is likely to give, a false or misleading impression as to a qualifying investment by a person who knew, or could reasonably be expected to have known, that the information was false or misleading.
4. **Benchmark manipulation** – transmitting false or misleading inputs in relation to a benchmark where the person who made the transmission or provided the input knew or ought to have known that it was false or misleading, or any other behaviour which manipulates the calculation of a benchmark.

3.2 Additional Market Manipulation Requirements

3.3 Market Manipulation

3.3.2 Know legitimate behaviour; the concept of accepted market practices; the obligation on persons discharging managerial responsibilities

The requirements around of 'legitimate behaviour' was discussed in section 2.4 of this chapter.

In addition, legitimate behaviour in relation to market manipulation under the UK MAR refers to actions or transactions that are carried out for valid commercial reasons and are in line with accepted market practices. This means that if a person can demonstrate that their conduct was in accordance with normal market standards and done for genuine purposes – rather than with the intent to mislead or distort the market—they may not be considered to have engaged in market manipulation.

UK MAR recognises that not all unusual trading activity constitutes market abuse, provided that the behaviour can be justified as legitimate and consistent with accepted market practices on the relevant market.

An example is where trading undertaken to hedge risk or carry out genuine investment strategies, rather than to create a false or misleading impression, would typically be considered legitimate. The concept of accepted market practices is determined by the FCA and may vary depending on the specific market and circumstances.

Additionally, persons discharging managerial responsibilities (PDMRs) and anyone closely associated with them must ensure their transactions are transparent and promptly disclosed.

3.2.1 Managers' Transactions

Persons discharging managerial responsibilities (PDMRs) are defined as individuals within an issuer who:

- Are members of the issuer's administrative, management, or supervisory bodies (e.g., directors).
- Are senior executives who have regular access to inside information and the power to make managerial decisions affecting the issuer's future.

The definition of 'PDMR' extends to those who are closely associated with them. PDMRs must notify the issuer or the emission allowance market and the FCA of the relevant details of their personal transactions:

- in relation to issuers, every transaction carried out on their own account with respect to shares, debt instruments or related derivatives, or
- in respect of emission allowance market participants, transactions relating to emission allowance, auction products based on them or derivatives relating to them.

These notifications must be made promptly, no later than three days after the transaction has been undertaken and must contain the following information:

- Name of the person.
- Reason for notification.
- Name of the issuer or emission allowance participant.
- Description and identifier of the instrument traded.
- Buy or sell and whether resulting from exercise of share options.
- Date and place of the transaction.
- The price and size of the transaction (such as the number of shares).

There is a further restriction on these individuals from conducting any transactions in their company's shares or related instruments during the closed period. This is defined as being 30 calendar days before the announcement of the company's interim or annual financial report. The company is required to make these public as a condition of listing or under national law.

This restriction may be lifted to permit a trade in the closed period in exceptional circumstances such as severe financial difficulty requiring the immediate realisation of funds. It also allows transactions under employee share schemes or similar transactions where there is no change in the beneficial ownership of those shares.

In addition to PDMRs, Persons Closely Associated are defined as individuals such as spouses, dependent children, and entities controlled by the PDMR.

3.2.2 Accepted Market Practices

UK MAR allows for the establishment of 'Accepted Market Practices' which are specific, legitimate behaviours that are expected and accepted in certain financial markets.

These practices provide a defence against potential market manipulation charges if a transaction or behaviour is deemed legitimate and conforms to an established accepted market practice.

The FCA is responsible for assessing and establishing accepted market practices in the UK market.

Key aspects of 'Accepted Market Practices' under UK MAR:

- **Legitimate Reasons:**
    - Transactions or behaviours must be carried out for legitimate reasons to be considered an AMP.
- **Conforming to 'Accepted Market Practices':**
    - The behaviour must align with the established AMP for it to be considered acceptable under the regulation.
- **FCA Oversight:**
    - The FCA has the authority to establish AMPs in the UK, but currently, no AMPs have been established.
- **Consultation:**
    - The FCA is required to consult with relevant stakeholders like issuers, financial service providers, and market participants before establishing an AMP.
- **Transparency:**
    - For a market practice to be an AMP, the identities of those performing it and the responsible party for transparency requirements must be disclosed.
- **Criteria for Establishing AMP:**
    - The FCA takes into account several criteria when deciding whether to accept a market practice as an AMP, including the structure of the market, the types of instruments traded, and the extent of retail participation.
- **Exceptions:**
    - The prohibition of insider dealing and market manipulation doesn't apply to activities related to buy-back programs or stabilization of securities under specific MAR conditions.

In essence, UK MAR acknowledges that certain established market practices are acceptable and legitimate, even if they might appear to be market manipulation under certain circumstances. The FCA plays a crucial role in defining and overseeing these practices to ensure market integrity and prevent abuse.

3.3 Investment Recommendations

3.3.3 Market Manipulation

3.3.2 Understand the obligations relating to the provision of investment recommendations

---

The UK MAR Investment Recommendation provisions dictate that persons (which includes individuals and firms) producing or distributing investment recommendations or suggesting investment strategies must ensure that such information is objectively presented and disclose their interests or indicate conflicts of interest concerning the financial instruments to which that information relates.

An investment recommendation does not fall under the MiFID definition of investment advice or a personal recommendation. An 'investment recommendation' is a proposal or strategy provided by a firm to individuals or other firms (in particular, fund managers and wealth managers) on financial instruments or a range of financial instruments (ie, not distributed) in relation to short-term trading ideas and scenarios.

The regulations impose a duty of care on producers of research or recommendations suggesting an investment strategy that they should employ reasonable care to ensure that they maintain objectivity but also disclose any conflict of interest that may exist in relation to that investment.

The provisions apply where the investment recommendation or strategy is provided to more than one person. Therefore, this excludes where a firm makes investment recommendations to individuals/firms based on an individual profile and they are specifically made to that one individual/firm and the firm can be confident that these will not be shared with other individuals or other firms. Where an investment recommendation is captured by UK MAR, there is a lengthy disclosure requirement required by the firms – not just a one-off requirement at the point of distribution; instead, there are ongoing obligations.

Such a conflict may be that the producers of research or the firm for which they work may have an existing position in the investment concerned or that others in their organisation may trade contrary to their current recommendation. It may also be that they are the corporate adviser or have some other relationship with the company in question.

Investment recommendations captured by UK MAR are subject to substantial disclosure requirements, not just a one-off requirement at the point of distribution, but also ongoing obligations. The following must be provided at the time that the investment recommendation is made to the client:

1. Facts are clearly distinguished from interpretations, estimates, opinions and other types of non- factual information.
2. All substantially material sources of information are clearly and prominently indicated.
3. All projections, forecasts and price targets are clearly and prominently labelled as such, and the material assumptions made in producing or using them are indicated.
4. The date and time when the production of the recommendation is completed are clearly and prominently indicated.
5. A summary of any basis of valuation or methodology and the underlying assumptions used to either evaluate a financial instrument or an issuer, or to set a price target for a financial instrument, as well as an indication and a summary of any changes in the valuation, methodology or underlying assumptions.
6. The meaning of any recommendation made, such as the recommendations to 'buy', 'sell' or 'hold' and the length of time of the investment to which the recommendation relates are adequately explained and any appropriate risk warning, which shall include a sensitivity analysis of the assumptions, is indicated.
7. A reference to the planned frequency of updates to the recommendation.
8. An indication of the relevant date and time for any price of financial instruments mentioned in the recommendation.
9. Where a recommendation differs from any of their previous recommendations concerning the same financial instrument or issue that has been disseminated during the preceding 12-month period, the change(s) and the date of that previous recommendation are indicated.
10. A list of all recommendations of any financial instrument or issuer that were disseminated during the preceding 12-month period, containing for each recommendation:

    - the date of dissemination
    - identity of the natural person(s)
    - price target and the relevant market price at the time of dissemination
    - direction of the recommendation, and
    - validity time period of the price target or of the recommendation.

Points nine and ten noted above are the ongoing requirements placed on firms when making an in-scope investment recommendation.

Where the disclosure of the information, noted in points six and ten, is disproportionate in relation to the length or form of the recommendation, the recommendation shall state where the required information can be directly and easily accessed by the persons receiving the investment recommendation.

Source: *UK MAR*

4. Money Laundering and Financial Crime

3.3 Market Manipulation

3.4.1 Know the terms: money laundering; criminal property

3.4.3 Understand main offences set out in the Proceeds of Crime Act 2002 (POCA)

4.1 Introduction

Money laundering (ML) is the process of turning money derived from criminal activities into money that appears to be from legitimate sources and origins. Dirty money is difficult to invest or spend in its original illicit form and carries the risk of being used by the legal authorities in order to evidence the initial crime. This is why criminals wish to turn the illicit funds, so that laundered money can be more easily invested and spent without risk of incrimination.

Increasingly, **anti-money laundering (AML)** provisions are being seen as the frontline against drug dealing, organised crime including human trafficking, wildlife trafficking, precious arts dealing, as well as the financing of terrorism. There has been an increase in police resources being dedicated towards making the disposal of criminal assets more difficult and more effectively monitoring the movement of money, specifically through the **National Crime Agency (NCA)**.

The current rules and regulations in relation to ML cover a variety of sources:

- **The Proceeds of Crime Act (POCA) 2002** – this specifies that ML relates to criminal property – that is, any benefit (money or otherwise) which has arisen from criminal conduct. Property is criminal property only if the alleged offender knows or suspects it is criminal property. The broad requirement is for firms to report suspicions of ML to the appropriate authorities.
- **The Serious Organised Crime and Police Act (SOCPA) 2005** – this Act amended certain sections of POCA. In particular, one feature of POCA was that criminal conduct was deemed to include anything which would have been an offence had it been committed in the UK, regardless of where it actually happened. This resulted in the often-cited Spanish bullfighter issue. Bullfighting is illegal in the UK, but not in Spain, meaning that, arguably, a financial institution should regard deposits made by a Spanish bullfighter as the proceeds of crime, even if they represented their legitimate earnings in Spain. SOCPA addresses this difficulty, in part at least, by granting a defence for alleged offenders if they can provide evidence that they know, or believe on reasonable grounds, that the conduct was not criminal in the country where it happened. However, the UK Secretary of State has reserved the

right to prescribe certain offences as relevant criminal conduct, which may be legal where it occurs but still illegal in the UK, and therefore still needs to be reported. For example, the government may specify serious tax evasion or drug cultivation as types of criminal conduct which do need to be reported, despite occurring overseas.

- **The Criminal Finances Act 2017** – this Act (an amendment to POCA) creates two criminal offences for firms that fail to prevent the criminal facilitation of tax evasion. One offence relates to UK tax evasion, with the second offence being the evasion of foreign tax. Firms and other bodies that fail to prevent associated persons from criminally facilitating tax evasion can be held to account for their failure where tax evasion is facilitated.
- **The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR 2017)** – detailed regulations, implemented as a result of EU directives, which deal predominantly with the administrative provisions which firms need to implement to combat ML. For example, the regulations deal with firms' requirements for relevant systems and controls, including the training requirements to prevent money laundering as well as the firms' obligations to check the identity of new customers through stringent KYC (know your customer) requirements. MLR 2017 implemented the Fourth EU Money Laundering Directive (MLD4). The Fifth Money Laundering Directive was transposed into the UK legislative framework in 2020. Following Brexit, the UK chose not to transpose the EU's Sixth Anti-Money Laundering Directive into UK Law as it considered its domestic legislation as already compliant with the Directive.
- **The Senior Management Arrangements, Systems and Controls (SYSC) Sourcebook** – this provides high-level rules and guidance for authorised firms in formulating their AML policies, procedures and controls. However, the regulator does not provide rules for procedures but rather refers firms to the **Joint Money Laundering Steering Group (JMLSG)** for guidance.
- **The Joint Money Laundering Steering Group (JMLSG) Guidance** – this is provided by a combination of UK trade associations. Guidance is provided to firms on how they should interpret and implement AML provisions. It is not mandatory, but does highlight industry best practice and provides procedural guidance for firms to follow. It is also approved by the HM Treasury, which means that if a firm can show that it adhered to this Guidance, the courts will take this into consideration as evidence of compliance with the legislation.

4.2 The Proceeds of Crime Act 2002 (POCA)

POCA establishes five offences:

1. **Concealing (Section 327)** – it is an offence for a person to conceal or disguise criminal property.
2. **Arrangements (Section 328)** – that is, being concerned in an arrangement which the person knows, or suspects, facilitates the acquisition, retention, use or control of criminal property for another person. Being concerned in an arrangement may be widely interpreted; for example, it could include a person working within a financial organisation giving advice on a transaction.

3. **Acquisition, use and possession (Section 329)** – acquiring, using or having possession of criminal property. The person must know or suspect that the property arose out of criminal conduct.

These offences are punishable by a fine and/or a jail term of up to 14 years.

4. **Failure to disclose (Section 330)** – there is a duty on employees in the regulated sector to make reports if they know or suspect that another person is engaged in ML or TF activity. It is an offence for employees to fail to disclose such information. Three conditions need to be satisfied for this offence:

    a. The person knows or suspects (or has reasonable grounds to know or suspect) that another person is committing an offence.
    b. The information giving rise to the knowledge or suspicion came to them during the course of business in a regulated sector (such as the financial services sector).
    c. The person does not make the required disclosure to a **nominated officer (NO)**, such as the firm's money laundering reporting officer (MLRO), as soon as is practicable.

These offences are punishable by a fine and a jail term of up to five years. The Crown Prosecution Service (CPS) updated its guidance on prosecuting standalone 'failure to disclose' cases under Section 330 of POCA on 2 June 2021. It is now possible to prosecute a Section 330 offence that has occurred after 2 June 2021 regardless of whether an offence of ML has been substantiated.

5. **Tipping off (Section 333A)** – this is a particular offence applying only to persons working in the regulated sector, and it involves disclosing a suspicious activity report or investigation. It is committed if a person knows or suspects that by disclosing the information this is likely to prejudice the ML or TF investigation, and the information came to them in the course of business in the regulated sector. It is possible to commit this offence even if you do not know that a report has actually been made.

These offences are punishable by a fine and/or a jail term of up to two years.

A person has a defence against the first three offences (concealing; arrangements; and acquisition, use and possession) if they make the required disclosure to the NO, MLRO or, if the person was the MLRO, to the National Crime Agency (NCA).

The offence of failure to disclose suspicions of ML may be committed, not only when the person knows or suspects, but also when there are reasonable grounds to know or suspect ML (even if the person did not know or suspect it). The test for whether there are reasonable grounds is called the objective test, which determines whether a reasonable person would have known or been suspicious, even though the offender protests their innocence.

Part 7 of POCA concerns investigations, and Section 342 describes the offence of prejudicing investigations, which applies generally, not only to those working in the regulated sector. A person commits this offence if they:

- make a disclosure that is likely to prejudice an investigation, or
- falsify, conceal, destroy or otherwise dispose of documents relevant to an investigation, or permit such falsification.

The offence is not committed if:

- the person did not know or suspect that the disclosure would prejudice an investigation
- the disclosure was made in the performance of a duty under POCA or other similar enactment
- the person is a legal adviser acting in their professional capacity in advising their client or in contemplation of legal proceedings (apart from where the disclosure is made with the purpose of furthering a criminal purpose)
- the person did not know or suspect that documents were relevant to the investigation, or
- the person did not intend to conceal from an investigator any facts disclosed by the documents.

These offences are punishable by a fine and/or a jail term of up to five years.

4.3 The Stages of Money Laundering

3.4 Money Laundering and Financial Crime

3.4.2 Know the three stages of money laundering

There are three stages to a successful money laundering (ML) operation:

1. **Placement** – introduction of criminal proceeds (cash or other assets) into the financial system; typically, this involves placing the criminally derived cash into a bank or building society account, or a bureau de change.
2. **Layering** – involves moving the criminal proceeds around the financial system, through a series of complex transactions in order to make it difficult for the authorities to link the placed funds with the original source, as well as the ultimate beneficiary of the money. This may involve buying and selling foreign currencies, shares or bonds in rapid succession, investing in CISs, insurance-based investment products or moving the money from one country to another.
3. **Integration** – the final stage in the ML process, when the layering process has been successful and the ultimate beneficiary appears to be holding what was previously dirty money as legitimate funds (clean money). The money is now regarded as integrated into the legitimate financial system.

Broadly, the anti-money laundering (AML) provisions are aimed at identifying customers and reporting suspicions at the placement and layering stages and keeping adequate records which will try and prevent the integration stage being reached.

4.4 Systems and Controls in Relation to Money Laundering

3.4 Money Laundering and Financial Crime

3.4.4 Know due diligence measures designed to prevent money laundering and/or terrorist financing; Joint Money Laundering Steering Group (JMLSG) guidance; credit reference agencies

---

The FCA's expectations for investment firms concerning financial crime systems and controls are set out in SYSC 6.3. In summary, firms are required to establish and maintain effective systems and controls for compliance with the various requirements and standards under the regulatory system and for countering the risk that a firm may be used to further financial crime. The provisions are principles- based as opposed to being prescriptive, therefore, it allows firms to implement arrangements which are proportionate to the nature, scale and complexity of their business.

Firms are required to ensure that their systems and controls enable them to identify, assess, monitor and manage ML risk. They must carry out regular assessments of the adequacy of these arrangements.

ML risk is the degree of risk that a firm may be used to facilitate the laundering of dirty money. Failure by a firm to manage this risk effectively will increase the risk to society of crime and terrorism. When considering whether a breach of its rules on systems and controls against ML has occurred, the FCA will look to see if the firm has followed relevant provisions in the JMLSG Guidance.

In identifying its ML risk, and in establishing its systems and controls, a firm should consider a range of factors, including:

- its customer, product and activity profiles
- its distribution channels
- the complexity and volume of its transactions
- its processes, systems and controls, and
- its operating environment.

A firm should ensure that the systems and controls include appropriate:

- training for its employees in relation to ML
- provision of appropriate information to its governing body, board and senior management, including a report at least annually by the firm's MLRO (see below) on the operation and effectiveness of those systems and controls
- documentation of the firm's risk management policies and risk profile in relation to ML
- measures to ensure that ML risk is taken into account in the firm's day-to-day operation and also when developing new products, taking on new customers, and changing its business profile, and
- measures to ensure that new client identification procedures do not unreasonably deny access to individuals who may not be able to produce detailed evidence of identity.

Each authorised firm must give a director or senior manager (who may also be the MLRO) overall responsibility for the establishment and maintenance of effective Anti-Money Laundering (AML) systems and controls.

A firm must appoint an MLRO, who is responsible for receiving and assessing internal ML suspicion reports, and after a proper investigation, determining whether to report these suspicions to the NCA. The MLRO is an FCA-required function under the SM&CR, so the individual holding this role is required to be approved by the regulator. The firm must ensure that its MLRO has an appropriate level of authority and independence within the firm and has appropriate access to resources and information sufficient to enable them to carry out their responsibilities. The MLRO acts as a central point for all activity within the firm relating to money laundering. The MLRO should be based in the UK.

Depending on the nature, scale and complexity of its business, it may be appropriate for a firm to have a separate compliance function. This function may be heavily involved in monitoring the firm's compliance with its AML procedures. The organisation and responsibilities of the compliance function should be fully documented. A compliance function should be staffed by an appropriate number of competent staff who are sufficiently independent to perform their duties. It should be adequately resourced and should have unrestricted access to all of the firm's relevant record.

4.4.1 The Joint Money Laundering Steering Group (JMLSG)

The primary source of procedural guidance for firms is the Joint Money Laundering Steering Group (JMLSG) Guidance. The Guidance is in three parts:

- **Part I** is general guidance applicable to all types of firms in the financial sector. This section also explains the international context and the UK legislative framework.
- **Part II** is sectoral guidance where each chapter is specifically geared to a particular type of firm; for example, retail banking, wealth management, stockbroking and wholesale markets.
- **Part III** is specialist guidance, relating to electronic payments (wire transfers), for example; this section also contains the UK financial sanctions regime.

The Guidance is essentially a risk-based approach; firms must identify the risks which their own business faces in conducting financial transactions and implementing arrangements, systems and controls to mitigate against the risk that the firm will be used for financial crime. The JMLSG is a private sector body that is made up of the leading UK Trade Associations in the financial services industry, its guidance is endorsed by HM Treasury – therefore it does not form part of the FCA's Handbook.

The JMLSG Guidance sets out how authorised firms should manage their risk in terms of ML and Terrorist Financing (TF).

The Guidance gives firms a degree of discretion in how they comply with AML/combating terrorist financing (CTF) legislation and regulation, and on the procedures that they put in place for this purpose. It is not intended that the Guidance be applied as a checklist of steps to take.

The FCA has made clear its expectation that regulated firms must address the management of risk in a thoughtful and considered way, and establish and maintain systems and procedures that are appropriate and proportionate to the risks identified. The aim of the Guidance is to assist firms to do this.

The JMLSG Guidance Notes requires firms to:

- take a risk-based and proportionate approach to ML prevention, adopting a formal policy which must be documented, kept up-to-date and made available to the FCA on request
- simplify the identity verification requirements for many customer types
- allow for greater reliance on identification verification carried out by other firms
- introduce some new or revised definitions, including beneficial owners and PEPs
- set out the CDD measures to be applied in various circumstances and stated that CDD should be applied on a risk-based approach
- set out the extent to which reliance may be placed on the CDD work of other regulated firms
- set out situations when simplified CDD measures may be applied
- set out when EDD must be applied, the six specific circumstances
- require firms to have policies, controls and procedures to identify and scrutinise complex or unusually large transactions or unusual patterns of transactions, and
- establish and maintain systems which enable firms to respond to enquiries from financial regulators.

Senior management of regulated firms must appoint an appropriately qualified senior member of staff who will have overall responsibility for the maintenance of the firm's AML systems and controls.

Firms must also have an AML policy statement in place; this provides a framework for the firm and its staff, and must identify named individuals and the functions responsible for implementing particular aspects of the policy. The policy must also set out how senior management undertakes its assessment of the ML and TF risks which the firm faces, and how these risks are to be managed.

The policy statement should include such matters as the following:

Guiding principles:

1. Clients' identities need to be satisfactorily verified before the firm accepts them.
2. A commitment to the firm knowing its customers appropriately – both at acceptance and throughout the business relationship by taking appropriate steps to verify a customer's identity and business.
3. Staff need adequate training and need to be made aware of the law and their obligations.
4. Recognition of the importance of staff promptly reporting their suspicions internally.

Risk-mitigation approach:

1. A summary of the firm's approach to assessing and managing its ML and TF risk.
2. Allocation of responsibilities to specific persons and functions.
3. A summary of the firm's procedures for carrying out appropriate identification and monitoring checks on the basis of their risk-based approach.
4. A summary of the appropriate monitoring arrangements in place to ensure that the firm's policies and procedures are being carried out.

Firms are also required to assess the risks inherent in their business, taking into account risk factors including those relating to their clients, countries they operate in, products, services they offer/provide, transactions undertaken and delivery channels.

4.4.2 JMLSG Guidance on 'Know Your Customer'

Firms must be able to demonstrate that they know, and understand the types of transactions that their customers undertake, or could undertake based on their business or trading activity.

Chapter 5 of the JMLSG Guidance Notes explains that the requirement to conduct CDD derives from the MLR 2017. The requirements are there for two broad reasons:

- to help the firm be satisfied that they know that the customers are who they say they are, and that there are no legal reasons preventing the relationship, and
- to assist law enforcement.

The CDD requirements should be applied by firms having regard to the risks associated with different types of their business relationship. There are three aspects to CDD at the outset of a new business relationship:

- Identifying the customer/beneficial owner – obtain the name, address and date of birth; for non- personal customers the beneficial owners must be identified.
- Obtaining verification of the customer's/beneficial owner's identity – conduct additional checks to verify the information.
- Obtaining information about the intended nature of the business relationship.

This is standard due diligence, and Chapter 5 of the JMLSG Guidance Notes gives practical guidance on the due diligence required for different types of customer. For personal customers, standard verification requirements may be satisfied by the production of a valid passport or photocard driving licence. For non-personal customers, such as companies, partnerships and clubs, it will be necessary to conduct checks on public registers, such as Companies House.

Simplified due diligence means not needing to conduct the same level of standard due diligence due to the lower risk of counterparties like:

- certain other regulated financial services firms
- listed companies
- beneficial owners of pooled accounts held by notaries or legal professionals
- UK public authorities
- community institutions, and
- certain products/arrangements when the risk of them being used for ML is inherently low: life assurance, e-money products, pension funds and child trust funds (CTFs).

If SDD does not apply, then satisfactory identification evidence for the customer should be obtained, and verified, as soon as is reasonably practicable after first contact between the firm and the customer. If there is a delay between the forming of the business relationship and the verification of the customer's identity (eg, in the case of non-face-to-face business) firms' risk management procedures should limit the extent of the relationship. They could do this, for example, by placing restrictions on the transactions the customer can enter into, or on the transfer of funds, until verification is complete.

If a firm cannot satisfactorily verify a customer's identity, it should not proceed with the business relationship and should consider whether this should cause it to make a report to the NCA. If it is simply the case that the customer cannot produce the correct documents or information, the firm may consider whether there is any other way it can satisfy itself as to their identity.

Enhanced due diligence (EDD) is when the firm conducts more checks than for standard cases. Firms must apply EDD measures on a risk-sensitive basis in any situation which by its nature can present a higher risk of money laundering or terrorist financing. As part of this, a firm may conclude, under its risk-based approach, that the information it has collected as part of the customer due diligence process is insufficient in relation to the money laundering or terrorist financing risk, and that it must obtain additional information about a particular customer, the customer's beneficial owner, where applicable, and the purpose and intended nature of the business relationship.

Therefore, firms should hold sufficient information about the circumstances and business of their customers and, where applicable, their customers' beneficial owners, for two principal reasons:

- to inform its risk assessment process, and thus manage its money laundering/terrorist financing risks effectively, and

- to provide a basis for monitoring customer activity and transactions, thus increasing the likelihood that they will detect the use of their products and services for money laundering and terrorist financing.

Firms' information demands need to be proportionate, appropriate and discriminating, and need to be justifiable to customers, therefore firms would need to maintain greater information on clients they deem as carrying a higher money laundering or terrorist financing risk, or where the client is seeking a product or service that carries a higher risk of being used for money laundering or terrorist financing.

MLR 2017 brought in new specific circumstances in which EDD measures must be applied:

- any case identified by the firm under its risk assessment (or in information provided by the supervisory authorities) where there is a high risk of ML/TF
- any transaction with a person established in a high-risk third country
- where the client has not been physically present for identification purposes
- in respect of a relation to correspondent banking relationships
- in respect of a business relationship or occasional transaction with a PEP, if the firm has determined that a customer or potential customer is a PEP, or a family member or known close associate of a PEP
- in any case where a customer has provided false or stolen identification documents or information on establishing a relationship, and
- in any case where a transaction is complex and unusually large or there is an unusual pattern of transactions.

A PEP is defined as:

'an individual who is or has, at any time in the preceding year, been entrusted with prominent public functions, other than as a middle-ranking or more junior official'.

Under the definition of a PEP, a firm's obligation to apply EDD measures to an individual ceases after they have left office for one year, or a longer period if the firm considers that it might be appropriate – in order to address risks of ML/TF in relation to that person.

Family members of a PEP include a spouse or partner of that person, a partner (including a person who is considered by their national law as equivalent to a spouse), children of that person and their spouses or partners, and parents of that person. Firms are no longer required to apply EDD measures to family members or close associates of a PEP when the PEP is no longer entrusted with a prominent public function, whether or not the period noted above has expired.

Firms are expected to apply enhanced due diligence on a risk-sensitive basis and to:

- have in place appropriate risk-management systems and procedures to determine whether a client or the beneficial owner of a client is a PEP, or a family member or known close associate of a PEP
- obtain appropriate senior management approval for establishing, or continuing, a business relationship with such a client

- take adequate measures to establish the source of wealth and source of funds which are involved in the business relationship or occasional transaction, and
- conduct enhanced ongoing monitoring of the business relationship.

Therefore, firms should take a proportional, risk-based approach to conducting transactions or business relationships with PEPs, depending on where they are assessed on the scale of high risk. However, establishing whether individuals qualify as PEPs is not always straightforward. The legal definition is quite explicit, but there is some confusion over middle-ranking or junior officials who have significant or even absolute control. Firms' analysis should employ an appropriate risk-based approach to assess where the PEP sits on the risk scale.

Part of the **Know Your Customer (KYC)** activities may involve using credit reference agencies' data in order to access and assess information such as electoral registers and credit history (including any financial associates with whom financial records have been linked), and update that information should it be necessary.

4.5 The Money Laundering Reporting Officer (MLRO) and the Nominated Officer

3.4 Money Laundering and Financial Crime

3.4.5 Know the role of the Money Laundering Reporting Officer and/or Nominated Officer

3.4.6 Know the duty to report suspicious activities

4.5.1 MLRO or Nominated Officer?

Under FCA rules, all firms (except those of sole traders, general insurance firms and mortgage intermediaries) must appoint an MLRO with overall responsibility for the firm's oversight of its compliance with the rules on systems and controls against ML.

The **Money Laundering Regulations (MLR 2017)** require all affected firms to appoint a nominated officer who is responsible for receiving internal ML disclosures from staff members and for making external reports to the NCA where necessary. The nominated officer is also responsible for receiving internal disclosures under POCA and the Terrorism Act 2000.

Although the obligations of the MLRO under the FCA requirements are different from those of the nominated officer under POCA, the Terrorism Act or the MLR 2007, in practice the same person tends to carry on both roles, and is usually known as the MLRO.

Contrast between Nominated Officer and MLRO

A nominated officer is the person a firm designates to receive internal suspicions of money laundering and report them to the National Crime Agency (NCA)). The MLRO is often the same person and is responsible for the broader function of ensuring the firm's compliance with anti-money laundering (AML) regulations, which includes making those external reports. In many firms, these roles are combined, but the terminology highlights a legal obligation versus a broader compliance function.

Role/Function	MLRO	Nominated Officer
Primary role	Oversees the firm's entire compliance with AML regulations	The designated point of contact to receive internal reports of suspected money laundering and terrorist financing
Legal duty	N/A	Must report suspicions to the NCA, as failure to do so is a criminal offense
Internal function	N/A	Acts as the recipient and initial reviewer of suspicious activity reports from other staff members
Reporting function	Makes the final report to the NCA after considering internal suspicions. The MLRO role can be thought of as the individual who takes the ultimate responsibility for the firm's compliance framework and external reporting obligations	
Broader responsibilities	Ensures staff are trained, overseeing customer due diligence, and implementing internal policies	

Duties and Responsibilities of an MLRO

The MLRO ensures the regulated entity complies with all relevant and applicable Money Laundering regulations and procedures, including developing policies, monitoring transactions, and reporting suspicious activity.

This includes:

1. **Policy Development and Implementation**
    - Creating and maintaining AML policies and procedures
        - developing and updating the company's AML framework, ensuring it aligns with legal and regulatory requirements.
        - ensuring policy effectiveness by regularly reviewing and assessing the effectiveness of the AML policies and procedures.
2. **Monitoring and Reporting**
    - Monitoring transactions:
        - overseeing the monitoring of transactions for suspicious activity, including reviewing automated alerts and conducting investigations
        - receiving and assessing internal reports.
    - Receiving reports of suspicious activity from employees and assessing whether further action is needed.
    - Making external reports (SARs) to the NCA:
        - the MLRO is the designated point of contact for reporting suspicious activity to the relevant authorities (eg, NCA)
        - maintaining a record of all internal and external reports (register) related to suspicious activity.
3. **Risk Management**
    - Conducting risk assessments:
        - leads company-wide risk assessments to identify and evaluate potential money laundering risks.
    - Managing risk:
        - develop strategies to mitigate identified risks and ensure the company's overall risk management framework is effective.
4. **Training and Awareness**
    - Developing and delivering training programs:
        - creates and delivers AML training programs to ensure employees understand their obligations and can identify suspicious activity.

- Fostering a culture of compliance:
    - key role in promoting a strong AML culture within the organization.

5. **Regulatory Compliance and Liaison**
    - Staying up-to-date with regulations:
        - keeps abreast of changes in AML regulations and ensures the company's policies and procedures are updated accordingly.
    - Liaising with regulators and law enforcement:
        - primary point of contact with regulatory bodies and law enforcement agencies on AML matters.

6. **Record Keeping**
    - Maintaining accurate records – the MLRO ensures all AML-related records, including training records, risk assessments, and reports, are properly maintained and accessible.

4.5.2 Disclosure of Suspicious Activities

Section 24 of MLR 2017 states that firms must take appropriate measures to ensure that relevant employees are:

- made aware of the law relating to ML and TF, and the requirements of data protection which are relevant to the implementation of MLR 2017, and
- given regular training on how to recognise and deal with transactions and other activities or situations which may be related to ML or TF.

Firms must maintain records of the measures taken, as noted above, and in particular the training provided to employees.

A relevant employee is defined as one whose role is capable of contributing to the identification or mitigation of the risk of ML and TF to which the firm is subject or prevention or detection of ML and TF in relation to the firm's business.

The appropriate measures that firms should consider and seek to implement would take into account the nature of the firm's business, its size and the nature and extent of the risk of ML and TF to which the firm is subject.

Firms should take into account any guidance issued by the FCA, or any other supervisory authority/appropriate body approved by the HM Treasury.

Under POCA 2002, it is an offence to fail to disclose a suspicion of ML. Obviously, this requires the staff at financial services firms to be aware of what constitutes a suspicion and

there is a requirement that staff must be trained to recognise and deal with what may be a ML transaction. Firms are also required to ensure that business relationships are clearly understood, and monitored, sufficiently well so that their staff will recognise patterns of activity which are not in keeping with the customer's anticipated business profile.

Firms must know and understand their customers business and, be able to assess the expected level and type of payments (both in and out) of their account, so that they are able to perform appropriate monitoring.

The disclosure of suspicious activity is made, ultimately, to the legal authorities, namely the NCA; however, disclosure goes through two stages. Firstly, any employee with any suspicion should disclose that suspicion to the firm's MLRO. It is the MLRO who reviews matters, and decides whether the suspicion should be passed on to the NCA.

It is important to appreciate that, by reporting any suspicion to the MLRO, the employee has fulfilled their responsibilities under the law, and has disclosed their suspicions. Similarly, by reporting these suspicions to the NCA, the MLRO has also fulfilled their responsibilities under the law.

The main part of the FCA Handbook which relates to the role of the MLRO is the SYSC Sourcebook. As an approved person, the MLRO is subject to the Senior Managers Regime (ie, performing a Senior Management Function) under the SM&CR, and is primarily responsible for ensuring a firm adequately trains staff in the knowledge, training and understanding of the regulatory requirements and how to recognise and deal with suspicious transactions.

5. Record Keeping Requirements

3.5 Record Keeping Requirements

3.5.1 Know the record keeping requirements in relation to: Anti-Money Laundering (AML); Combating the Financing of Terrorism (CFT)

Firms must identify their customers and, where applicable, their beneficial owners, and then verify their identities. Firms must also understand the purpose and intended nature of the customer's relationship with the firm and collect information about the customer and, where relevant, beneficial owner. This should be sufficient to obtain a complete picture of the risk associated with the business relationship and provide a meaningful basis for subsequent monitoring. These obligations also apply not just when onboarding a new customer but when carrying out ongoing monitoring of a customer. In these circumstances, the purpose is to validate whether information relevant to the risk assessment of the customer or the beneficial ownership of the customer, remains up-to-date.

Firms also play an important role in obtaining and providing information that could potentially assist authorities with counter-terrorism investigations. Many of the controls that firms have in place in relation to terrorism will overlap with their AML measures, ie, risk assessment, CDD, transaction monitoring and the escalation of suspicions.

As part of their overall financial crime and terrorist financing prevention obligations, firms are required to keep copies of any documents and information obtained to meet CDD and counter terrorist financing requirements and sufficient records for transactions for five years after:

- the business relationship ends, or
- an occasional transaction.

Transactional records that occur in a business relationship do not need to be kept beyond ten years. Where a firm is relied on by others to carry out due diligence checks, then it must retain records of those checks for the same period of time.

Conversely, where a firm relies on another party to carry out AML checks, that firm will be expected to demonstrate how it satisfies itself that it can rely on the party undertaking these checks and that records are being retained for five years.

The FCA Handbook (SYSC sourcebook, Chapters 6 and 9) contain details on the record keeping requirements for firms, which stipulate that they must take reasonable care to make and retain adequate records (including accounting records).

The detailed requirements means that firms must make and retain, for the periods specified below, the following records:

- evidence of identity:
    - a copy of the evidence of identity obtained, or
    - a record of where a copy of the evidence of identity can be obtained, or
- a record containing details of every transaction carried out by the firm with or for the client in the course of regulated activity:
    - records of action taken under internal reporting or external reporting.

The specified periods are:

- in relation to evidence of identity, five years from the end of the relationship between the firm and the client
- in relation to transactions, five years from the date when the transaction was completed, or
- in any other case, five years from the obtaining of the information or the creation of the record.

In addition, records kept should include the dates when 'anti-money laundering' training was given, the nature of the training, and the names of the staff who received training.

6. The Bribery Act

3.5 Record-Keeping Requirements

3.6.1 Know the main purpose of the Bribery Act 2010 and the categories of offences covered in Sections 1–7 Bribery Act 2010

6.1 Overview

The **Bribery Act** 2010 creates four offences, namely:

- offering, promising or giving a bribe to another person
- requesting, agreeing to receive or accepting a bribe from another person
- bribing a foreign public official, and
- a corporate offence of failing to prevent bribery.

6.2 Penalties

The Act carries a maximum penalty of ten years' imprisonment for offences, except the corporate offence which carries an unlimited fine.

The relevant sections are as follows:

- **Section 1** covers the crime of bribery which occurs when a person offers, gives or promises to give a **financial or other advantage** to another individual in exchange for the **improper** performance of a **relevant function or activity**.
- **Section 2** covers the offence of being bribed, which is defined as requesting, accepting or agreeing to accept such an advantage, in exchange for the improper performance of such a function or activity.
- **Section 3** defines **relevant function or activity** as:

'any function of a public nature; any activity connected with a business, trade or profession; any activity performed in the course of a person's employment; or any activity performed by or on behalf of a body of persons whether corporate or unincorporated'.

This applies to both private and public industry and encompasses activities performed outside the UK, even if the activities have no link to the country.

- Under **Section 4**, the activity will be considered to be **improperly** performed when the expectation of good faith or impartiality has been breached, or when the

function has been performed in a way not expected of a person in a position of trust.

- **Section 5** provides the standard which should be expected of a reasonable person in the UK, including what might be expected of a person in such a position. If the breach has occurred in a jurisdiction outside the UK, local practices or customs should be disregarded when deciding the issue, unless they form part of the **written law** of the jurisdiction; written law is given to mean any constitution, statute or judicial opinion set down in writing.
- **Section 6** covers bribery of foreign public officials. A person will be guilty of this offence if they promise, offer or give a financial or other advantage to a foreign public official, either directly or through a third party, where such an advantage is not legitimately due. A foreign public official is defined, under Section 6(4), as:

  'an individual holding legislative, administrative or judicial posts or anyone carrying out a public function for a foreign country or the country's public agencies or an official or agent of a public international organisation'.

  The inclusion of **through a third party** is intended to prevent the use of middle men to avoid committing a crime. The offence under Section 6 only applies to the briber and not to the official who receives or agrees to receive such a bribe.

- **Section 7** creates the **broad and innovatory offence** of the failure of commercial organisations to prevent bribery on their behalf. This applies to all commercial organisations which have business in the UK, with a strict liability with no need to prove any kind of intention or positive action. It also provides an offence of vicarious liability; therefore a commercial organisation can be guilty of the offence if the bribery is carried out by an employee, an agent, a subsidiary, or another third party.

6.2.1 Hospitality

A financial advantage could include corporate hospitality. The statutory guidance details that it will not amount to a bribe provided that the hospitality has a legitimate business aim, is reasonable, proportionate and appropriate in the circumstances. Facilitation payments on the other hand are an offence unless it is the written law of the country of the foreign public official which allows the official to accept the advantage offered or where payments have been made under threat of violence.

6.3 Defence

A firm has a defence to the offence of failing to prevent a bribe if it can show that it has put in place adequate procedures to prevent bribery. The Ministry of Justice (MoJ) has provided guidance, in the form of six principles, on how firms can implement procedures to prevent bribery:

- **Proportionality** – the action the firm takes should be proportionate to the risks it faces and to the size of the business. A firm may need to do more to prevent

bribery if the organisation is large or if the firm is operating in an overseas market where bribery is known to be commonplace, compared to what the firm might do if the organisation is small or is operating in markets where bribery is not so prevalent.

- **Top level commitment** – those at the top of an organisation are in the best position to ensure their organisation conducts business without bribery. If the firm is running a business, it will want to show that it has been active in making sure that its staff (including any middle management) and the key people it does business with, understand that the firm does not tolerate bribery. The firm may also want to get personally involved in taking the necessary proportionate action to address any bribery risks.
- **Risk assessment** – think about the bribery risks the firm might face. For example, it might want to do some research into the markets in which it operates and the people it deals with, especially if the firm is entering into new business arrangements and new markets overseas.
- **Due diligence** – knowing exactly who the firm is dealing with can help to protect the organisation from taking on people who may be less than trustworthy. The firm may therefore want to ask a few questions and do a few checks before engaging others to represent it in its business dealings.
- **Communication** – communicating the firm's policies and procedures to staff and to others who will perform services for it enhances awareness and helps to deter bribery by making clear the basis on which the organisation does business. The firm may, therefore, want to think about whether additional training or awareness-raising is appropriate or proportionate to the size and type of business.
- **Monitoring and review** – the risks the firm faces and the effectiveness of its procedures may change over time. The firm may want, therefore, to keep an eye on the anti-bribery steps it has taken so that it keeps pace with any changes in the bribery risks the firm faces when, for example, it enters new markets.

7. Fraud and Economic Crime

3.7 Fraud and Economic Crime

3.7.1 Know the responsibilities in relation to the prevention of fraud and economic crime

---

The Economic Crime and Corporate Transparency Act (ECCTA) is aimed at delivering reforms to tackle economic crime and improving transparency over corporate entities.

ECCTA introduced:

- a new regulatory objective into the Legal Services Act 2007 on tackling economic crime
- reforms to Companies House to prevent the creation of, and shutting down, fraudulent companies
- reforms to prevent the abuse of limited partnerships

- additional powers to seize and recover suspected criminal cryptoassets
- a new failure to prevent fraud offence
- measures to address strategic lawsuits against public participation (SLAPPs).

7.1 Failure to Prevent Fraud

ECCTA introduced the corporate criminal offence failure to prevent fraud, which came into effect on 1 September 2025.

The Home Office guidance sets out that under the offence:

'An organisation may be criminally liable where an employee, agent, subsidiary, or other 'associated person', commits a fraud intending to benefit the organisation and the organisation did not have reasonable fraud prevention procedures in place.'

The offence applies to:

- all large incorporated bodies, subsidiaries and partnerships
- large not-for-profit organisations (such as incorporated charities)
- incorporated public bodies
- 'large organisations' must meet at least two of the following criteria:
    - turnover of more than £36 million
    - balance sheet total of more than £18 million
    - more than 250 employees.

The offence applies to the 'base fraud' offences listed in Schedule 13 of ECCTA:

- fraud offences under Section 1 of the Fraud Act 2006, including:
    - fraud by false representation
    - fraud by failing to disclose information
    - fraud by abuse of position
- participation in a fraudulent business
- obtaining services dishonestly
- cheating the public revenue (common law)
- false accounting
- false statements by company directors
- fraudulent trading.

Money laundering is not an offence of fraud.

The base fraud offence must be committed by a person associated with the relevant body including:

- an employee
- an agent

- a subsidiary of the relevant body
- a person who provides services for or on behalf of the relevant body while providing those services.

Aiding, abetting, counselling, or procuring the commission of any of the listed offences also qualifies as a base fraud offence.

The benefit may be financial or non-financial, and an organisation does not need to actually receive any benefit for the offence to apply, as the fraud offence can be complete before any gain is received. It is enough that the organisation was intended to be the beneficiary.

It is a defence if the organisation has reasonable procedures in place to prevent fraud.

The Home Office has provided guidance that sets out six fraud prevention principles that should inform organisations' fraud prevention framework:

- top-level commitment
- risk assessment
- proportionate risk-based prevention procedures
- due diligence
- communication (including training)
- monitoring and review.

Source of information: *UK Government (https://assets.publishing.service.gov.uk/media/67f8ef1845705eb1a1513f35/Failure+to+Prevent+Fraud+Guidance+-+English+Language+v1.6.pdf)*

7.2 Failure to Prevent Fraud

The offence creates strict liability for firms, which means even if senior management were unaware of the fraud, the firm can be held liable.

This means the defence of 'reasonable procedures' to prevent fraud is critical, which raises questions as to how organisations should respond practically.

8. The Disclosure and Transparency Rules (DTR)

8.1 Rules and Control of Inside Information

3.8. Disclosure and Transparency Rules

3.8.1 Know the main concepts, legal requirements and regulations relating to disclosure and transparency rules as they relate to: disclosure and control of insider information by issuers; transactions by persons discharging managerial responsibilities and their connected persons; share dealing by directors and other persons discharging, including closed periods; chairman's approval' no short term dealing anti-money laundering

---

We discussed the concept of persons discharging managerial responsibilities in section 3 of this chapter.

The **Disclosure and Transparency Rules (DTR)** are part of the FCA Handbook. The Disclosure Rules are implemented by the FCA in its role as the listing authority. The Transparency Rules give effect in the UK to the Transparency Directive, with both sets of rules applying to issuers of securities listed to trade on certain markets.

8.1.1 Disclosure Rules

The purpose of the Disclosure Rules, in accordance with provisions for dealing with inside information and preventing market abuse, is to:

- promote prompt and fair disclosure of relevant information to the market
- set out specific circumstances in which an issuer can delay the public disclosure of inside information, and
- set out requirements to ensure that such information is kept confidential in order to protect investors and prevent insider dealing.

Transparency Rules

The purpose of the Transparency Rules is to ensure there is adequate transparency of and access to information in the UK financial markets.

The Disclosure Rules set out the requirements for the control of inside information, in two respects:

- **Denying access** – issuers must establish effective arrangements to deny access to inside information to persons other than those who require it for the exercise of their functions within the issuer.
- **Breaches of confidentiality** – issuers must have measures in place that enable public disclosure to be made via an approved regulatory information service (RIS) as soon as possible, in cases where the issuer is unable to ensure the confidentiality of the inside information. These measures should include a holding announcement to be used if a breach of confidentiality occurs when the issuer is legitimately delaying disclosure of inside information to protect its own interests, in accordance with the FCA rules which permit this. The holding announcement must give as much detail as possible, state why a full announcement cannot be made, and undertake to announce further details as soon as possible.

8.2 Disclosure Rules

In developed equity markets with a substantial number of listed companies, it is felt appropriate that when investors purchase (or sell) shares to bring about (or reduce) a significant stake in a company, such information should be made available to the investing public. This will let others judge the likely impact on the price.

The level at which a shareholding is deemed significant is set at 3% in the UK; for example, if a corporate raider built up a stake of 3% or more in a listed UK company, it would be disclosed to the market. This enables other existing and potential investors to assess the company in full knowledge that there is a new significant shareholding.

The Disclosure and Transparency Rules (DTR) vary in different jurisdictions. In this section, we will consider two jurisdictions – the UK and the US.

The EU has harmonised disclosure rules via the implementation of the Transparency Directive. Following Brexit, the UK Transparency Directive established disclosure requirements on an ongoing basis for issuers who have securities admitted to trading on a regulated market situated or operated within UK and/or the EU. Included are notification requirements of both issuers and investors in relation to the acquisition and disposal of significant shareholdings in companies.

The notification requirement is triggered when the size of holdings reaches, exceeds, or moves below certain thresholds. The thresholds are set at 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%. The shareholder reaching or breaching the threshold is required to inform the issuer, and the issuer will then inform the market.

On implementation of the Directive, when the UK was part of the EU, the UK decided to retain its thresholds at 3% and each percentage point above that level. So, under UK regulation, an investor is judged to have a notifiable interest in a public company if they hold 3% or more of its shares. At this point they are obliged to inform the company of their holding.

Under the UK DTR, an interest is also notifiable if the 3% interest is in the form of voting rights, rather than simply holding the shares. Voting rights attached to shares are now disclosable, rather than interests in shares. Voting rights may arise from holdings of financial instruments as well as shares.

Indirect holdings may also result in a requirement for a notification to be made to the issuer, when a person may be able to control the exercise of voting rights. Appointing a proxy, for example, will (if the holding reaches the relevant threshold) require the shareholder and proxy holder to notify the issuer if, but only if, the appointment includes the power to vote in the discretion of the proxy holder.

Voting rights attached to shares are totally disregarded in six cases:

1. Shares acquired for the sole purpose of clearing and settlement within the period between the transaction and the third trading day following the execution of the transaction.
2. Shares held by a custodian or bare nominee.
3. Shares held (if less than 10%) by a declared market maker.
4. Shares held (if not more than 5%) in the trading book of an investment firm or credit institution.
5. Shares held as collateral.
6. Shares acquired for stabilisation purposes as long as the voting rights are not exercised.

Shareholders are deemed to have knowledge of the acquisition or disposal of voting rights (and hence time to notify starts to run from) no later than two trading days following the transaction in question or, if it was conditional upon an event outside the control of the parties to the transaction, when it becomes unconditional.

Furthermore, once the investor's holding is above 3%, they must also inform the company if it rises or falls through a whole percentage point. For example:

- a stake of 3.7% rising to 4.1% must be reported, but a stake of 3.7% rising to 3.9% does not need to be, and
- a stake of 5.4% falling to 4.9% must be reported, but a stake of 5.4% falling to 5.1% does not need to be.

An investor must also inform the company if their stake falls back to below 3%.

One of the reasons that disclosure from the investor is deemed necessary, despite the fact that the company maintains a register of its shareholders, is that these notifiable interest rules not only include those shares held directly by the investor, but also those shares held by parties connected to them, known as connected parties. These include shares held by:

- the investor's spouse
- the investor's children (less than 18 years old)

- companies controlled by the investor; for these purposes, control is assumed if the investor holds at least one third of the voting rights of a company, and
- concert parties: this is simply an agreement between two or more persons to influence the company together, such as voting together; if the combined holding reached 3% or more it becomes notifiable, as if it were a single holding.

As seen above, 3% is the level at which notification starts and this information must be reported in writing to the company within two business days. If the company is listed, it must then report the same information to a primary information provider, such as the LSE's RNS, by the end of the following business day. It is worth remembering that reporting is not made to the FCA.

Fund managers and operators of regulated CISs (such as authorised unit trusts (AUTs) and open-ended investment companies (OEICs)) are deemed to be non-beneficial holders and are exempt from reporting under the notifiable interest (3%) rule. Interests held by investment managers and OEICs, and in general non-beneficial owners, are under the UK DTR subject to disclosure at 5% and 10% (but not at the percentages in between 5% and 10%) and then at every percentage above 10%. Also, market makers have an exemption for holdings below 10% under UK DTR and, as long as they are not able to control the voting rights of the shares concerned, custodians are completely exempt from the disclosure rules.

The company is required to maintain a register of notifications of interests in shares and make this available at its registered office.

Companies Act Section 793 Letter

Under Section 793 of the Companies Act 2006, a UK public company is able to send a written notice to any person that the company knows or suspects to be a shareholder and ask them to confirm whether they are holding any shares. The notice requests details of that shareholder's total interest in the company.

The notice can also request details of past shareholdings held at any time in the last three years and, when the interest is a past interest, details of the identity of the person to whom the shares were sold if that is known. However, it is rare for such a notice to be sent by the company registrar to an individual shareholder. These letters are usually sent to the nominee companies that appear on the register. A nominee company is the legal owner of shares on behalf of another beneficial owner.

The letter is sent to the company secretary of the nominee company, requesting details of the true beneficial owner of the securities. Section 793 enables the registrar to identify when someone is using the nominee company to hide their identity and accumulate a substantial holding without anyone being aware of the fact.

Notices under Section 793 require a written response from the recipient within a reasonable time as may be specified in the letter. If requests are persistently ignored, the company can apply to court to have the shares held frozen. This means the shareholders would lose their rights to vote on those shares, lose their entitlement to dividends and be

unable to sell them. The company is required to keep a record of the Section 793 letters that have been sent, and the information received, in a separate part of its register of shareholders.

Similar disclosure and transparency requirements are implemented globally. While the detailed requirements vary, the aim is always to foster transparency over issuers. For example, in the US the Securities and Exchange Commission (SEC) published its disclosure rules for resource extraction issuers.

Further, the US Congress enacted the Corporate Transparency Act (CTA) in 2021. The CTA requires companies to report information regarding their beneficial owners using a beneficial ownership registry. The registry is maintained by the US Treasury Department's Financial Crimes Enforcement Network (FinCEN).

The following information is required from the beneficial owners:

1. Full legal name.
2. Date of birth.
3. Current residential or business street address.
4. Non-expired US passport number, non-expired US or state government ID number, non-expired driver's licence, or a valid foreign passport number.

Reporting of information must be made within one year of beneficial status changes. These changes include:

1. when ownership exceeds or drops below 25%
2. a substantial change in the ownership of the company, or
3. a change in the contact details of the beneficial owner.

End of Chapter Questions

Think of an answer for each question and refer to the appropriate section for confirmation.

1. **What is market abuse?**
   Answer Reference: Section 1.1

2. **How does the FCA provide guidance on what constitutes market abuse?**
   Answer Reference: Section 1.2

3. **Name two types of behaviour that give rise to the offence of market abuse.**
   Answer Reference: Section 1.2

4. **What reporting requirements exist for market abuse?**
   Answer Reference: Section 1.3.2

5. **What is inside information?**
   Answer Reference: Section 2.1

6. **What is the offence of insider dealing?**
   Answer Reference: Section 2.1 & 2.2

7. **Insider dealing is an offence under which legislation?**
   Answer Reference: Sections 2.2

8. **What financial instruments are caught by insider dealing legislation?**
   Answer Reference: Section 2.2

9. **What are the general defences against insider dealing?**
   Answer Reference: Section 2.4.1

10. **List four forms of market manipulation.**
    Answer Reference: Section 3.1

11. **What are the obligations on a person with managerial responsibility?**
    Answer Reference: Section 3.2

12. **What are investment recommendations?**
    Answer Reference: Section 3.3

13. **What is the activity of money laundering?**
    Answer Reference: Section 4.1

14. **What defence can be used for the offences under POCA 2002?**
    Answer Reference: Section 4.2

15. **Describe the three stages of money laundering.**
Answer Reference: Section 4.3

16. **What three types of customer due diligence requirements are set out in the JMLSG Guidance?**
Answer Reference: Section 4.4.1 & 4.4.2

17. **What are the responsibilities of the MLRO?**
Answer Reference: Section 4.5

18. **What are the record keeping requirements in relation to AML & CFT?**
Answer Reference: Section 5

19. **What are the main offences of the Bribery Act 2010?**
Answer Reference: Section 6.1

20. **What are the aims of the Economic Crime and Corporate Transparency Act (ECCTA)?**
Answer Reference: Section 7

21. **What is the purpose of the Disclosure and Transparency Rules?**
Answer Reference: Section 8.1

Chapter Four
Complaints and Redress

Section 1	Consumer Rights
Section 2	Customer Complaints
Section 3	Data Protection
Section 4	Whistleblowing

This syllabus area will provide approximately 9 of the 75 examinations questions

1. Consumer Protection

1.1 Consumer Rights

4.1 Consumer Rights

4.1.1 Know the relevant aspects of the Consumer Rights Act 2015 (CRA)

The **Consumer Rights Act 2015 (CRA)** is a UK law that consolidates consumer protection laws, particularly for contracts involving goods, digital content, and services. It outlines statutory rights for consumers and remedies available when those rights are breached. The act aims to enhance consumer confidence and simplify enforcement, and is designed to:

- give consumers certain statutory rights relating to consumer contracts for goods, digital content, and services
- give consumers certain statutory remedies in the event of a breach of these statutory rights
- reform and consolidate the law relating to unfair terms in consumer contracts (Part 2).

The act is in three parts covering:

1. consumers' rights and remedies in relation to contracts for the supply of goods, digital content, and services.
2. provisions relating to unfair terms in consumer contracts and notices.
3. miscellaneous and general provisions, including investigatory powers for consumer law enforcers and provisions relating to secondary ticketing.

Under the CRA, the FCA has the statutory power to challenge unfair terms in financial services consumer contracts. The FCA is deemed as a qualifying body under the Unfair Terms in Consumer Contracts Regulations 1999. This means that the FCA has the power to seek an undertaking from a firm that it will amend or remove an unfair contract term from future consumer contracts. The FCA can also apply to the court for an injunction to prevent a firm from using or enforcing the term against existing customers.

The unfair terms provisions of the CRA protect consumers against unfair terms in contracts and notices, including terms that have been individually negotiated between a consumer and a firm.

A term is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer.

The CRA contains an indicative and non-exhaustive list of terms of consumer contracts that may be regarded as unfair. This list is known as the grey list. The fact that a term is not on the grey list does not necessarily mean that it is fair.

Whether a term is fair is determined by:

- taking into account the nature of the subject matter of the contract, and
- referring to all the circumstances at the time the term was agreed and to all of the other terms of the contract or of any other contract on which it depends (including implied terms)

The CRA requires that terms are transparent. A term that fails to meet the CRA requirement for transparency is not necessarily unfair (which must be determined in the light of all the relevant factors) with the consequence that it is not binding on the consumer.

1.2 Procedures

4.1 Consumer Rights

4.1.2 Know: the purpose and requirements of the cancellation and withdrawal rights; the application of reflection periods

---

Cancellation rights must be provided to retail customers when they transact investment business with a firm. In this respect, the rules on cancellation apply to:

- firms providing retail financial products based on designated investments or deposits, and
- firms entering into distance contracts with consumers, relating to deposits or designated investments.

The cancellation rights and rights to withdraw are intended to ensure that clients entering into the relevant range of investment transactions have the opportunity to reconsider their decision within a certain period of time and are able to cancel the transaction if they change their minds. When a consumer does so, the effect is that the contract is terminated.

In summary, the cancellation periods are:

- life and pension products – 30 calendar days
- cash deposit Individual Savings Accounts (ISAs) – 14 calendar days
- non-life and pensions products (advised, non-distance contracts) – 14 calendar days, and
- non-life and pensions products (distance contracts) – 14 calendar days.

For example, should a client who receives a cancellation notice in respect of an advised purchase of an authorised unit trust (AUT) or OEIC wish to exercise their right to cancel, they must do so within 14 days.

The cancellation period starts either from the day the contract concludes, or from the day the client receives contractual information, if this is later.

If cancellation rights apply, firms must tell consumers of their rights in good time before (or where that is not possible, immediately after) the consumer is bound by the contract; and they must do so in a durable medium. They must tell the consumer of:

- the existence of the cancellation/withdrawal right
- its duration
- the conditions for exercising it (including information on any amount the consumer may have to pay)
- what happens if they do not exercise it, and
- practical details of how to exercise it, including the address to which they must send any notification.

A firm need not do this if the consumer is already receiving similar information from it, or another person, under the COBS rules (distance marketing disclosures rules and providing product information).

If a consumer exercises the right to cancel, they must notify the firm; the notification is deemed to have been observed if it is dispatched before the deadline expires. The consumer does not need to give any reason for cancelling.

The record-keeping retention period is:

- indefinitely for pension transfers, pension opt-outs or free-standing additional voluntary contributions (FSAVCs)
- at least five years in relation to a life policy, pension contract, personal pension scheme or stakeholder pension scheme, or
- at least three years in any other case.

Where a client evokes the cancellation rights, they may not get the amount that they invested or used to purchase a product. For instance, if they invested into a collective investment scheme (unit trust or a UCITS fund), then they will receive back the proceeds following the sale of their holding – which will be impacted by the price movement of the fund's underlying holdings.

Source of information: *FCA Website (Conduct of Business Sourcebook)*

2. Customer Complaints

It is almost inevitable that customers will raise complaints against a firm; sometimes these complaints are valid and sometimes they are not. The FCA requires authorised firms to deal with all complaints promptly and fairly and there are additional requirements for handling complaints from complainants who are eligible to subsequently take their grievance to the Financial Ombudsman Service (FOS).

2.1 Eligible Complaints

4.2 Customer Complaints

4.2.1 Know the criteria for a complainant to be eligible to lodge a complaint

---

Not all complainants will have the right to subsequently take their grievance to the FOS. Access to the FOS depends on whether the circumstances fall within the FOS jurisdiction (see below) and whether the complainant is an eligible complainant.

Eligible complainants are:

- **Consumers** – any person using or contemplating using the services of an authorised firm or an appointed representative.
- **Micro-enterprises** – any person engaged in economic activity, irrespective of legal form, employing fewer than ten persons and having a turnover or balance sheet figure not exceeding €2 million at the time the complaint is raised.
- **Charities** with an annual income of less than £6.5 million at the time the complaint is raised.
- A **trustee of a trust** with a net asset value of less than £5 million at the time the complaint is raised.
- **Certain SMEs** – with an annual turnover of less than £6.5 million and a balance sheet threshold of £5 million, or fewer than 50 employees.
- A **person acting for purposes** which are outside their business of profession or a borrower under a 'buy-to-let' credit agreement (this could mean a client classified as either an ECP or a professional client being in scope).

A further condition for eligibility is that the complaint must arise out of a business relationship with the firm. For example, they are a customer, or have a beneficial interest in a pension scheme, or are a policyholder. Personal guarantors of loans to a business they are involved in also have the right to complain to the FOS.

Other authorised firms are generally not eligible complainants, although they may be eligible if the complaint is in respect of an activity for which they do not have permission themselves.

ECPs and professional clients (other than a trustee of a pension scheme) are generally not eligible complainants but they may be so if the complaint was about an activity other than that for which they are classified as either an ECP or a professional client.

2.2 Complaints Procedures

4.2 Customer Complaints

4.2.2 Know the procedures a firm must implement and follow to handle customer complaints

---

The FCA requires firms to have appropriate written procedures for handling expressions of dissatisfaction from eligible complainants. However, a firm is able to apply these procedures to other complainants as well, if it chooses to do so. These procedures should be followed regardless of whether the complaint is oral or in writing and whether the complaint is justified or not, as long as it relates to the firm's provision of (or failure to provide) a financial service.

These internal complaints handling procedures should capture the following:

- the receiving of complaints
- acknowledging receipt of complaints
- responding to complaints
- appropriately investigating complaints, and
- notifying eligible complainants of their right to go to the FOS where relevant.

The Complaint Handling Rules are contained in the FCA's Dispute Resolution: Complaints Sourcebook (DISP 1) which is entitled 'Treating Complainants Fairly'. This chapter of DISP contains rules and guidance on how respondents should deal promptly and fairly with complaints in respect of business carried on from establishments in the UK.

In order to aid consumer awareness of the protections offered by the regulatory system, firms must:

- publish appropriate summary details of their internal process for resolving complaints and the right of eligible complainants to take unresolved complaints to the FOS
- refer eligible complainants in writing of the availability of these summary details at, or immediately after, the point of sale, and
- provide such summary details in writing on request at any time and when acknowledging a complaint.

These provisions are the Consumer Awareness Rules (DISP 1.2).

The Complaint Handling Rules are set out in DISP 1.3 and require firms to have effective and transparent procedures in place for the reasonable and prompt handling of all complaints, without charging a complainant. These procedures should allow complaints to be made by any reasonable means and recognise the need for resolution. Firms must put in place appropriate management controls and take reasonable steps to ensure that when handling complaints they identify and remedy any recurring issues, or systemic problems, for example, by establishing formal processes for:

- identifying the root causes of complaints and common root causes of complaints about particular products or services
- analysing how many complaints are resolved within one business day of receipt
- considering whether root causes may also affect other processes or products, including those not directly complained about
- correcting, where reasonable to do so, such root causes and prioritising how they are dealt with
- providing regular reports to senior management on recurring or systemic problems, and
- keeping records in relation to the analysis of complaints and of senior management's response to information on root causes of complaints.

The Complaints Resolution Rules (DISP 1.4) state that, once a firm has received a complaint, it must investigate the complaint competently, diligently and impartially, obtaining additional information as necessary. It must assess fairly, consistently and promptly:

- the subject matter of the complaint
- whether the complaint should be upheld
- what remedial action or redress (or both) may be appropriate, and
- if appropriate, whether the firm has reasonable grounds to be satisfied that another firm may be solely or jointly responsible for the matters alleged in the complaint.

The following factors may be relevant when assessing a complaint:

- all the evidence available and the particular circumstances of the complaint
- similarities with other complaints received by the firm
- relevant guidance published by the FCA, other relevant regulators and the FOS, and
- analysis of FOS decisions.

The firm must offer redress or remedial action when it decides this is appropriate and explain to the complainant promptly, and in a way that is fair, clear and not misleading, its assessment of the complaint, the reason for the firm's decision, and any offer of remedial action or redress. Finally, it should comply promptly with any offer of remedial action or redress accepted by the complainant.

2.2.1 Stages and Timings

The FCA sets specific standards which must be observed when a firm receives a complaint. These should be reflected in a firm's internal complaint handling procedures. On receipt of a complaint, a firm must:

- send the complainant a prompt written acknowledgement that the complaint is being dealt with
- keep the complainant regularly informed of progress, and
- within eight weeks, send a written response to the complainant. This will either be a final response or a holding response (note there are different timescales for dealing with payment/electronic service complaints – this is noted in section 2.2.4 of this chapter).

2.2.2 Record Keeping and Reporting

Records must be kept in relation to complaints, both for FCA monitoring purposes and to enable the firm to co-operate fully with the FOS, if necessary. The record-keeping requirements should include:

- the name of the complainant
- the substance of the complaint, and
- the measures taken in order to provide a resolution to the complaint.

The records must be retained for a minimum of five years from the date the complaint was received` if the complaint relates to MiFID business, and three years for all other complaints.

The exception to this, with just an annual report, would be where a firm meets the following criteria:

- Permissions relate to credit-related activities or operating an electronic system in relation to lending and has revenue of less than £5 million, or
- Permissions to carry on only:
    - regulated claims management activities, or
    - regulated funeral plan activities.

The information that firms must provide the FCA includes the following information with regards to the relevant reporting period and particular categories of products:

- total number of complaints received by the firm.
- total number of complaints closed by the firms.
- total number of complaints:
    - upheld by the firm in the reporting period, or
    - outstanding at the beginning of the reporting period.
- total number of redress paid in respect of complaints during the reporting period.

In addition, where a firm receives 500 or more complaints during the six month reporting period, they must provide the following information to the FCA with regards to the relevant reporting period and particular categories of products:

- Information about the total number of complaints received by the firm and the cause of the complaint.
- Information about the number of complaints that were:
    - closed or upheld within different periods of time, or
    - the amount of redress paid by the firm in relation to complaints upheld and not upheld during the reporting period.
- Information providing context about the complaints received.

Complaints are considered closed when the firm has sent a final response, or when the complainant has indicated, in writing, that they accept an earlier response by the firm. If the firm adopts the two- stage approach, a complaint is considered closed if the complainant has not responded to the written response within eight weeks.

A firm must make a record of each complaint received and the measures taken to resolve it and keep that record:

1. for at least five years when the complaint relates to MiFID business or collective portfolio management services for a UCITS scheme
2. for three years for all other complaints.

From the date that the complaint was received by the firm.

The FCA produces quarterly statistical complaints data based on firm's submissions, which is available on the FCA's website.

2.2.3 Final Responses to Complainants

For all complaints, irrespective of the underlying nature, a final response leads the firm to complete one of the following:

- accept the complaint and offer redress or remedial action, or
- offer redress or remedial action without accepting the complaint, or
- reject the complaint and gives reasons for doing so.

The final response must also:

- inform the complainant that if they are still dissatisfied, they may refer the matter to the FOS and they should do this within six months of the firm's final response, and
- include a copy of the FOS leaflet.

If the firm is not able to send a final response within eight weeks, it must send a written response which:

- explains why the firm is not yet able to make a final response and indicate when this will be provided
- informs the complainant that they may now refer the matter to the FOS, and
- includes the FOS leaflet.

2.2.4 Firms Subject to the Payment Services Directive (PSD) and/or the Electronic Money Directive (EMD)

As mentioned above, firms are required under the FCA's DISP rules to respond to a complainant, with either a final response or a holding response, within eight weeks. However, the revised Payment Services Regulations 2017 introduced complaint-handling timescales that differ to the requirements within DISP for certain types of complaint, referred to as EMD or PSD complaints). The FCA implemented the revised requirements into DISP at DISP 1.6.2A.

HM Treasury implemented the PSD through the Payment Services Regulations 2017. The FCA is the nominated regulator for the PSD.

Upon receipt of an EMD or PSD complaint firms are required under DISP 1.6.2A to send a final response to the complainant by the end of 15 business days after the day on which the complaint was received. If there are exceptional circumstances that prevent a firm from responding to a complainant within 15 business days, the firm must:

- send a holding response to the complainant by the end of the 15th business day explaining the reason(s) for the delay and in doing so, provide a deadline by which the firm will send its final response; and
- send the final response to the complainant by the end of the 35th business day following the day on which the complaint was received.

Where the subject matter of a complaint only partially related to an EMD complaint or PSD complaint, that part of the complaint must be responded to in accordance with DISP 1.6.2A.

An EMD complaint is defined in the FCA Handbook as:

> *'any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, an electronic money holder, about the provision of, or failure to provide, a financial service or redress determination:*
>
> *a. which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience, and*
> *b. concerning the rights and obligations arising under Part 5 of the Electronic Money Regulations'.*

A PSD complaint is similarly defined in the FCA Handbook as:

> *'any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of a payment service user about the provision of, or failure to provide, a financial service or a redress determination:*
>
> *a. which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience, and*
> *b. concerning the rights and obligations arising under Parts 6 and 7 of the Payment Service Regulations'.*

2.2.5 Improving Complaints Handling

The FCA enhanced its complaint handling rules with the following requirements:

- extending the next business days rule, where firms are permitted to handle complaints less formally, without sending an acknowledgement letter, three business days after the date of the receipt of the complaint
- reporting of all complaints to the regulator, including those handled within the three business days after the receipt rule
- a 'new complaints' return (requiring firms to send data twice yearly) detailing the number of complaints received
- raising consumer awareness of the Financial Ombudsman Service by sending a summary resolution communication following resolution of complaints by the third business day after receipt, and
- revised rules limiting the cost of calls made by consumers, making consumers pay no more than the maximum basic rate cost for calls.

2.3 Customer Complaints

4.2 Customer Complaints

4.2.3 Know the role of the Financial Ombudsman Service (FOS)

2.3.1 The Role of the FOS

Under the provisions of FSMA, the FCA has the power to make rules relating to the handling of complaints and an independent body has been established to administer and operate a dispute resolution scheme. The dispute resolution scheme is known as the FOS, and the body that operates it is the Financial Ombudsman Service Ltd. It is an independent body that helps resolve disputes between financial businesses and their customers. Its role is to provide a free, impartial, and efficient way for consumers to resolve complaints about financial products and services, acting as an alternative to the courts. The FOS aims to ensure fair and reasonable outcomes for both consumers and businesses.

The FOS is designated to resolve complaints about financial services firms quickly and with minimum formality. Importantly, it is free to complainants, which removes the deterrent effect of anxiety over legal costs. The FOS does not replace the court system, and any complainant is entitled to take civil action against a firm, although they cannot do so if they accept the final decision of the Ombudsman.

While the FOS is free for complainants, regulated firms pay an annual 'levy', as part of their overall regulatory fees and also 'case fees' for each case accepted and investigated by the FOS.

2.3.2 Compulsory versus Voluntary Jurisdictions

The FOS comprises two jurisdictions:

1. **Compulsory jurisdiction (CJ)** which extends to complaints from eligible complainants against FCA-authorised firms in relation to their regulated activities (and any ancillary activities) which the firm is unable to resolve to the satisfaction of the complainant within the timescales outlined above. Authorised firms are automatically subject to the compulsory jurisdiction.
2. **Voluntary jurisdiction (VJ)** covers complaints which are not within the CJ. Businesses can opt into the VJ by entering into a contractual arrangement with the FOS. In doing so, they become 'VJ participants'. The FCA has stated that certain complaints which do not fall within the compulsory jurisdiction can be considered under the VJ.

2.3.3 FOS Awards

The FOS can require the firm to pay monetary award as a result of a complaint. Any monetary award against the firm will be an amount which the FOS considers to be fair compensation.

The amounts of compensation the FOS can award to a complainant are as follows:

Date complaint is referred to the FOS	Date of the 'act or omission'	
	Before 1 April 2019	On or after 1 April 2019
On or after 1 April 2024	£195,000	£430,000
On or after 1 April 2025	£200,000	£445,000

The key is that the limits refer to when the event being complained about actually happened as well as when it was brought before the FOS.

Future limits will be adjusted in line with inflation, award limits will be automatically adjusted on 1 April each year using the consumer price index (CPI) for the preceding January.

In calculating the maximum award, the FOS excludes interest on the award, costs which were reasonably incurred by the complainant in respect of the complaint, and interest on costs.

When the FOS has adjudicated on the complaint, it will write to the complainant asking for confirmation as to whether the complainant accepts or rejects the decision. If the decision is accepted, it is final and binding on both parties.

2.3.4 Super-Complaints and Mass-Detriment References

Certain consumer organisations are allowed to make what are known as super-complaints. The aim is to provide consumer bodies with a way of raising competition and consumer issues with the FCA. Mass- detriment is defined as a large-scale damage, harm or loss to consumers.

Furthermore, the FOS and the firms themselves are allowed to make mass-detriment references. A mass-detriment reference can be made by either the FOS or by a regulated firm if either:

1. it appears that there may have been regular failures by a firm (or firms) to comply with the regulatory requirements, and consumers have suffered, or may suffer, loss or damage as a result, which could be remedied or relieved by legal proceedings; or
2. it appears that a firm (or firms) have regularly acted in a way that, if a complaint were to be made to the FOS, it is likely that the complaint would have been upheld in the complainant's favour and an award made.

The FCA must respond within 90 days of the super-complaint being raised with them.

HM Treasury, via primary legislation, determines which consumer bodies should be able to make super-complaints.

The super-complainant, must write to the FCA setting out the reasons why, in its view, a UK market for goods or services has a feature, or a combination of features that is, or appears to be, significantly harming the interests of consumers and should therefore be investigated.

Super complaints may cover complaints relating to issues arising from the characteristics of a certain financial product or service, or from the conduct of any authorised or exempt

person or any recognised investment exchange.

2.4 The Financial Services Compensation Scheme (FSCS)

4.2 Customer Complaints

4.2.3 Know the role of the Financial Services Compensation Scheme (FSCS)

2.4.1 Purpose

The FSCS was established to pay compensation to eligible claimants in the event of the default of an authorised firm, where the firm's insurance cover becomes exhausted and the firm will enter insolvency. It is essentially an 'insurance policy' that is paid for by all authorised firms and provides protection in relation to valid claims for compensation in the event that a firm is unable, or unlikely to be able, to pay claims against it. Eligible claimants are certain consumers who have a protected claim against an authorised firm that is in default. They include most clients of the defaulting firm, except:

- other authorised firms
- overseas financial institutions
- CISs, their trustees and operators
- some pension and retirement funds – see further details below
- supranational institutions, governments and central administrative authorities
- provincial, regional, local and municipal authorities
- directors and managers of the firm in default and their relatives (unless the firm is a small mutual association and the directors/managers are not salaried, or unless the firm is a credit union)
- companies in the same group as the firm in default unless that company is also a trustee of certain pension schemes
- persons holding 5% or more of the defaulting firm's capital, or of any firm in the same group
- auditors of the firm in default
- any person who has contributed to the firm's default
- large companies or large mutual associations
- large partnerships
- persons whose claim arises from transactions in connection with which they have been convicted of money laundering, and
- persons whose claim arises under the Third Parties (Rights against Insurers) Act 1930.

There are special arrangements for protected insurance claims. Generally, all small businesses are eligible claimants.

Although other authorised firms are not eligible, the following types of authorised firms are eligible if the claim arises from an activity for which they do not have Part 4A permissions:

- sole trader firms
- credit unions
- trustees or operators of stakeholder or personal pension schemes, and
- small businesses – those with an annual turnover of less than £1 million.

Although pension funds are generally excluded, trustees of small self-administered schemes or occupational schemes, where the employer is not a large company, large partnership or large mutual association, are also eligible claimants.

The protected claims can relate to the following:

- money on deposit with a bank (protected deposits)
- claims on contracts of insurance (protected contracts of insurance)
- protected investment business carried on within the (protected investment business) or
- any claims against the manager or trustee of an authorised unit trust or the authorised corporate director (ACD) or depository of an ICVC, providing that, in each case, the claim is made by the holder of the units.

It is important to note that, as operating an unregulated CIS is designated investment business, claims against a UK-authorised unregulated scheme operator carrying on business in the UK are eligible under the FSCS.

In summary, in order to receive compensation, the person making the claim must be an eligible claimant and must have a protected claim against an authorised firm that is in default. The precise amount of compensation payable depends upon the amount of money lost by the claimant and the type of protected claim.

2.4.2 Compensation Payable

Compensation is only paid to cover financial loss, so for investment claims, the compensation paid will try to return the individual to the financial position they would have been if they did not invest.

There are limits to the amount of compensation the FSCS can pay depending on what type of product individuals are claiming for. These limits apply to each person, per authorised firm and product category (as below). Compensation limits vary depending on the circumstances of a case.

Deposits are protected up to £110,000 per eligible person, per firm. This increased from £85,000 per person from 1 December 2025. Temporary high balances such as those that occur after the sale of a property or receipt of an inheritance, are covered up to £1.4 million for a period of 6 months, this increased from 1 December 2025 from £1 million.

Banks, building societies and credit unions (if the firm failed after 1 December 2025)	• Up to £110,000 per eligible person, per bank, building society or credit union. • Up to £220,000 for joint accounts. (Multiple entities may use the same 'licence'. A £110,000 limit for a single person or £220,000 for a joint account are the maximum payout per 'licence').
Insurance firms (if the firm failed after 8 Oct 2020)	The type of insurance held and when the firm failed will affect how much compensation could be claimed. **100% protected:** • Compulsory insurance. • Long-term insurance. • Professional indemnity insurance. • Claims arising from the death or incapacity of the policyholder due to sickness, injury or infirmity. **90% protected:** • All other kinds of insurance.
Insurance brokers/financial advisers (no time limit)	**100% protected:** • Compulsory general insurance. **90% protected:** • All other general insurances.

Investments **(if the firm failed after 1 Apr 2019)**	• Up to £85,000 per eligible person, per firm.
Pensions **(if the firm failed after 1 Apr 2019)**	**If the pension provider fails:** • 100% of the claim, with no upper limit. **If the SIPP operator fails:** • Up to £85,000 per eligible person, per firm. **Bad pension advice:** • Up to £85,000 per eligible person, per firm.

3. Data Protection

4.3 Data Protection Act 2018 (DPA)

4.3.1 Know the six principles of the Data Protection Act 2018

The **Data Protection Act (DPA) 1998** provides for how personal data must be dealt with to protect the rights of the persons concerned. Personal data relates to living individuals who can be identified by that data. Following the implementation of the EU General Data Protection Regulation (GDPR) in 2018, the DPA 1998 was repealed and replaced by a new UK Data Protection Act (titled Data Protection Act 2018).

The DPA 2018 has a wider remit than the GDPR as noted below:

- The DPA 2018 has a part dealing with processing that does not fall within EU law, for example, where it is related to immigration. It applies GDPR standards but it has been amended to adjust those that would not work in the UK national context.
- It has a part that transposes the EU Data Protection Directive 2016/680 (Law Enforcement Directive) into domestic UK law. The Directive complements the GDPR and Part 3 of the DPA 2018 sets out the requirements for the processing of personal data for criminal 'law enforcement purposes'.
- National security is also outside the scope of EU law. The UK Government decided that it is important that the intelligence services are required to comply with internationally recognised data protection standards, so there are provisions based on the Council of Europe Data Protection Convention 108 that apply to them.
- There are also separate parts to cover the **Information Commissioner's Office (ICO)** and their duties, functions and powers plus the enforcement provisions.

The DPA 2018 Principles are:

1. processing must be lawful and fair
2. purposes of processing must be specified, explicit and legitimate
3. personal data must be adequate, relevant and not excessive
4. personal data must be accurate and kept up to date
5. personal data must be kept for no longer than is necessary, and
6. personal data must be processed in a secure manner..

3.1 Purpose

The ICO's mission is:

'to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals'.

This involves safeguarding and empowering individuals, fostering responsible innovation, promoting transparency, and ensuring compliance with data protection and e-privacy legislation. Ultimately, the ICO aims to create a society where information is used responsibly and ethically, with individuals confident in their rights and organisations operating with integrity

Data controllers, those entities that collect and process personal data, have to register with the ICO.

3.2 UK General Data Protection Regulation (UK GDPR)

4.3 Data Protection Act 2018 (DPA)

4.3.2 Know the rights of individuals in respect of the collection and use of their personal data

Individuals have specific rights regarding their personal data under data protection laws like the **UK General Data Protection Regulation (UK GDPR)**. These rights include the right to be informed about how their data is being used, the right to access their data, the right to have inaccurate data corrected, the right to have their data erased in certain circumstances, the right to restrict processing, the right to data portability, and the right to object to processing.

Following Brexit, the GDPR requirements were retained in domestic law in the UK, as the UK GDPR. The high-level requirements remained unchanged.

- **Scope**

  The UK GDPR applies to both data controllers and processors, whereas the DPA only applies to data controllers. The UK GDPR covers controllers and processors located

outside the UK whose activities relate to the offering of goods/services, or monitoring the behaviour of UK data subjects – this is a big change from the DPA.

Data may be exported outside the UK, but data controllers and processors must comply with the conditions set out in the UK GDPR.

- **Accountability**

  The UK GDPR places accountability obligations on data controllers to demonstrate compliance.

- **Data Protection Officers (DPOs)**

  The UK GDPR makes it mandatory for certain organisations, such as public authorities or bodies that regularly and systematically monitor data subjects on a large scale, to designate a data protection officer (DPO).

- **Data Protection Principles**

  The UK GDPR is based on the following data protection principles:

  - Lawfulness
  - Fairness and transparency
  - Purpose limitation
  - Data minimisation
  - Accuracy
  - Storage limitation
  - Accountability.

- **Processing Conditions**

  Where the processing is based on consent, the UK GDPR requires the data controller to be able to demonstrate that the consent is freely given, specific and informed, and that it is an 'unambiguous indication' of a data subject's wishes expressed either by a statement or a clear affirmative action.

  Consent will be purpose-limited, ie, it will permit processing only for specified purposes.

  Consent contained in a written declaration must be distinguishable from other matters in the declaration and must be intelligible, easily accessible, and in clear and plain language.

  Data subjects must also have the right to revoke their consent at any time and it must be as easy to withdraw consent as it is to give it.

  Criminal convictions and offences are not considered as sensitive data under the UK GDPR.

- **Data Subject Rights**

  The UK GDPR enhances the existing rights of data subjects. It requires a significant increase in the amount of information to be provided by data controllers to data subjects.

- **Erasure**

  Individuals have the right to request that businesses delete their personal data in certain circumstances. This is not an entirely new right, but instead builds on the 'right to be forgotten' principle that was established by the Court of Justice of the EU.

- **Portability**

  Data subjects will have a new right to obtain a copy of their personal data from the data controller in a commonly used and machine-readable format in order to transmit that data to another controller.

- **Right to Object**

  There is no right for an individual to object to processing in general. However, in certain circumstances, individuals will have the right to object to their personal data being processed for certain specific purposes.

- **Data Security**

  Data controllers and data processors are required to implement appropriate technical and organisational measures to ensure a level of security of personal data proportionate to the risk, eg, using pseudonymisation and encryption, ensuring confidentiality of processing systems and having a process for regularly testing these measures.

- **Fines**

  Under the UK GDPR, organisations can be fined up to 4% of their annual worldwide turnover (or, if greater, £17.5 million) for breaches of certain provisions, and up to 2% (or, if greater £8.7 million) for other specified breaches.

Under UK GDPR, the key rights of an individual in relation to their data are:

- **Right to be Informed:**
    - the collection and use of their personal data including details about the purposes of processing, categories of data, recipients, retention periods, and other relevant information.

- **Right to Rectification:**
    - inaccurate or incomplete data to be corrected.
- **Right to Erasure (Right to be Forgotten):**
    - deletion of their personal data.
- **Right to Restrict Processing:**
    - individuals can request that the processing of their data be restricted under specific circumstances, such as while accuracy is being verified or if they object to processing.
- **Right to Data Portability:**
    - obtain and reuse their personal data for their own purposes across different services.
- **Right to Object:**
    - object to the processing of their personal data, particularly when it is based on legitimate interests or public interest tasks.
- **Right related to Automated Decision-Making:**
    - decisions made solely by automated means, including the right to understand the logic involved and to contest such decisions
    - empower individuals and give them control over their personal information
    - organisations have a responsibility to ensure these rights are respected and to provide individuals with the information and mechanisms to exercise them.

3.3 Breach Notification and Reporting

4.3 Data Protection Act 2018 (DPA)

4.3.3 Know the breach notification and reporting requirements

---

In cases of data breaches, the ICO has the power to investigate, take enforcement action, and impose penalties.

Part 3 of the DPA 2018 introduces a duty on all organisations to report certain types of personal data breach to the ICO. This must be undertaken within 72 hours of the firm becoming aware of the breach, where feasible.

If the breach is likely to result in a high risk of adversely affecting individuals' rights and freedoms, firms must also inform those individuals without undue delay.

Therefore, regulated firms must have robust breach detection, investigation and internal reporting procedures in place.

What is a personal data breach?

- personal data breach means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data. This means that a breach is more than just losing personal data.

What breaches need to notified to the ICO?

- You only have to notify the ICO of a breach if it is likely to result in a risk to the rights and freedoms of individuals.
- If left unaddressed such a breach is likely to have a significant detrimental effect on individuals. For example:

    - result in discrimination
    - damage to reputation
    - financial loss, or
    - loss of confidentiality or any other significant economic or social disadvantage.

What information must be reported to the ICO?

A firm's report to the ICO must include:

- a description of the nature of the personal data breach including, where possible:
    - the categories and approximate number of individuals concerned
    - the categories and approximate number of personal data records concerned

- the name and contact details of the data protection officer (if you have one) or other contact point where more information can be obtained
- a description of the likely consequences of the personal data breach, and
- a description of the measures you have taken, or propose to take, to deal with the personal data breach and, where appropriate, of the measures you have taken to mitigate any possible adverse effects.

When should a firm advise individuals about a breach?

- If a breach is likely to result in a high risk to the rights and freedoms of individuals, firms must inform those concerned directly without undue delay. In this context high risk means the threshold for informing individuals is higher than for notifying the ICO.
- The duty to tell an individual about a breach does not apply if:

    - firms have implemented appropriate technical and organisational measures which were applied to the personal data affected by the breach (for example the data has been securely encrypted)
    - firms have taken subsequent measures which will ensure that any high risk to the rights and freedoms to individuals is no longer likely to materialise, or
    - it would involve disproportionate effort.

Where a communication of a breach would involve disproportionate effort, firms must make the information available to individuals in another, equally effective way, such as a public communication.

- Firms may restrict the information, either wholly or partly, that you provide to individuals affected by a breach under certain circumstances. This is when doing so is a necessary and proportionate measure:

    - to avoid obstructing an official or legal inquiry, investigation or procedure
    - to avoid prejudicing the prevention, detection, investigation or to prosecution of criminal offences or the execution of criminal penalties
    - to protect public security
    - to protect national security, or
    - to protect the rights and freedoms of others.

What information must firms advise to individuals who have been affected by the breach?

Firms must provide the following information:

- a description of the nature of the personal data breach
- the name and contact details of the data protection officer (if relevant) or other contact point where more information can be obtained
- a description of the likely consequences of the personal data breach, and
- a description of the measures you have taken, or propose to take, to deal with the personal data breach and, where appropriate, of the measures you have taken to mitigate any possible adverse effects.

Following the notification by a firm to the ICO of a data breach, the ICO will take into account the following factors when considering whether to impose a financial penalty:

- the nature of the personal data involved
- the duration and extent of the contravention
- the number of individuals actually or potentially affected
- the importance, value, degree, amount or extent of the breach
- the public importance (ie, in the case of a security breach)
- whether the contravention was deliberate and/or premeditated
- whether the data controller was aware of and did not follow relevant advice, and
- whether there were inadequate procedures, policies, processes and practices in place.

Factors impacting the ICO decision not to impose a financial penalty include whether:

- the data controller has already complied with requirements of another regulatory body, or
- the contravention was caused by circumstances outside the direct control of the data controller.

There are two tiers of penalty that the ICO can impose – the higher maximum penalty and the standard maximum:

- The higher maximum amount is £17.5 million or 4% of the total annual worldwide turnover in the preceding financial year, whichever is higher. In practice, the higher maximum amount can apply to any failure to comply with any of the data protection principles, any rights an individual may have or in relation to any transfers of data to third countries.
- The standard maximum may be applied where there are infringements of other provisions, such as administrative requirements of the legislation. The standard maximum is £8.7 million or 2% of the total annual worldwide turnover in the preceding year, whichever is higher.

In addition, breaches of data protection can now also lead to criminal prosecution, potentially resulting in unlimited fines.

4. Whistleblowing

4.4 Data Protection Act 2018 (DPA)

4.4.1 Know the legal and regulatory basis for whistleblowing

The **Public Interest Disclosure Act (PIDA) 1998** introduced legislation to protect individuals from retaliation, if they inform the regulatory authorities of concerns that might come to their attention at their place of work; this is generally referred to as **whistleblowing**.

In 2013, the Parliamentary Commission on Banking Standards (PCBS) recommended that banks put in place additional mechanisms to allow their employees to raise concerns internally (ie, to blow the whistle) and that they appoint a senior person to take responsibility for the effectiveness of these arrangements.

The key rules on whistleblowing require firms to:

- appoint an individual of sufficient seniority as their whistleblowing champion (the FCA expects most firms to appoint a non-executive director as its whistleblowing champion, or a senior manager if a firm does not have a non-executive director, but expects insurers to apportion the role to a director or senior manager)

- put in place internal whistleblowing arrangements able to handle all types of disclosure from all types of individuals
- put text in settlement agreements explaining that workers have a legal right to blow the whistle
- tell UK-based employees about the FCA and PRA whistleblowing services
- present a report on whistleblowing to the board at least annually
- inform the FCA if it loses an employment tribunal with a whistleblower, and
- require its appointed representatives and tied agents to tell their UK-based employees about the FCA whistleblowing service.

4.1 Whistleblowing: Key Regulatory Requirements

The FCA and the PRA whistleblowing rules require firms to establish, implement and maintain appropriate and effective arrangements for the disclosure of reportable concerns by whistleblowers, they must:

1. be effective so as to handle disclosures of reportable concerns including:

    a. where the whistleblower has requested confidentiality or has chosen not to reveal their identity, and
    b. allowing for disclosures to be made through a range of communication methods

2. ensure the effective assessment and escalation of reportable concerns by whistleblowers where appropriate, including to the FCA or PRA
3. include reasonable measures to ensure that if a reportable concern is made by a whistleblower, no individual under the control of the firm engages in victimisation of that whistleblower
4. provide feedback to a whistleblower about a reportable concern made to the firm by them, where this is feasible and appropriate
5. include the preparation and maintenance of:

    a. appropriate records of reportable concerns made by whistleblowers and the firm's treatment of these reports including the outcome, and
    b. up-to-date written procedures that are readily available to the firm's UK-based employees outlining the firm's processes for complying with the whistleblowing procedures

6. include the preparation of the following reports:

    a. a report made at least annually to the firm's governing body, or its board, on the operation and effectiveness of its systems and controls in relation to whistleblowing. The report must maintain the confidentiality of individual whistleblowers, and
    b. prompt reports to the FCA, or PRA, as applicable, about each case the firm contested but lost before an employment tribunal where the claimant successfully based all or part of their claim on either detriment suffered as a result of making a protected disclosure in breach of section 47B of the

Employment Rights Act 1996 or being unfairly dismissed under section 103A of the Employment Rights Act 1996

7. include appropriate training for:

    a. UK-based employees
    b. managers of UK-based employees wherever the manager is based, and
    c. employees responsible for operating the firm's internal arrangements.

The regulator will take into account the following to determine if the firm has complied with the whistleblowing measures:

- the firm's written procedures state that there may be other appropriate routes for some issues, for example, through employee grievances or consumer complaints; however, internal arrangements as set out in SYSC 18.3.1R(2) can also be used to blow the whistle after alternative courses of action have been exhausted, in relation to the effectiveness or efficiency of the routes, and
- nothing prevents firms taking action against those who have made false and/or malicious disclosures.

Firms are required to undertake training and development for all UK-based employees, and should include the following:

- a statement that the firm takes the making of reportable concerns seriously
- reference to the ability to communicate reportable concerns to the firm and the methods for doing so
- examples of events that might prompt the making of a reportable concern
- examples of action that might be taken by the firm after receiving a reportable concern by a whistleblower, including measures to protect the whistleblower's confidentiality, and
- information about sources of external support, for example, whistleblowing charities.

Wherever the manager is based, managers of UK-based employees, must provide training and development to ensure that individuals know:

- how to recognise when there has been a disclosure of a reportable concern by a whistleblower
- how to protect whistleblowers and ensure their confidentiality is preserved
- how to provide feedback to a whistleblower, where appropriate
- the steps to ensure fair treatment of any person accused of wrongdoing by a whistleblower, and
- the sources of internal and external advice and support on the matters raised in relation to whistleblowing.

4.1.1 Appointed Representatives and Tied Agents

Firms are encouraged to invite their appointed representatives or, where applicable, their tied agents to consider adopting appropriate internal procedures which will encourage workers with concerns to blow the whistle internally about matters which are relevant to the functions of the FCA or PRA. Firms must ensure that their appointed representatives or, where applicable, their tied agents, inform any of their UK-based employees, as workers, that they are able to make protected disclosures to the FCA, or the PRA, if they are a PRA-regulated firm.

4.1.2 Link to Fitness and Propriety

The regulator regards any evidence that a firm had acted to the detriment of a whistleblower as a serious matter. Such evidence could call into question the fitness and propriety of the firm or relevant members of its staff, and could therefore, if relevant, affect the firm's continuing satisfaction of threshold condition 5 (Suitability) or, for an approved person or an employee under the SMR, or the Certification Regime, their status as such.

4.1.3 Whistleblower Champion

Under the SM&CR, some firms (banks with the deposit-taking permission and insurance companies subject to Solvency II) are required to appoint an individual acting as the **whistleblowers' champion**.

Firms must allocate to the whistleblowers' champion the responsibility for ensuring and overseeing the integrity, independence and effectiveness of the firm's policies and procedures on whistleblowing – including the policies and procedures intended to protect whistleblowers from being victimised, due to the disclosed reportable concerns.

The whistleblowers' champion should have a level of authority and independence within the firm, including access to appropriate resources (for example, access to independent legal advice and training) and information sufficient to enable them to carry out that responsibility. The individual does not need to have a day-to-day operational role, and they can be based anywhere, as long as they can perform their function effectively – and meet the criteria of the Senior Managers arrangements within the Accountability Regime.

End of Chapter Questions

Think of an answer for each question and refer to the appropriate section for confirmation.

1. **What is the purpose of the CRA 2015?**
   Answer reference: Section 1.1

2. **How does the CRA 2015 impact financial services?**
   Answer reference: Section 1.1

3. **What is meant by cancellation rights?**
   Answer reference: Section 1.2

4. **How do "cancellation rights" impact the relationship between the firm and a client?**
   Answer reference: Section 1.2

5. **List the types of eligible complainant.**
   Answer Reference: Section 2.1

6. **What is the purpose of firms complaint handling procedures?**
   Answer reference: Section 2.2

7. **What should be included within a firm's complaints-handling arrangements?**
   Answer Reference: Section 2.2

8. **What are the record-keeping requirements in relation to complaints-handling?**
   Answer Reference: Section 2.2.2

9. **What is the role of the FOS?**
   Answer Reference: Section 2.3.1

10. **Is the FOS a free service for complainants and firms?**
    Answer Reference: Section 2.3.1

11. **What is the difference between compulsory jurisdiction and voluntary jurisdiction?**
    Answer Reference: Section 2.3.2

12. **What awards can the FOS make?**
    Answer reference: Section 2.3.3

13. **What are super-complaints and mass-detriment references and how quickly must the FCA respond to them?**
Answer Reference: Section 2.3.4

14. **What is the role of the FSCS?**
Answer Reference: Section 2.4.1

15. **Who are normally excluded from claiming compensation from the FSCS?**
Answer Reference: Section 2.4.1

16. **What compensation is available under the FSCS for protected deposits?**
Answer Reference: Section 2.4.2

17. **What are the Data Protection Act 2018 principles?**
Answer reference: Section 3

18. **What is the ICO and who must register with them?**
Answer reference: Section 3.1

19. **What data rights exist under the UK GDPR?**
Answer reference: Section 3.2

20. **What are the breach reporting requirements for firms?**
Answer reference: Section 3.3

21. **What must firms have in place regarding whistleblowing?**
Answer reference: Section 4

22. **What is a whistleblowing champion?**
Answer reference: Section 4.1.3

Glossary

Aggregation
Multiple client orders are bulked together and processed as a single order. Customers must be notified of this procedure and its advantages and disadvantages.

Allocation
The division of a single aggregated order between two or more investors' accounts.

Anti-Money Laundering (AML)
See Money Laundering.

Ancillary Services
Activities, for example, giving advice on MiFID instruments, which are passportable only if the firm is already passported in relation to a core investment service or activity (such as dealing), and if that firm is providing those services as ancillary services to that activity.

Appointed Representative
Any type of person, ie, an individual or a company, who must be a party to a contract with an authorised person that allows them to carry on certain regulated activities – and the authorised person must have accepted responsibility for the conduct of these regulated activities in writing.

Approved Persons (APER)
Individuals who are approved by the Financial Conduct Authority (FCA) to undertake controlled functions. These individuals are required to comply with the FCA's Statements of Principle and Code of Practice for Approved Persons (APER). Due to the extension of the SM&CR, APER only applies to a limited number of individuals, including appointed representatives.

Authorisation
The Financial Services and Markets Act (FSMA) requires firms to obtain authorisation prior to conducting investment business. Authorisation is gained by receiving one or more Part 4A permissions from the Financial Conduct Authority (FCA), and/or the Prudential Regulation Authority (PRA).

Bank of England (BoE)
The UK's central bank which acts as the government's banker and determines interest rates via its Monetary Policy Committee (MPC).

Best Execution
Firms must obtain the best outcomes for a client when executing their deal, taking into account not only price factors, but also such issues as costs, speed, likelihood of execution and settlement, and all these in the light of the size and nature of the deal.

Bribery Act
The Bribery Act 2010 covers the criminal law relating to bribery. It relates to the act of bribery by commercial organisations and their employees.

Capital Requirements Directive (CRD)
This sets out the prudential (capital) rules for financial firms. It applies to banks, building societies and most investment firms. The CRD has been implemented in the UK. The aim of the CRD is to ensure that firms hold adequate financial resources and have adequate systems and controls to prudently manage the business and the associated risks.

Certification Regime
This is part of the SM&CR. Individuals will not be approved by the regulators, rather they will be given a 'certificate' by their firm to confirm that they are 'fit and proper' to perform their role. The PRA and FCA have different criteria as to who is subject to the regime.

Churning
Excessive trading by a broker in order to generate commission, regardless of the interests of the customer.

Client
Individuals or firms that conduct business through an authorised person. Clients are categorised as retail, professional or eligible counterparty.

Client Assets/Client Money
Cash, securities or other assets held by a firm on behalf of its clients. The assets have to be kept separate (segregated) from the firm's own assets.

Collective Investment Scheme (CIS)
A generic term for open-ended funds, for example, a unit trust and an open-ended investment company (OEIC), also known as an investment company with variable capital (ICVC).

Common Platform Firms
Firms subject to either the Capital Requirements Directive (CRD) or the Markets in Financial Instruments Directive (MiFID).

Compulsory Jurisdiction
The range of activities for which complaints fall compulsorily within the jurisdiction of the Financial Ombudsman Service (FOS).

Conduct of Business Sourcebook (COBS) Rules
Rules made by the FCA under the Financial Services and Markets Act 2000 (FSMA) dealing mainly with the relationship between an authorised firm and its clients.

Conduct Rules
This is part of the SM&CR. All UK-based employees of relevant firms will be subject to high-level conduct rules. There are additional conduct rules for individuals who are classified as a senior manager (ie, subject to the Senior Managers Regime).

Consumer Duty
An FCA initiative to deliver 'fair' treatment of retail customers (consumers) and the delivery of 'good outcomes' when purchasing financial products and services. It comprises of a Principle, Cross-Cutting rules and Outcomes.

Contracts of Insurance
Financial products specified by Part III of the Regulated Activities Order 2001, with two subdivisions: general and long-term insurance contracts.

Criminal Justice Act (CJA) 1993
A substantial Act which includes provisions relating to insider dealing, including a definition of that offence.

Data Protection Act (DPA) 2018
Legislation governing how personal data should be held and the rights of access to it.

Dematerialised
The term used to describe stock which is held in electronic form rather than having ownership evidenced by way of paper certificates.

Depositary Receipts
Bearer instruments evidencing rights over a block of shares which are held with a depositary – usually a bank or trust company. American Depositary Receipts (ADRs) are a good example. Depositary receipts are specified investment instruments under the Financial Services and Markets Act (FSMA).

Designated Professional Bodies (DPBs)
Professional bodies whose members are able to carry on limited financial services business without the need for authorisation from the FCA, providing that the limited financial services offered to clients are incidental to their main business. These are the professional bodies for lawyers, accountants, chartered surveyors, licensed conveyancers and actuaries.

Disclosure and Transparency Rules (DTR)
Contained in the FCA's DTR Sourcebook. The aim of the Disclosure Rules is, in part, to make provisions to ensure that information relating to publicly listed securities is properly handled and disseminated. The aim of the Transparency Rules, in part, is to implement the requirements of the Transparency Directive and to ensure there is adequate transparency of and access to information in the UK financial markets.

Durable Medium
Paper or any instrument which enables the recipient to store information addressed personally to them in a way accessible for future reference, for a period of time adequate for the purposes of the information.

Eligible Counterparty (ECP)
A client that under the Markets in Financial Instruments Directive II (MiFID II) which is neither a professional client nor a retail client.

Exempt Person
Firms exempt from the need to be authorised to carry on regulated activities. The term includes bodies such as recognised investment exchanges and recognised clearing houses.

FCA Handbook
The document containing the FCA rules, guidance and other provisions, with which authorised firms must comply. The Handbook is divided into a number of separate Sourcebooks and manuals covering different topics.

Financial Conduct Authority (FCA)
The FCA is responsible for regulating conduct in retail and wholesale markets, supervising the trading infrastructure that supports those markets and for the prudential regulation of firms not regulated by the Prudential Regulation Authority (PRA).

Financial Ombudsman Service (FOS)
The body established to investigate and determine the outcome of complaints made by eligible complainants.

Financial Policy Committee (FPC)
The FPC (formed in early 2011) is effectively the UK's risk regulator with responsibility and powers to reduce systemic risk. As an official committee of the Bank of England it focuses on the macro- economic and financial issues that may threaten long-term growth prospects, holding powers of direction and recommendation over the PRA.

Financial Services Act 2012
The Act of Parliament that created the current regulatory landscape in the UK, introducing the Prudential Regulation Authority (PRA), the Financial Conduct Authority (FCA) and the Financial Policy Committee (FPC).

Financial Services and Markets Act 2023
The Act of Parliament that provided reforms to financial services in the UK post Brexit, including providing a new secondary objective for the PRA and the FCA. The Act implements the Government's 'Smarter Regulatory Framework' agenda, giving certain powers to HM Treasury, the PRA and the FCA.

Financial Services and Markets Act (FSMA)
Legislation put in place to regulate the financial services sector, it has been amended many time since it was enacted. In particular, it was amended by the Financial Services Act 2012 to introduce the FCA and the PRA.

Financial Services Compensation Scheme (FSCS)
The scheme created to provide a safety net for customers in the case of a regulated firm being unable to meet its obligations in respect of valid claims.

Fit and Proper
Under the Financial Services and Markets Act 2000 (FSMA), every firm conducting investment business must be fit and proper and ensure that its affairs are conducted soundly and prudently.

Information Commissioner's Office (ICO)
The UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.

Future
A futures contract is a legally binding arrangement by which parties commit to buy/ sell a standard quantity and (if applicable) quality of an asset from another party on a specified date in the future, but at a price agreed today. As the price is agreed at the outset, the seller is protected from a fall in the price of the underlying asset in the intervening time period (and vice versa).

HM Revenue & Customs (HMRC)
The government department responsible for the administration and collection of tax in the UK, and the guidance notes on HM Treasury's rules for individual savings accounts (ISAs).

HM Treasury
The government department responsible for formulating and implementing the government's financial and economic policies. Among other things this means that it is responsible for financial services regulation in the UK.

Home State
The term used for the European Union (EU) country where a financial services firm conducting cross-border business is based.

Information Barriers
Organisational barriers to the flow of information set up in large firms, to prevent the movement of confidential, sensitive information between departments, in order to manage any potential conflicts of interest. Often referred to as 'Chinese walls'.

Inside Information
Information relating to a security, or an issuer, which is not publicly known and which would affect the price of the security if it were made public.

Insider Dealing
One of several offences created under the Criminal Justice Act 1993 which may be committed by an insider in possession of unpublished price-sensitive information if they attempt to deal in affected securities, encourage others to deal, or pass on sensitive information.

Integration
The third stage of the money laundering process. Integration is the stage at which the laundered funds appear to be of legitimate provenance.

Joint Money Laundering Steering Group (JMLSG)
A group whose membership is made up of trade bodies in the financial services sector. The JMLSG has published guidance notes which set out how firms should interpret and implement the Money Laundering Regulations. This guidance is not binding but, where there is a breach, compliance with the guidance is relevant to an enforcement action.

Know Your Customer (KYC)
The Money Laundering Regulations 2007 and the Financial Conduct Authority (FCA) Rules requiring firms to take sufficient steps, before taking on a customer, to satisfy themselves of the identity of that customer.

Layering
The second stage of the money laundering process, in which money or assets are typically passed through a series of transactions to obscure their origin.

London Stock Exchange (LSE)
The LSE is a recognised investment exchange, dominating the UK market for trading in securities, especially shares and bonds.

Market Maker
A firm which quotes bid and offer prices for a named list of securities in the market. Such a firm is normally under an obligation to make a price in any security for which it is market maker, at all times.

Markets in Financial Instruments Directive (MiFID)
An EU directive which amongst other things allows firms authorised in one member state to provide/offer financial services to customers in another member state, subject to some restrictions. It was repealed and replaced by MiFID II in 2018.

The term ‘MiFID’ is often referred to as meaning the ‘MiFID framework’ (ie, both MiFID and MiFIR).

Markets in Financial Instruments Regulation (MiFIR)
A Regulation which came into effect alongside MiFID II in 2018, following a review of MiFID and as a response to the global financial crisis of 2007–08. As a regulation, EU member states are not required to 'transpose' MiFIR into national law.

Misleading Statement
The term used for false information given about an investment, in order to (or with the effect of) affecting its value – a criminal act under Section 89–92 of the Financial Services Act 2012 and a potential form of market abuse.

Monetary Policy Committee (MPC)
The committee chaired by the Governor of the Bank of England which sets sterling interest rates.

Money Laundering
The process whereby criminals attempt to conceal the true origins of the proceeds of their criminal activities, and to give them the appearance of legitimacy by introducing them into the mainstream financial system.

Money Laundering Reporting Officer (MLRO)
A senior employee who is responsible for a firm's arrangements for the prevention of financial crime, for assessing internal suspicion reports,
and, where these appear justified, for reporting those suspicions to the National Crime Agency (NCA).

Money Laundering Regulations 2017 [Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017]
The regulations under which authorised firms, and some other businesses, are required to comply with certain administrative obligations in order to prevent their firms/organisation from being used for money laundering.

Multilateral Trading Facility (MTF)
An MTF is defined as a multilateral system, operated by an investment firm or a market operator, and which brings together multiple third party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract.

National Crime Agency (NCA)
The law enforcement agency to which suspicions of money laundering must be reported by a firm's money laundering reporting officer (MLRO).

Nominated Officer (NO)
A term for the officer who is required to receive a firm's internal suspicion reports under the Proceeds of Crime Act (POCA), the Terrorism Act and the Money Laundering Regulations. In practice, this is usually the same individual as the money laundering reporting officer (MLRO).

Nominee
The party which, under a legal arrangement, holds assets in its own name on behalf of the true beneficial owner.

Option
This gives the holder the right (but not the obligation) to buy or sell a fixed quantity of an underlying asset on, or before, a specified date in the future. There are two basic types of option – calls and puts. The holder of a call option has the right to buy the underlying asset at a given price. The holder of a put option has the right to sell the underlying asset at a given price.

Organised Trading Facility (OTF)
A multilateral system which is not an Regulated Market (RM) or an MTF and in which multiple third party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract. Unlike RMs and MTFs, operators of OTFs will have discretion as to how to execute orders, subject to pre-transparency and best execution obligations.

Part 4A Permission
The term used where persons are granted authorised status by the FCA under Part 4A of the Financial Services and Markets Act 2000 (FSMA).

Passporting
The method by which firms authorised in one EU member state are, under MiFID II, permitted to carry on regulated financial services activities in another state without the need to become fully authorised in that other state.

Pension Ombudsman (TPO)
Handles pension complaints and disputes. They act impartially, their service is free of charge and they are an independent organisation set up by law.

Pensions Regulator (TPR)
Regulates work-based pension schemes to protect members' benefits and encourage high standards in the running of pension schemes.

Placement
The first stage of the money laundering process, in which money is introduced into the financial system.

Price Stabilisation
The activity of supporting the price of a new issue of securities in order to minimise the volatility that can sometimes arise with new issues.

Principles for Businesses
Twelve key principles established by the FCA which must be observed by authorised firms. These Principles are detailed in the FCA Handbook.

Proceeds of Crime Act (POCA) 2002 Legislation which contains, among other things, anti-money laundering (AML) provisions.

Product Intervention and Product Governance (PROD)
This contains the requirements for firms in respect of product oversight and governance processes (the systems and controls firms have in place to design, approve, market and manage products throughout the products' life cycle to ensure that they meet legal and regulatory requirements) and the FCA's use of the temporary product intervention rules.

Prohibition Order
An order which may be exercised by the FCA under powers given to it under Section 56 of the Financial Services and Markets Act 2000 (FSMA). Such an order prohibits the individual in connection with whom it is granted from carrying out particular controlled functions on the grounds that they are not fit and proper.

Prudential Regulation
The aspect of financial services regulation which deals with firms' financial resources and governance. The PRA and the FCA are responsible for ensuring the financial soundness of their respective authorised firms.

Prudential Regulation Authority (PRA)
The PRA, part of the Bank of England, is responsible for the prudential regulation of financial firms, including banks, investment banks, building societies and insurance companies.

Public Interest Disclosure Act (PIDA) 1998
Among other things, this provides protection for employees who, in good faith, disclose suspicions
of wrongdoing within an organisation.

Recognised Clearing House (RCH)
A term used to denote those clearing houses recognised by the FCA as providing appropriate standards of protection in the provision of clearing and settlement facilities to certain markets. LCH.Clearnet and Euroclear UK & Ireland are the two organisations granted this status.

Recognised Investment Exchange (RIE)
A term used to denote those UK exchanges which operate markets in investments, meeting certain standards set by the FCA.

Regulated Activities
Activities for which authorisation (or exemption from the need for that authorisation) is required. Regulated activities are defined in relation both to the activities themselves, and to the investments to which they relate.

Regulatory Decisions Committee (RDC)
The committee of the FCA which is responsible for disciplinary decisions.

Senior Managers & Certification Regime (SM&CR)
The regime introduced by the PRA and the FCA to bring individual accountability to staff working in the banking industry. It has three parts to its regime – Senior Managers Regime, Certification Regime and Conduct Rules. This regime initially applied to relevant firms (UK-incorporated banks, building societies, credit unions and UK-incorporated investment firms which are regulated by the PRA and which have permission to deal as principal) and insurance companies. It has now been rolled out to the majority of UK regulated firms.

Senior Managers Regime (SMR)
This is part of the SM&CR. Individuals will be in a position where they direct/control and manage the firm's business (on a day-to-day basis) and are responsible for the discharge of the firm's regulatory obligations. Individuals will be approved by the regulator and held accountable in the event of issues arising.

Threshold Conditions
The conditions which a firm must meet before the FCA and the PRA will authorise, and by which they firms must continue to satisfy on an ongoing basis.

Tipping Off
An offence established under various pieces of anti-money laundering and terrorist financing legislation. It involves disclosing the fact that an investigation is, or is likely to be, under way, if that disclosure may imperil any such investigation.

Training and Competence Sourcebook
It sets out the FCA's requirements in connection to all staff, and with additional requirements for some specified activities. The Sourcebook includes rules relating to training and competence, and specifies which qualifications are required for certain activities.

Trustee
A person or organisation who is the legal owner of assets held in trust for someone else. The trustee is responsible for safeguarding the assets, complying with the trust deed and (where the trust is a unit trust) overseeing the activities of the unit trust's manager.

UK European Market Infrastructure Regulation (UK EMIR)
The Market Infrastructure Regulation (EMIR) on derivatives, central counterparties and trade repositories came into force in 2012. UK EMIR became applicable on 31 December 2020, following the Brexit.

UK Securities Financing Transactions Regulations (UK SFTR)
The Securities Financing Transactions Regulations (SFTR) came into force in 2016. UK SFTR became applicable on 31 December 2020, following Brexit. Its objective is to improve transparency and monitor the risk associated with the securities financing transactions market.

Undertakings for Collective Investment in Transferable Securities (UCITS)
Collective investment schemes established under the UCITS directives. These directives aim to harmonise EU member states' laws so as to allow for the operation and marketing of UCITS schemes across EU borders.

Warrant
An investment instrument giving the holder the right to buy a set number of the underlying equities at a predetermined price on specified dates, or at any time, up to the end of a predetermined time period. Warrants are usually issued by companies or by securities houses.

Whistleblower Champion
As part of the whistleblowing rules, firms must put in place internal whistleblowing arrangements able to handle all types of disclosure from all types of person. In addition, firms must appoint a senior person to take responsibility for the effectiveness of these arrangements.

Whistleblowing
The term used when an individual raises concerns over potential wrongdoing. The Public Interest Disclosure Act 1998 provides some statutory protections for whistleblowers.

Multiple Choice Questions

The following multiple choice questions have been compiled to reflect, as closely as possible, the standard that you will experience in your examination. Please note, however, that they are not actual CISI examination questions.

1. **Which of the following is a Financial Conduct Authority operational objective?**
   A. To ensure retail clients are not overcharged for financial products
   B. To prevent authorised firms from going into default
   C. To secure an appropriate degree of protection for consumers
   D. To ensure authorised firms have adequate financial resources

2. **Which of the following is true of the Data Protection breach notification and reporting requirements?**
   A. Reporting must be made to the FCA and the ICO within 48 hours of identification of the breach
   B. Where the breach is likely to result in a high risk of adversely affecting individuals rights and freedoms, then the individuals must be informed
   C. All breaches must be reported, along with a breakdown of the client types (i.e. consumer, professional clients and eligible counterparties)
   D. Companies that notify the ICO will not be subject to penalties by the ICO.

3. **Which of the following is true about insider lists under UK MAR?**
   A. They must be maintained by firms and shared with the FCA and HM Treasury
   B. Issuers can pass on their obligation to maintain insider lists to their adviser
   C. The insider lists only need to be updated on a monthly basis
   D. Firms must maintain insider lists for each transaction and a 'permanent' list

4. **The FCAs 'management and control' Principle for Businesses requires firms to have adequate systems in place specifically relating to:**
   A. customer fairness
   B. financial resources
   C. risk management
   D. staff training

5. **Which of the following is a statutory consequence of contravening the general prohibition?**
   A. Approved persons lose their approved status
   B. A firm may not conduct any business within the UK
   C. Civil proceedings may commence
   D. Financial services agreements are likely to be unenforceable

6. **Which of the following would be deemed eligible to lodge a claim with the FOS against a firm?**
   A. A charity with income of £7.5 million at the time the claim is raised
   B. A trustee of a trust with gross assets of £10 million at the time the claim is raised
   C. A borrower under a 'buy-to-let' credit agreement
   D. A investment firm when dealing with a counterparty who is a member of a UK Regulated Market

7. **Which of the following is an excluded activity and, hence, does not require authorisation under FSMA?**
   A. Safeguarding and administering investments
   B. Dealing on an agency basis
   C. Dealing as principal in connection with an employee share scheme
   D. Accepting deposits

8. **Which of the following is true regarding the requirement to prevent and detect market abuse?**
   A. Firms must report a suspicious transaction to the NCA
   B. Firms requirement to establish and maintain effective arrangements, systems and procedures is proportionate to their scale, size
   C. Firms must report a suspicious transaction within 24 hours of it being identified, to the FCA
   D. A suspicious transaction report only relates to a transaction undertaken on a UK Regulated Market

9. **Which of the following may conduct a limited range of regulated activity under Part 20 of FSMA (Provision of Financial Services by Members of the Professions) regime, without the need for authorisation?**
   A. Accountants
   B. Independent financial advisers
   C. Market makers dealing on a principal basis
   D. Home finance advisers

10. **In order to satisfy the suitability threshold conditions for authorisation, firms are specifically required to:**
    A. commission an external assessment
    B. appoint a standards officer
    C. prove that they are fit and proper
    D. provide an acceptability declaration

11. **Which factor is typically NOT considered in regulators' assessment over the fitness and propriety of a person performing a Senior Management Function (SMF) within authorised firms?**
    A. Honesty, integrity and reputation
    B. Competence and capability
    C. Experience and seniority
    D. Financial soundness

12. **Which of the following is not correct regarding the rights of individuals on the collection and use of personal data?**
    A. Individuals have the right to request that their person data is deleted in certain circumstances
    B. Data subjects have the right to revoke their consent for their personal data to be held and processed
    C. Data subjects have the right to their personal data, so that they can transfer the data to another data controller
    D. Data Processors have accountability obligations regarding individual personal data

13. **Which of the following is not a Data Protection 2018 Principle?**
    A. Companies must be open and transparent in their dealings with individuals and the ICO
    B. Processing must be lawful and fair
    C. Personal data must be kept of no longer than is necessary
    D. Personal data must be adequate, relevant and not excessive

14. **If someone deposits criminally obtained banknotes in a building society account, what stage of the money laundering process is this normally known as:**
    A. integration
    B. layering
    C. phasing
    D. placement

15. **What action should a Money Laundering Reporting Officer (MLRO) take if a member of staff has identified a suspicious transaction?**
    A. Make a notification to HM Treasury
    B. Make a notification to the FCA
    C. Contact the Serious Fraud Office (SFO) for advice
    D. Make a report to the National Crime Agency

16. **Which of the following instruments are caught under the insider dealing legislation?**
    A. Debt securities
    B. Private Companies
    C. Spot Foreign Exchange
    D. Bank account and savings account

17. **Which of the following are specified investment under the Regulated Activities Order?**
    A. A cash deposit held with a bank
    B. Trade bills, cheques and other bills of exchange
    C. Commodity futures for commercial purposes
    D. Buying foreign currency for a foreign holiday

18. **Which of the following is a special defence against the charge of insider dealing under the Criminal Justice Act?**
    A. An individual is providing information in the role of a journalist
    B. An individual is acting on behalf of a friend or relative
    C. An authorised firm is acting in good faith in the course of their business as a market maker
    D. A market maker is providing data purely for information purposes

19. **An individual has acquired inside information and has encouraged a friend to deal in the affected securities. Which of the following statements is TRUE?**
    A. This is a perfectly legitimate action
    B. The individual is likely to have committed an offence
    C. Only the friend will be guilty of an offence
    D. Any deal will be automatically void

20. **To satisfy the definition of 'market abuse', an individual's behaviour must:**
    A. be based on generally available information
    B. be likely to give a false or misleading impression of the supply, demand or value of the investments concerned
    C. constitute a breach of the Criminal Justice Act 1993
    D. constitute a breach of the Money Laundering Regulations 2007

21. **The Guidance provided by the Joint Money Laundering Steering Group (JMLSG):**
    A. has been approved by the FCA and forms part of the Handbook
    B. is mandatory for all investment firms
    C. is approved and published by the FCA and the PRA
    D. highlights best practice that has been approved by the Treasury

22. **Which of the following is an offence under POCA 2002?**
    A. Handling stolen goods, which you knew were derived from criminal activity
    B. Acquiring, use or possession of property without knowledge of criminal activities
    C. Conspiring to commit insider dealing
    D. An individual working for UK regulated entity reported their suspicion to the firms MLRO

23. **One of the two broad reasons for the JMLSG customer due diligence requirements is to help the firm be satisfied that the customer is who they say they are and there are no legal reasons preventing the relationship; the other reason is to:**
    A. identify the customer or beneficial owner
    B. obtain verification of the beneficial owner and conduct additional checks
    C. assist law enforcement
    D. obtain information about the intended nature of the business relationship

24. **Which of the following is true in relation to the UK MAR Market Soundings requirements?**
    A. A sounding applies to retail clients and professional clients
    B. It only applies to financial instruments listed on UK Regulated Markets
    C. The investment firm must obtain approval from the issuer on who the 'non-public' information can be shared with
    D. The disclosing firm must obtain the consent of the recipient where the information is considered to be non-public information

25. **If a firm is carrying on activity on an eligible counterparty basis, which of the following rules applies to them?**
    A. Best execution
    B. Client order handling
    C. Conflicts of interest
    D. Client agreements

26. **Under the Conduct of Business Sourcebook (COBS) rules, which financial promotions communicated by their appointed representatives are firms responsible for?**
    A. Only those promoting MiFID financial instruments
    B. Those which are published in the consumer press
    C. Those which relate to high-risk investments
    D. All types of financial promotions

27. **Why is a commodity derivatives dealer classified as a per se professional client?**
    A. Commodity derivatives are MiFID financial instruments
    B. The activity is conducted by way of business
    C. The dealer is an investment firm
    D. The dealer is unable to qualify as a retail client

28. **In relation to non-MiFID business, which of the following retail clients may be suitable for reclassification as an elective professional client?**
    A. A newly appointed trustee of a trust exceeding €500,000
    B. A client to whom the firm regularly sends financial promotions for non-mainstream investment opportunities
    C. A client who has recently inherited a sizeable portfolio
    D. The spouse of one of the firm's investment managers

29. **Which of the following is a retail investment product?**
    A. Home income plan
    B. Occupational pension scheme
    C. Collective investment scheme
    D. Commodity derivative

30. **Which of the following statements is TRUE about a client that is an eligible counterparty for executing orders?**
    A. If the client requires investment advice they will be classified as a per se professional client for that service
    B. The eligible counterparty status provides the client with regulatory protection for the execution of orders
    C. The firm must conduct both qualitative and quantitative assessments on the client before executing orders
    D. The firm is only required to conduct a qualitative assessment on the client before executing orders

31. **Which of the following is true with regards to a firm's interactions with an 'insistent client'?**
    A. The firm must not undertake any transactions that differ from the personal recommendation provided to a retail client
    B. Firms must obtain client acknowledgement before carrying out transactions that differ from those made in a personal recommendation
    C. Firms are not required to advise the client why they made the recommendation, which the client has decided not to follow
    D. Retail clients can opt out of the insistent rules in the COBS sourcebook

32. **Firms carrying out MiFID business must provide clients with appropriate information on which of the following?**
    A. Compliance officer's name
    B. The firm's major shareholders
    C. Where the firm's shares are listed
    D. Costs and associated charges

33. **Client agreements must be provided for designated investment business carried out for:**
    A. eligible counterparties (in respect of non-MiFID business)
    B. professional clients (in respect of non-MiFID business)
    C. professional clients (in respect of MiFID business)
    D. eligible counterparties (in respect of MiFID business)

34. **Which of the following is TRUE in relation to the rules on disclosure of costs and associated charges for MiFID business?**
    A. They apply to retail and professional clients
    B. Commissions have to be shown separately
    C. All fees, commissions and charges must be disclosed by the firm
    D. A firm must only disclose taxes payable by the firm

35. **Unless a retail client has agreed otherwise with the firm, what is the frequency that an investment manager must send a periodic statement?**
    A. Weekly
    B. Quarterly
    C. Six-monthly
    D. Annually

36. **In which of the following circumstances does a firm have to send a suitability report?**
    A. If the recommendation is to increase a regular premium to an existing life insurance contract
    B. If the recommendation is for a client to undertake a pension transfer
    C. If the firm is acting as an investment manager for a retail client and recommends a regulated collective investment scheme (CIS)
    D. If the recommendation is to make a further investment into an existing packaged product

37. **In which of the following circumstances do the rules on appropriateness apply?**
    A. Personal recommendation to a retail client to purchase a UK-authorised collective investment scheme
    B. Retail client responding to a direct offer financial promotion to deal in warrants
    C. Discretionary portfolio management for a retail client
    D. Personal recommendation to a professional client to invest in a hedge fund

38. **In which of the following circumstances is an appropriateness assessment required?**
    A. Portfolio manager making a discretionary decision to deal
    B. Financial adviser who advises a client to invest in a UK-authorised CIS
    C. Private wealth manager who advises a professional client to invest in a hedge fund
    D. A firm transmitting an execution-only order in a security admitted to trading on an authorised investment exchange (RIE)

39. **Which of the following is TRUE regarding the suitability rules?**
    A. They apply to retail clients and professional clients
    B. The suitability requirements do not apply to a per se professional client
    C. They apply to professional clients and eligible counterparties when advice is provided
    D. Firms must obtain financial statements and knowledge and understanding on investment from retail and professional clients

40. **Which of the following is TRUE regarding the requirement of firms to undertake Trade and Transaction reporting?**
    A. UK SFTR & UK EMIR requires firms to provide details of transactions to assist the FCA in market surveillance
    B. UK MiFIR requires firms to provide details of transactions to assist the FCA in market surveillance
    C. All reporting must be made directly by firms to the FCA
    D. Only UK based firms are required to report transactions, not UK Branches of third country entities

41. **Which of the following is EXEMPT from the financial promotion rules?**
    A. A promotion to a professional client
    B. The promotion of non-MiFID business to a retail client
    C. The promotion of packaged products to a UK-domiciled retail client
    D. One-off promotions of non-MiFID business that are not cold calls

42. **The rules requiring charges to be included in a direct offer promotion to retail clients can be waived if:**
    A. the product is considered to be low risk
    B. the product has previously been promoted
    C. the charges are included in another document that the client can refer to in order to respond to the offer
    D. the charges are below a threshold level which is assessed each year in line with the retail price index

43. **What action might a firm take to ensure investment research staff do not pass price-sensitive information to other departments?**
    A. Make this a condition of employment for all staff
    B. Create information barriers
    C. Conduct appropriate supervision
    D. Establish a training and competence scheme

44. **MiFID firms may accept payments or non-monetary benefits from a third party only if:**
    A. the client is a professional client
    B. the amount is below that specified in the firm's conflicts of interest policy
    C. the payment is recorded, and details provided to the client on request
    D. the payment enhances the quality of service and is disclosed to the client

45. **Which of the following is one of the FCA's Consumer Duty 'outcomes' that firms must comply with?**
    A. Communications outcome
    B. Treating customers fairly outcome
    C. Price outcome
    D. Consumer understanding outcome

46. **The best execution rules under COBS require firms to:**
    A. execute orders on the terms that are most favourable to their client
    B. execute orders that achieve the best price
    C. execute orders that usually achieve the best price and cost for the client
    D. execute orders that achieve the best price and speed of execution for the client

47. **What is the MAIN purpose of the client money rules?**
    A. To compensate clients if an authorised firm becomes insolvent
    B. To ensure client money benefits from the best possible rate of returns
    C. To segregate and protect client money from a firm's own money
    D. To prevent clients from encashing client money before the due date

48. **How often must a firm internally reconcile client assets?**
    A. Everyday
    B. Monthly
    C. As often as is necessary
    D. At whatever frequency is requested by the client

49. **A firm must hold client money accounts in trust with a bank to ensure that:**
    A. the firm cannot use client money to repay its own creditors
    B. the bank is able to maintain its regulatory status as designated trustee
    C. no loss will be borne by the firm should the bank become insolvent
    D. the bank is able to retain the client money should the firm become insolvent

50. **What is the maximum amount of monetary award against an authorised firm that the Financial Ombudsman Service (FOS) can make?**
    A. £85,000
    B. £195,000
    C. £430,000
    D. £445,000

51. **Why does the Money Laundering Reporting Officer (MLRO) have responsibility for the training of staff in relation to identifying money laundering activity?**
    A. Compliance officers require MLROs to undertake this function
    B. It is required by the JMLSG
    C. It is required by the FCA
    D. It is required by the Proceeds of Crime Act

52. **Who is the FCA directly accountable to?**
    A. The Financial Policy Committee
    B. The Bank of England
    C. HM Treasury
    D. Parliament

53. **When a firm gives permission to an employee to undertake a personal account transaction it must:**
    A. promptly notify the FCA
    B. promptly notify the employee
    C. receive prompt notification that the transaction has been conducted
    D. obtain permission from the FCA

54. **Which of the following is true with regards to the Inducements rules for MiFID business?**
    A. Minor non-monetary benefits do not need to be disclosed to retail clients
    B. The requirements apply to activities undertaken with ECPs
    C. Firms are not required to provide detailed disclosure to clients, even when requested
    D. Minor non-monetary benefits must be capable of enhancing the quality of service provided by the firm to the client

55. **Which of the following is true of transactions undertaken by persons discharging managerial responsibilities under UK MAR?**
    A. Notifications must be made promptly
    B. Notifications must be made within 7 days
    C. There are no restrictions relating to the pending announcement of a firm's annual or interim results
    D. The FCA must approve all transactions 30 days prior to the company's annual or interim results being announced

56. **The Proceeds of Crime Act (POCA) 2002 includes provisions related to which of the following?**
    A. The offence of market abuse
    B. The offence of making false and misleading statements
    C. The protection of persons who inform authorities of their concerns
    D. The requirement to disclose suspicious money laundering transactions

57. **Which of the following is true of the Bribery Act 2010?**
    A. The act carries a penalty offence of 5 years imprisonment
    B. The corporate offence is subject to a fine of up to £1 million and imprisonment of 3 years
    C. There is no defence to the offence of bribery
    D. Offering, promising or giving a bribe to another person is an offence

58. **When must a firm normally send a written confirmation after carrying out an order for a retail client?**
    A. The same business day
    B. No later than the next business day
    C. Within three business days
    D. Within five business days

59. **Which of the following bodies provides a safety net for customers of financial services firms that become insolvent?**
    A. The Financial Services Compensation Scheme
    B. The Financial Conduct Authority
    C. The Financial Ombudsman Service
    D. The Upper Tribunal

60. **Which of the following is the primary purpose of the FCA's Financial Promotion rules in the COBS sourcebook**
    A. To ensure that they are fair, clear and not misleading
    B. They are consistent with Principle 5 (a firm must observe proper standards of market conduct) of the FCA Principles of Businesses
    C. The FCA approves financial promotions to be distributed to retail clients
    D. The rules set minimum requirements for firms to help with a consistent approach being adopted in the market

61. **With whom must a firm register as data controller under the Data Protection Act?**
    A. The UK Department for Business, Innovation and Skills
    B. The FCA
    C. The Information Commissioner
    D. HM Treasury
62. **In relation to the FCA's complaints handling requirements, which of the following is TRUE?**
    A. The complaint must be dealt with at the firm by an individual involved in the original matter
    B. The firms is not obliged to advise the complainant of their rights to take the complaint to the FOS
    C. The firm's procedures for the receiving of eligible complaints apply to complaints received by both oral and written notification
    D. The firm must maintain a document on its internal procedures for dealing with complaints. However, it is only required to provide this to clients/complainants when requested to do so

63. **What do the UK MAR Investment Recommendation requirements require firms to undertake?**
    A. They can only provide them to ECPs and Professional Clients
    B. They can be provided to individuals
    C. Firms must disclose conflicts of interests
    D. Disclosure requirements apply to recommendations to 'buy' or 'sell' a financial instrument
64. **Which of the following is TRUE in connection with a MiFID firm communicating with retail clients?**
    A. The firm's name must be included in the communication
    B. The information can highlight benefits without having to highlight risks
    C. Financial promotions must name the FCA or PRA as the firm's regulator
    D. Where comparisons are made, the source of the information does not have to be identified

65. **The rules on personal account dealing do not apply to which of the following?**
    A. Options
    B. Overseas markets
    C. Life policies
    D. Initial Public Offerings (IPOs)

66. **Which of the following is TRUE of a firms order execution policy?**

A. The client must provide explicit consent before they can undertake transactions
B. A firm must review its order execution policy at least every six months
C. Firms must provide details of their monitoring and review of the policy to clients
D. A firm would be required to notify clients of a material change to their order execution arrangements

67. **Which of the following is true of the suitability requirements in the FCA COBs sourcebook?**

A. Knowledge and experience of working in financial services cannot be taken into account by a firm when making personal recommendations
B. Firms do not need to obtain financial information from clients in order for them to make personal recommendations
C. A personal recommendation only relates to the proposal by a firm with regards to the 'purchase' or 'sale' of a financial instrument
D. The requirements exist to ensure that firms take reasonable steps and care to ensure that personal recommendations are suitable

68. **Which of the following is correct regarding an individual's cancellation and withdrawal rights?**

A. They apply to retail and professional clients only
B. They apply to distance contracts entered into with retail clients regarding deposits
C. The time period is 14 calendar days for life and pension products
D. The time period for advised contracts relating to non-life or pension products is 14 business days

69. **Under the Consumer Duty Cross-Cutting rules, which of the following applies regarding a firm's requirement to avoid causing foreseeable harm to retail consumers?**

A. All retail customers must be protected from all risks associated with buying a firms product or service
B. Firms are prohibited from taking a commercial view to profiting from retail consumers on new products and services
C. Firms must ensure that retail consumers understand and accept the inherent risk associated with their product or service
D. Firms must ensure that all products or services sold to retail consumers are designed to meet their financial needs and requirements

70. **A firm is permitted to deal for itself prior to the publication of a research recommendation under which of the following circumstances?**
    A. It anticipates customer demand
    B. It is a market maker acting in good faith
    C. The market price is likely to be unaffected by publication
    D. The firm's documentation states that it may deal ahead of publication

71. **Which of the following is true in relation to insider dealing?**
    A. The offence of insider dealing only applies to securities listed on a UK Regulated Market
    B. Equities (shares) and debt securities (bonds) are the financial instruments covered by the UK regime insider dealing regime
    C. 'Inside information' is information that has not been made public and is price sensitive
    D. An individual encouraging another to deal, or not to deal, would be deemed as insider dealing if that individual was in possession of inside information

72. **Which of the following is a regulated activity?**
    A. Discussing term assurance generally
    B. Explaining different types of investments
    C. Advising on investments
    D. Advising on bank accounts

73. **Which of the following is TRUE of the Best Execution requirements in COBS?**
    A. Firms do not need to obtain explicit consent from a client to its order execution policy
    B. A client specific instruction does not remove a firm's obligation to obtain 'best execution' for a client
    C. A firms order handling processes and procedures do not need to be disclosed to clients
    D. Firms are not permitted to aggregate their orders with client order

74. **Which of the following is one of the MAIN purposes of the Disclosure Rules in relation to dealing with inside information and preventing market abuse?**
    A. To ensure reporting is made to the FCA of suspicious transactions
    B. To ensure that firms have appropriate and adequate systems and controls to detect market abuse
    C. To ensure prompt disclosure of relevant information to the FCA
    D. To ensure prompt disclosure of relevant information to the market

75. **Which of the following is true regarding a firm's conflicts of interest policy?**

A. Where a UK entity is part of a larger group, the policy does not need to take into account conflicts arising from business activities of other members of the group

B. The policy is owned and managed by the firms CEO, or the head of the branch for third country entities

C. The policy does not need to set out the circumstances which have to identify how and why conflicts may arise

D. The policy must state the processes and procedures for preventing and managing conflicts

Answers to Multiple Choice Questions

Q1. Answer: C Ref: Chapter 1, Section 1.1 & 1.2

The FCA does not operate a no-fail regime for authorised firms; therefore, option B is incorrect. The FCA is not a price regulator and does not specify the cost/charges that authorised firms can charge on financial products or services that it provides, therefore option A is incorrect. The FCA does specify the amount of financial resources some authorised firms must have, but this is not one their statutory objectives; therefore; option D is incorrect.

The correct answer is option C. One of the FCA's statutory operational objectives is to ensure that there is appropriate protection for consumers; one example of this is the client money rules where cash managed/held by a firm is held in client money bank accounts and not in the name of the firm.

Q2. Answer: B Ref: Chapter 4, Section 3.3

All breaches must be reported to the ICO, within 72 hours of the company identifying the breach. Companies only need to notify the ICO of a breach if it is likely to result in a risk to the rights and freedoms of individuals.

Q3. Answer: D Ref: Chapter 3, Section 2.1.2

Issuers and persons acting on their behalf are required to draw up an 'insider list' of all persons who have access to inside information, including where they are working for them under a contract of employment, or otherwise performing tasks through which they have access to inside information, such as advisers, accountants or credit rating agencies. The list must be promptly updated where there is a change (ie, in the reason for including a person already on the list, where there is a new person who has access to inside information and needs to be added to the list or where a person ceases to have access to inside information).
Firms are required to maintain separate insider lists for each transaction and one for permanent 'insiders'.

Q4. Answer: C Ref: Chapter 1, Section 2.1

Principle 3 (Management & Control) requires firms to have adequate risk management systems.

Q5. Answer: D Ref: Chapter 1, Section 6.1

Option D is a statutory consequence; other statutory consequences are imprisonment and/or an unlimited fine.

Q6. Answer: C Ref: Chapter 4, Section 2.1

Eligible complainants are:

- **Consumers** – any person using or contemplating using the services of an authorised firm or an appointed representative.
- **Micro-enterprises** – any person engaged in economic activity, irrespective of legal form, employing fewer than ten persons and having a turnover or balance sheet figure not exceeding €2 million at the time the complaint is raised.
- **Charities** with an annual income of less than £6.5 million at the time the complaint is raised.
- **A trustee of a trust** with a net asset value of less than £5 million at the time the complaint is raised.
- **Certain SMEs** – with an annual turnover of less than £6.5 million and a balance sheet threshold of £5 million, or fewer than 50 employees.
- A **person acting for purposes** which are outside their business of profession or a borrower under a 'buy-to-let' credit agreement (this could mean a client classified as either an ECP or a professional client being in scope).

Q7. Answer: C Ref: Chapter 1, Section 6.5

Dealing as principal in connection with an employee share scheme is an excluded activity and so does not require authorisation.

Q8. Answer: B Ref: Chapter 3, Section 1.3.1& 1.3.2

The requirements around 'establish and maintain effective arrangements, systems and procedures to detect and report suspicious orders and transactions' include the following obligations on firms. The arrangements, systems and procedures should be appropriate and proportionate in relation to the scale, size, nature and complexity of their business activity.

The requirement to report covers financial instruments traded on a trading venue as well on a bilateral basis (OTC), and must be reported to the FCA in a timely manner, following an investigation by the firm making the report.

Q9. Answer: A Ref: Chapter 1, Section 6.4

The correct answer is A – accountants do not need authorisation under FSMA when they

carry on a limited range of regulated activity which is incidental to their main business. In addition, they must operate within a set of rules laid down by the Institute of Chartered Accountants in England and Wales, which is their designated professional body. In these circumstances, the accountant is operating within FSMA Part 20 regime.

Q10. Answer: C Ref: Chapter 1, Section 6.6.3

The suitability condition requires firms to prove themselves fit and proper to be granted Part 4A permission, namely that their affairs will be conducted soundly and prudently.

Q11. Answer: C Ref: Chapter 1, Section 3.5

In assessing the fitness and propriety of a person, the regulator(s) will look at a number of factors against a set of criteria, of which the most important are the person's: honesty, integrity and reputation; competence and capability & financial soundness.

Q12. Answer: D Ref: Chapter 4, Section 3.2

Option D is correct, only data controllers have accountability obligations relating to the personal data that they hold for data subjects.

Options A, B & C are correct, in that they are all rights of individuals in relation to the collections and use of personal data.

Q13. Answer: A Ref: Chapter 4, Section 3

Option a is correct, the DPA 2018 Principles are:

1. processing must be lawful and fair
2. purposes of processing must be specified, explicit and legitimate
3. personal data must be adequate, relevant and not excessive
4. personal data must be accurate and kept up to date
5. personal data must be kept for no longer than is necessary, and
6. personal data must be processed in a secure manner.

Q14. Answer: D Ref: Chapter 3, Section 4.3

The placement stage of the money laundering process is the first stage and involves placing criminally obtained cash with a financial institution.

Q15. Answer: D Ref: Chapter 3, Section 4.5.2

A firm's MLRO must report suspicious activity to the National Crime Agency.

Q16. Answer: A Ref: Chapter 3, Section 2.2

Debt securities are caught under the insider dealing legislation; however, the other three options are not in scope – as they are not defined as MiFID financial instruments

Q17. Answer: D Ref: Chapter 1, Section 6.3.1

Option D is correct. Options A, B and C are specified investments under the RAO, whereas spot FX (ie, buying foreign currency for holiday) is not.

Q18. Answer: C Ref: Chapter 3, Section 2.4.2

One of the special defences is where a market maker acts in good faith carrying out its roles as a market maker. The other three options are all general defences under the CJA.

Q19. Answer: B Ref: Chapter 3, Section 2.4.1

Someone commits the offence of insider dealing if they encourage someone else to deal in price- affected securities when in possession of inside information.

Q20. Answer: B Ref: Chapter 3, Section 1.2

Market abuse behaviours are normally behaviours which are likely to give a false or misleading impression of the supply, demand or value of the investments concerned.

Q21. Answer: D Ref: Chapter 3, Section 4.4.1

Option D is correct. Guidance provided by the JMLSG is not approved by the FCA or the PRA, rather it is endorsed by HM Treasury. The JMLSG guidance is not mandatory; rather it is industry guidance provided on best practices within the financial services sector.

Q22. Answer: A Ref: Chapter 3, Section 4.2

Option A is correct. The five offences under POCA 2002 are: Concealing; Arrangements; Acquisition, use and Possession; Failure to disclose and Tipping off.

Q23. Answer: C Ref: Chapter 3, Section 4.4.1

C is the correct answer as it is one of the two broad reasons. The other answers are the three aspects to CDD at the outset of a new business relationship.

Q24. Answer: D Ref: Chapter 3, Section 2.3.2

A sounding can include the disclosure of 'non-public' information which is sensitive and considered to be insider information – for this reason, the disclosing firm has to comply with the following obligations:

- Obtain the consent of the person receiving the market sounding to receive inside information.
- Inform the person receiving the market sounding that they are prohibited from using that information, or attempting to use that information, by acquiring or disposing of financial instruments relating to that information.
- Inform the person receiving the market sounding that they are prohibited from using that information, or attempting to use that information, by cancelling or amending an order which has already been placed concerning a financial instrument to which the information relates or through personal account dealing/encouraging another person to invest or divest in the underlying financial instrument.
- Inform the person receiving the market sounding that, by agreeing to receive the information, they are obliged to keep the information confidential.
- Maintain a record of all information given to the person receiving the sounding.
- Maintain a record of recipients who did not consent to being provided with such inside information.
- Advise the recipients of inside information when that information ceases to be considered as inside information.

Q25. Answer: C Ref: Chapter 2, Section 1.2

Options A, B and D are disapplied for eligible counterparties (COBS – Annex 1) business. The conflicts of interest rules (SYSC 10) are applicable to all authorised/regulated firms.

Q26. Answer: D Ref: Chapter 2, Section 2

Firms are responsible for ensuring that appointed representatives comply with the COBS 4 rules when communicating all types of financial promotions.

Q27. Answer: C Ref: Chapter 2, Section 3.1.2

Clients that are investment firms are, by default, classified as per se professional clients.

Q28. Answer: B Ref: Chapter 2, Section 3.1, 3.3

For non-MiFID business, clients whom the firm assesses as capable of making their own investment decisions can be reclassified as elective professional clients. If a firm considers a client sufficiently sophisticated that the firm is able to promote non-mainstream investments to them, that client is likely to satisfy the qualitative assessment for an elective professional client. The other examples do not give any indication of investment expertise.

Q29. Answer: C Ref: Chapter 2, Section 8.1.3

A unit in any type of collective investment scheme, whether or not the scheme is regulated, is classed as a retail investment product. The scope of PRIIPs are distinguished by the broadly comparable functions they perform for retail investors. They typically provide exposure to multiple underlying assets, deliver capital accumulation over a medium- to long-term investment period, entail a degree of investment risk (although some may provide capital guarantees), and are normally marketed to retail investors.

They can be categorised into four groups: investment funds; insurance-based investment products; retail-structured securities and structured term deposits.

Q30. Answer: A Ref: Chapter 2, Section 3.1.2

An eligible counterparty only has that classification in relation to eligible counterparty business, such as the execution of orders. If the client requires another service such as investment advice, they will be classified as a per se professional client for that service. Eligible counterparties have little or no protection under the regulatory system. Options C and D are only relevant for retail client reclassification.

Q31. Answer: B Ref: Chapter 2, Section 7.6

When a firm executes a transaction for an insistent client which is not in accordance with the personal recommendation given by the firm, they should communicate to the insistent client, in a way which is clear, fair and not misleading, and having regard to the information needs of the insistent client so that the client is able to understand the information.

The firm should obtain from the insistent client an acknowledgement that the transaction is not in accordance with the firm's personal recommendation and the transaction is being carried out at the request of the client.

Q32. Answer: D Ref: Chapter 2, Section 4.2, 4.3

Firms carrying on MiFID must provide their clients with appropriate information, in a comprehensible form, about themselves and their service, the investments and strategies to be used, the execution venues on which these may be dealt and any costs and associated charges.

Q33. Answer: C Ref: Chapter 2, Section 4.1

Client agreements are required for business carried out for retail clients and (for MiFID business) professional clients.

Q34. Answer: C Ref: Chapter 2, Section 4.3

The disclosure of costs and charges must be made to retail clients. Commission charges/costs must be itemised separately. A firm has to disclose all related fees, commissions, charges and expenses and any taxes payable via the firm. The FCA removed the requirement for professional clients and ECPs (MiFID quick fix in 2021) – although they could request for this information, and a firm would need to decide whether to provide based on commercial decisions, as it is not a regulatory requirement.

Q35. Answer: B Ref: Chapter 2, Section 12.4.1

Option B is correct. For retail clients the firm must send a statement to them at least quarterly, although the retail client can request a statement from the firm on a more frequent basis. For leveraged portfolios, the firm must send monthly statements to the client.

Q36. Answer: B Ref: Chapter 2, Section 7.5

Option B is correct; the other options are all exempt from the requirement to send a suitability report

Q37. Answer: B Ref: Chapter 2, Section 7.7

Option B is correct as the rules on non-advised sales (appropriateness) apply to a range of MiFID and non-MiFID investment services which do not involve advice or discretionary portfolio management.

Options A, C and D are covered by the suitability rules, therefore they are incorrect. Option B is correct.

Q38. Answer: D Ref: Chapter 2, Section 7.7

Options A, B & C would require the firm to undertake a suitability assessment. Whereas option D is captured by the requirement for the firm to complete an appropriateness assessment because it is not providing an MiFID investment service.

Q39. Answer: B Ref: Chapter 2, Section 7.3

A firm is entitled to assume that a professional client (per se and elective professional clients) in respect of UK MiFID has the necessary experience and knowledge in that area. A firm is entitled to assume that a per se professional client is able to financially bear any related investment risks consistent with their investment objectives.
However, firms are not permitted to make this same assumption for elective professional clients.

Q40. Answer: B Ref: Chapter 2, section 12.2

Transaction reporting (UK MiFIR) is carried out to provide information to the regulator, enabling review of transactions after the fact. Such details are used by the regulator to monitor for market abuse, including insider dealing, and aid the general surveillance of the market.

UK MiFIR transactions can be reported directly to the FCA, or to an ARM (Approved Reporting Mechanism), who will report the transactions to the FCA.

Whereas under UK EMIR & UK SFTR, all transactions must be reported to a Trade Repository, who will report transactions to the FCA.

The purpose of UK EMIR & UK SFTR reporting is to enhance transparency and enable regulators to monitor risk.

Q41. Answer: D Ref: Chapter 2, Section 5.2

The financial promotions rules are disapplied in certain cases, notably excluded communications. One such rule is a one-off promotion that is not a cold call, if related to non-MiFID business.

Q42. Answer: C Ref: Chapter 2, Section 5.5 & 5.7

The mandatory data need not be included if the client has to refer to another document containing that information in order to respond to the offer.

Q43. Answer: B Ref: Chapter 2, Section 9.1

The information barriers approach prevents information from one part of the firm flowing to another, as part of a firm's arrangements to mitigate against conflicts of interest.

Q44. Answer: D Ref: Chapter 2, Section 10.1

The inducements rules apply to both retail and professional clients.

For a third-party payment to be acceptable it must satisfy all of the following criteria:

1. disclosed to the client prior to the provision of the service
2. enhances the quality of the service that the firm is providing to the client
3. does not impair compliance with the firm's duty to act in the best interest of the client.

Q45. Answer: D Ref: Chapter 1, Section 2.2

D is the correct answer because the four outcomes in the Consumer Duty are: Products and Services Outcome; Price and Value Outcome; Consumer Support Outcome, and Consumer Understanding Outcome.

Q46. Answer: A Ref: Chapter 2, Section 11.2.1

A is the correct answer. Whilst price, cost and speed of execution are all relevant execution factors to consider, there are other relevant factors that need to be considered for a firm to achieve best execution for a client. The additional factors to be considered include the likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of an order.

Q47. Answer: C Ref: Chapter 2, Section 13.1

The purpose of the client money rules is to protect the client money by requiring segregation away from the firm's own money.

Q48. Answer: C Ref: Chapter 2, Section 13.2

It is up to a firm to decide the necessary frequency of completing reconciliations of safe custody accounts.

Q49. Answer: A Ref: Chapter 2, Section 13.1

The purpose of holding the client money in trust is to protect the client money against the firm using it for its own needs, such as repaying creditors.

Q50. Answer: D Ref: Chapter 4, Section 2.3.3

The maximum monetary amount that the FOS can award against a firm is £445,000. For complaints about acts or omissions by firms on or after 1 April 2019 and which are referred to the FOS on or after 1 April 2025.

Q51. Answer: C Ref: Chapter 3, Section 4.5.1

The MLRO's responsibility is derived from a firms responsibility to have appropriate systems and controls, as detailed in the FCA's 'SYSC' Sourcebook.

Q52. Answer: C Ref: Chapter 1, Section 5.5

HM Treasury is the department responsible for developing and executing the British Government's public finance and economic policy. HM Treasury has overall responsibility for the financial services sector in the UK. The FCA reports directly to HMT. The Chancellor of the Exchequer appoints the FCA's CEO and chair.

Q53. Answer: C Ref: Chapter 2, Section 11.8.2

Personal account dealing rules require details of the transactions undertaken to be notified to the firm promptly so that it keeps record of these personal transactions.

Q54. Answer: D Ref: Chapter 2, Section 10.1 & 10.2

The inducements rules should be seen as payment rules as they prohibit any payment, unless expressly permitted. The rules on inducements apply to firms carrying on designated investment business which is MiFID business as well as non-MiFID business. The rules only apply to professional clients and retail clients; therefore, investment firms undertaking ECP business will not be subject to the detailed inducement provisions

A minor non-monetary benefit is one which:

- is clearly disclosed prior to the provision of the relevant service to the client is capable of enhancing the quality of service provided to the client
- is of a scale and nature that it could not be judged to impair the firm's compliance with its duty to act honestly, fairly and professionally in the best interests of the client

Firms can satisfy their disclosure obligations under these rules if they:

- disclose the essential arrangements for such payments/benefits in summary form undertake to their client that further details will be disclosed on request, and
- do, in fact, give such details on request

Q55. Answer: A Ref: Chapter 3, Section 3.2.1

Option A is correct, the notification must be made promptly after the transaction/s has been executed.

Q56. Answer: D Ref: Chapter 3, Section 4.2

POCA is concerned with laundering the proceeds of criminal activities.

Q57. Answer: D Ref: Chapter 5, Sections 6.1 & 6.2

The Bribery Act 2010 created four offences: offering, promising or giving a bribe to another person; requesting, agreeing to receive or accepting a bribe from another person, bribing a foreign public official, and a corporate offence of failing to prevent bribery.

The Act carries a maximum penalty of ten years' imprisonment for offences, except the corporate offence which carries an unlimited fine.

A firm has a defence to the offence of failing to prevent a bribe if it can show that it has put in place adequate procedures to prevent bribery

Q58. Answer: B Ref: Chapter 2, Section 12.4.1

For retail clients, the trade confirmation must be sent as soon as possible and no later than the next business day.

Q59. Answer: A Ref: Chapter 4, Section 2.4

The Financial Services Compensation Scheme (FSCS) was established to provide a safety net for customers of financial services firms that become insolvent.

Q60. Answer: A Ref: Chapter 2, Section 5.1.1, 5.1.2

The purpose of the financial promotion rules is to ensure that promotions are identified as such, and that they are fair, clear and not misleading. The financial promotion rules are consistent with Principles 6 and 7 of the Principles for Businesses: Principle 6 - a firm must pay due regard to the interests of its customers and treat them fairly & Principle 7 - a firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading.

Firms must ensure that all communications relating to designated investment business, including financial promotions, are fair, clear and not misleading.

Q61. Answer: C Ref: Chapter 4, Section 3

All entities classified as data controllers that process personal data have to register with the Information Commissioner.

Q62. Answer: C Ref: Chapter 4, Section 2.2 &2.3

Customer complaints procedures apply to complaints received orally or in writing.

Q63. Answer: C Ref: Chapter 3, Section 3.3

The UK MAR Investment Recommendation provisions dictate that persons (which includes individuals and firms) producing or distributing investment recommendations or suggesting investment strategies must ensure that such information is objectively presented, and disclose their interests or indicate conflicts of interest concerning the financial instruments to which that information relates. Where an investment recommendation is captured by UK MAR, there is a substantial disclosure requirement needed - not just a one-off requirement at the point of distribution, but also ongoing obligations. One of the requirements is that the recommendation must identify whether it relates to a 'buy, sell or hold' and the length of time for a specific financial instrument or group of financial instruments.

Q64. Answer: A Ref: Chapter 2, Section 5.5

The firm's name must be included in communications.

Q65. Answer: C Ref: Chapter 2, Section 11.8.2

The rules on personal account dealing do not apply to personal transactions in life policies.

Q66. Answer: D Ref: chapter 2, Section 11.3

Firms are required to disclose the order execution policy to a client prior to undertaking any MiFID investment business for that client and to obtain prior consent from the client to the order execution policy. They are permitted to obtain consent either by way of a general agreement with the client or consent in respect of individual transactions – they do not need client 'explicit' consent.

Firms must give their clients appropriate information about their execution policies; this needs to be more detailed for retail clients. Firms must obtain their clients' consent prior to their order execution policies (although this can be implied consent where the client continues to trade with the firm after they have been provided with the firms MiFID Terms of Business).

Firms must review their order execution policies whenever a material event occurs, but at least annually. Firms must notify clients of any material changes to their order execution arrangements or execution policy. The FCA does not, however, define the term material change.

Q67. Answer: D Ref: Chapter 2, Section 7.1

The suitability rules exist to ensure that authorised firms take reasonable steps to ensure that personal recommendations (or decisions to trade) are suitable for their clients' needs.
When a firm makes a personal recommendation, provides investment advice, or is managing a client's investments, it should obtain the necessary information regarding the client's:

- knowledge and experience in the investment field relevant to the specific type of designated investment business being offered to the client
- financial situation, including the client's ability to bear losses, and investment objectives and the present risk profile of the clients.

The suitability requirements, under UK MiFID, are not just limited to the provision by a firm of a personal recommendation to buy a financial instrument, but also extend to capture all decisions whether to trade, including any personal recommendations made to a client on whether to buy, sell or take no action (hold) an investment.

Q68. Answer: B Ref: Chapter 4, Section 1.2

Cancellation rights must be provided to retail customers when they transact investment business with a firm. In this respect, the rules on cancellation apply to:

- firms providing retail financial products based on designated investments or deposits, and
- firms entering into distance contracts with consumers, relating to deposits or designated investments.

In summary, the cancellation periods are:

- life and pension products – 30 calendar days
- cash deposit Individual Savings Accounts (ISAs) – 14 calendar days
- non-life and pensions products (advised, non-distance contracts) – 14 calendar days, and
- non-life and pensions products (distance contracts) – 14 calendar days.

Q69. Answer: C Ref: Chapter 1, Section 2.2

Option C is correct because firms must ensure that retail customers understand and accept the inherent risk in products, Firms do not have a responsibility to protect customers from all foreseeable harm and customers must understand and accept inherent risks associated with products (which must be presented in a manner by firms that is clear, fair, not misleading and transparent).

Q70. Answer: B Ref: Chapter 2, Section 9.4

Exceptions to the restriction on trading ahead of the publication of research include execution-only client orders and market makers acting in good faith.

Q71. Answer: D Ref: Chapter 3, Section 2.2

Insider dealing can be defined as the deliberate exploitation of information by dealing in financial instruments, having obtained this information by virtue of some privileged relationship or position. The legislation setting out the UK's current criminal law is Part V of CJA 1993.
Section 52 of the CJA outlines three ways of committing the offence of insider trading: Dealing in the security; Encouraging another to do so; and/or disclosing inside information to another.

Inside information, as defined in Section 56 of CJA, is information which:

a. relates to securities traded on, admitted to trade on or a request to admit to trading, has been made, on a UK/EEA or Gibraltar Regulated Market, MTF or OTF
b. relates to securities traded on, admitted to trade on or a request to admit to trading, has been made on Nasdaq, SIX Swiss Exchange and the New York Stock Exchange (NYSE)
c. relates to securities not covered by point (a) or (b), the price of which depends on, or has effect on, the price or value of a security referred to in those points
d. is specific or precise
e. has not been made public, and
f. is price-sensitive (ie, if it were made public, would be likely to have a significant effect on the price of any security).

Q72. Answer: C Ref: Chapter 1, Section 6.3.2

Advising on investments is a regulated activity but does not extend to advice on deposits, nor generic advice or facts.

Q73. Answer: A Ref: Chapter 2, Section 11.3, 11.4 & 11.6

Option A is correct, firms must obtain consent from a firm of their order execution policy, but this can be an implied consent – i.e. the client undertakes transactions with the firms.

Firms can aggregate their orders with clients, but they need to disclose this to the client.

A client specific instructions does remove the best execution requirements for the firm, as long as they adhere to the client specific instructions, and this was not solicited.

Q74. Answer: D Ref: Chapter 3, Section 8.1

The purpose of the Disclosure Rules, in accordance with provisions for dealing with inside information and preventing market abuse, is to:

- promote prompt and fair disclosure of relevant information to the market
- set out specific circumstances in which an issuer can delay the public disclosure of inside information, and
- set out requirements to ensure that such information is kept confidential in order to protect investors and prevent insider dealing.

Q75. Answer: D Ref: Chapter 2, Section 9.3

Firms are required to have in place effective arrangements for preventing and managing conflicts of interest. Specifically, the rules require firms to have a written conflicts of interest policy which is appropriate to the scale and nature of their business activity.
If a firm is a member of a larger group, the policy should take into account any potential conflicts arising from the structure and/or the business activities of other members of that group.

Firstly, the policy needs to set out the circumstances which may give rise to a conflict, paying particular attention to circumstances where a person performs two or more roles in relation to (for example) investment research and advice, proprietary trading, portfolio management and corporate finance business.

Secondly, the policy needs to state the processes and procedures for preventing and/or managing such conflicts. These procedures should cover:

- control of information to prevent the exchange of information which may harm the interest of one or more clients
- separate supervision of persons who are engaged in activities for different clients whose interests may conflict with each other or those of the firm
- removal of any direct link between remuneration of individuals whose activities may give rise to conflicts, and
- measures to prevent or limit one person exercising inappropriate influence over another, and measures to control an individual's involvement in a series of activities which may give rise to a conflict.

Syllabus Learning Map

Syllabus Unit/ Element		Chapter/Section
Element 1	**The Regulatory Environment**	**Chapter 1**
1.1	**The Role of the FCA and PRA** On completion, the candidate should:	
1.1.1	Know the role, activities and statutory objectives of the: Financial Conduct Authority (FCA); Prudential Regulatory Authority (PRA); Key regulatory areas	1
1.2	**Principles for Businesses** On completion, the candidate should:	
1.2.1	Know key features of the FCA's Principles for Businesses	2.1
1.3	**Fitness and propriety** On completion, the candidate should:	
1.3.1	Know the requirements of: the Senior Managers & Certification Regime (SM&CR); Fit and Proper Test (FIT)	3.1 – 3.5
1.4	**Prudential Standards** On completion, the candidate should:	
1.4.1	Know the purpose of the Capital Adequacy Requirement for certain types of investment firms	4.1
1.5	**The Regulatory Infrastructure** On completion, the candidate should:	
1.5.1	Know the role of: • The Competition and Markets Authority (CMA) • HM Revenue & Customs (HMRC) • The Financial Policy Committee (FPC) • The Bank of England (BoE) • HM Treasury (HMT)	5.1 – 5.5
1.5.2	Know the Pension regulator's rules with respect to occupational pension schemes	5.6

1.5.3	Understand how UK Financial services may be impacted by overseas: • directives • regulations • law • guidance • international intergovernmental bodies (eg, FATF)	5.7
1.5.4	Know the role played by oversight, influencing bodies and relevant codes of conduct: • internal audit • external audit • trustees • compliance • industry bodies, professional bodies and trade associations	5.8
1.6	**Regulated and Prohibited Activities** On completion, the candidate should:	
1.6.1	Know the regulated and prohibited activities: • authorised persons [PERG 2.2.3] • exempt persons and FSMA • offences under the Act • enforceability of agreements entered into with an unauthorised business • defences available under the Act • prohibition orders • actions for damages	6.1 – 6.4

1.7	**Regulated Activities** On completion, the candidate should:	
1.7.1	Know the main exclusions from the need for authorisation under the FSMA 2000 (Regulated Activities Order): • absence of holding out • groups and joint enterprises • advice in newspapers • trustees, nominees and personal representatives • employee share schemes • overseas persons	6.5
1.7.2	Know the investments specified in Part III of the Regulated Activities Order	6.3
1.7.3	Know the authorisation procedures for firms: the need for authorisation; the threshold conditions for authorisation	6.6
1.7.4	Understand: • the PRA and FCA individual accountability requirements for all firms • the requirements for individuals to be registered and be subject to the Senior Managers & Certification Regime and what this means • who is subject to the Conduct Rules	3.1 - 3.3
1.8	**Training and Competence** On completion, the candidate will be able to:	
1.8.1	Know regulatory responsibilities in relation to the assessment of employee competence: • pre-engagement • at engagement • continuing professional development (CPD) • Statement of Professional Standing (SPSS)	7

Element 2	Conduct of Business and Client Assets	Chapter 2

2.1	**The Application and General Provisions of the FCA Conduct of Business Sourcebook (COBS)** On completion, the candidate should:	
2.1.1	Know: • firms subject to the FCA Conduct of Business Sourcebook • activities which are subject to the FCA Conduct of Business Sourcebook including Eligible Counterparty Business and transactions between regulated market participants • the impact of location on firms/activities of the application of the FCA Conduct of Business Sourcebook: permanent place of business in UK	1.1, 1.2
2.2	**Appointed Representatives** On completion, the candidate should:	
2.2.1	Know how the application of the FCA Conduct of Business Sourcebook applies to appointed representatives including financial promotions and firm's responsibilities for appointed representatives	2
2.3	**Accepting Clients** On completion, the candidate should:	
2.3.1	Understand client status: • definition of client • the application of the rules on client categorisation • retail client professional client and eligible counterparty	3.1

2.3.2	Understand client status: • when a person is acting as agent for another person • the rule on categorising elective professional clients and the requirements for clients electing to be professional clients • the rule on elective eligible counterparties • providing clients with a higher level of protection • the requirement to provide notifications of client categorisation	3.2–3.5
2.4	**Client Agreements and Information Provision** On completion, the candidate should:	
2.4.1	Know: • the requirement for firms to provide client agreements • when a client agreement is required to be signed • when it is acceptable to be provided to clients for MiFID business	4.1
2.4.2	Know the requirement to provide information to clients prior to providing services to clients including information relating to the nature and risk of the services and designated investments being offered for MiFID and non-MiFID business	4.2
2.4.3	Know the rules on: • disclosure of costs and associated charges • timing of disclosure; medium of disclosure • changes to information provided to the client • compensation information for MiFID and Non-MiFID business	4.3

2.5	**Reliance on Others** On completion, the candidate should:	
2.5.1	know the rules, guidance and evidential provisions regarding reliance on others	3.6
2.6	**Communicating with Clients, including Financial Promotions** On completion, the candidate should:	
2.6.1	Know the FCA Conduct of Business Rules relating to fair treatment of customers, the application of the rules on communication to clients and on fair, clear and not misleading communications and financial promotions and the additional requirements relating to retail clients in respect of MiFID non-MiFID business	5.1
2.6.2	Know: • the main exceptions to the financial promotion rules in COBS • the limitations in connection to MiFID business • the existence of the FPO	5.2
2.6.3	Know the rules on prospectus advertisements	5.3
2.6.4	Know the requirement for approving financial promotions and the circumstances of relying on another firm's confirmation of compliance	5.4
2.7	**Retail Clients** On completion, the candidate should:	
2.7.1	Understand the four elements of the Consumer Duty	2.2 (chapter 1)
2.7.2	Know obligations related to the Fair Treatment of Customers (FTOC) for firms outside of the scope of the Consumer Duty	2.3 (chapter 1)

2.8	**Communicating with Retail Clients** On completion, the candidate should:	
2.8.1	Know: • the general rule in connection with communicating with retail clients • the restrictions on the promotion of speculative illiquid securities to retail clients • the rules on past, simulated past and future performance • the rule on financial promotions containing offers or invitations	5.5–5.7
2.9	**Cold Calls and Other Promotions that are not in writing** On completion, the candidate should:	
2.9.1	Know the rules on: • unwritten promotions and the restriction on cold calling • financial promotions for overseas persons	5.8
2.10	**Suitability** On completion, the candidate should:	
2.10.1	Understand the purpose of the suitability rules and the requirement for assessing suitability	7.1
2.10.2	Understand: • the information which a firm must obtain from a client in order to make a suitability assessment • the guidance on assessing suitability	7.2
2.10.3	Know the application of the assessing suitability rules for professional clients	7.3
2.10.4	Understand the application of the rules on churning and switching for MiFID and non-MiFID business	7.4

2.10.5	Know: • the obligation to provide a retail client with a suitability report for MiFID business and non-MiFID business • the timing and contents of a suitability report for MiFID business and non-MiFID business • relevant guidance for dealing with insistent clients	7.5, 7.6
2.11	**Appropriateness (Non-Advised Services)** On completion, the candidate should:	
2.11.1	Know the: • obligations for assessing appropriateness for MiFID and non-MiFID business • circumstances in which it is not necessary to assess appropriateness for MiFID business and non-MiFID business	7.7
2.12	**Product Disclosure and the Client's Right to Cancel** On completion, the candidate should:	
2.12.1	Know: • the purpose of the rules on the sale of packaged products to retail clients • the rules requiring the provision of key features to retail clients • the main features to be explained in the key features • the information about financial instruments (MiFID provisions)	8.1, 8.2
2.13	**Conflicts of interest** On completion, the candidate should:	
2.13.1	Know the rules for managing conflicts of interest: common methods; contents of a conflicts policy	9.1–9.3
2.13.2	Know the rules on managing conflict in connection with investment research and research recommendations	9.4

2.14	**Inducements and Payment for Research** On completion, the candidate should:	
2.14.1	Know the rules on inducements relating to: • MiFID business • the provision of independent advice, restricted advice and portfolio management services to retail clients • the provision of independent advice and portfolio management services to retail clients outside the UK or to Professional clients	10.1–10.4
2.14.2	Know the rules regarding acceptable minor non-monetary benefits	10.1
2.15	**Personal Account Dealing** On completion, the candidate should:	
2.15.1	Understand: • the purpose and application of the personal account dealing rule • the restrictions on personal account dealing for MiFID business and non-MiFID business	11.8
2.16	**Dealing and Managing** On completion, the candidate should:	
2.16.1	Know the application of the rules on dealing and managing	11.1
2.17	**Best Execution** On completion, the candidate should:	
2.17.1	Understand the requirements of providing best execution for MiFID and Non-MiFID business	11.2

2.17.2	Understand: the requirements for an order execution policy; its disclosures; the requirements for consent and review for MiFID and non-MiFID business	11.3
2.17.3	Understand the rules on following specific instructions from a client	11.4
2.17.4	Understand the rules on: • monitoring the effectiveness of execution arrangements and policy; • demonstrating compliance with the execution policy • the duties of portfolio managers and receivers and transmitters to act in a client's best interest • information provision for MiFID business and non-MiFID business	11.3
2.18	**Client Order Handling for MiFID and Non-MiFID Business** On completion, the candidate should:	
2.18.1	Understand the rule on client order handling and the conditions to be satisfied when carrying out client orders	11.5, 11.6
2.19	**Client Limit Orders** On completion, the candidate should:	
2.19.1	Know: the rules on client limit orders; the obligation to make unexecuted client limit orders public for MiFID and non-MiFID business	11.7
2.20	**Transaction and Trade Reporting** On completion, the candidate should:	
2.20.1	Know the definition of a reportable transaction	12.1
2.20.2	Know the role and purpose of reporting: • transaction (UK MiFIR) • trade (UK MiFIR) • UK EMIR • short selling • UK SFTR	12.2
2.20.3	Know which party to a trade is responsible for reporting including trades carried out by overseas branches	12.3

2.21	**Reporting to Clients** On completion, the candidate should:	
2.21.1	Know: general client and occasional reporting requirements; the provision of dealing confirmations and periodic statements to retail and professional customers; exceptions to the requirements and the record-keeping requirements in respect of MiFID and non-MiFID business	12.4
2.22	**Client Assets** On completion, the candidate should:	
2.22.1	Know: the purpose of the client money and custody rules (CASS); exemptions	13.1, 13.2

Element 3	Enhancing Market Integrity	Chapter 3
3.1	**Market Abuse** On completion, the candidate should:	
3.1.1	Understand the scope and status of the UK Market Abuse Regulation	1.1, 1.2
3.1.2	Understand the civil and criminal regime for market abuse and insider dealing	1.2
3.1.3	Understand the requirement to prevent and detect market abuse including the obligation on firms to make suspicious transaction and order reports	1.3
3.2	**Insider Dealing** On completion, the candidate should:	
3.2.1	Know the main concepts of: inside information; insider dealing; unlawful disclosure of inside information and insider list	2.1
3.2.2	Know offences described in UK legislation and the instruments covered by the Criminal Justice Act 1993	2.2
3.2.3	Understand market soundings and market manipulation	2.3
3.2.4	Understand disclosure requirements for inside information; the requirement for insider lists	2.1.1, 2.1.2

3.2.5	Understand general defences relating insider dealing	2.4.1
3.2.6	Understand special defences: market makers acting in good faith; market information; price stabilisation; legitimate behaviour	2.4.2
3.3	**Market Manipulation** On completion, the candidate should:	
3.3.1	Understand the four forms of market manipulation: manipulating transactions; manipulating devices; dissemination; and benchmark manipulation	3.1
3.3.2	Know: legitimate behaviour; the concept of accepted market practices; the obligation on Persons discharging managerial responsibilities	3.2
3.3.3	Understand the obligations relating to the provision of investment recommendations	3.3
3.4	**Money Laundering and Financial Crime** On completion, the candidate should:	
3.4.1	Know the terms: money laundering; criminal property	4.1
3.4.2	Understand the three stages of money laundering	4.3
3.4.3	Understand the main offences set out in the Proceeds of Crime Act 2002 (POCA)	4.2
3.4.4	Know due diligence measures designed to prevent money laundering and/or terrorist financing: Joint Money Laundering Steering Group (JMLSG) guidance; credit reference agencies	4.4
3.4.5	Know the role of the Money Laundering Reporting Officer and/or Nominated Officer	4.5.1
3.4.6	Know the duty to report suspicious activities	4.5.2
3.5	**Record Keeping Requirements** On completion, the candidate should:	
3.5.1	Know record keeping requirements in relation to: • Anti-Money Laundering (AML)	5

	• Combating the Financing of Terrorism (CFT)	
3.6	**Bribery and Corruption** On completion, the candidate should:	
3.6.1	Know the main purpose of the Bribery Act 2010 and the categories of offences covered in Sections 1–7 Bribery Act 2010	6.1–6.3
3.7	**Fraud and Economic Crime** On completion, the candidate should:	
3.7.1	Know responsibilities in relation to the prevention of fraud and economic crime	7.1, 7.2
3.8	**Disclosure and Transparency Rules** On completion, the candidate should:	
3.8.1	Know the main concepts, legal requirements and regulations relating to disclosure and transparency rules as they relate to: • disclosure and control of inside information by issuers • transactions by persons discharging managerial responsibilities and their connected persons • share dealing by directors and other persons discharging managerial responsibilities, including closed periods; chairman's approval; no short-term dealing Anti Money Laundering	8.1, 8.2

Element 4	Complaints and Redress	Chapter 4
4.1	**Consumer Rights** On completion, the candidate should:	
4.1.1	Know relevant aspects of the Consumer Rights Act 2015 (CRA)	1.1
4.1.2	Know the: purpose and requirements of the cancellation and withdrawal rights; application of reflection periods	1.2
4.2	**Customer Complaints** On completion, the candidate should:	
4.2.1	Know the criteria for a complainant to be eligible to lodge a complaint	2.1
4.2.2	Know the procedures a firm must implement and follow to handle customer complaints	2.2
4.2.3	Know the role of the Financial Ombudsman Service (FOS)	2.3
4.2.4	Know the role of the Financial Services Compensation Scheme (FSCS)	2.4
4.3	**Data Protection Act 2018 (DPA)** On completion, the candidate should:	
4.3.1	Know the six principles of the Data Protection Act 2018	3
4.3.2	Know the rights of individuals in respect of the collection and use of their personal data	3.2
4.3.3	Know the breach notification and reporting requirements	3.3
4.4	**Whistleblowing** On completion, the candidate should:	
4.4.1	Know the legal and regulatory basis for whistleblowing	4

Examination Specification

Each examination paper is constructed from a specification that determines the weightings that will be given to each element. The specification is given below.

It is important to note that the numbers quoted may vary slightly from examination to examination as there is some flexibility to ensure that each examination has a consistent level of difficulty. However, the number of questions tested in each element should not change by more than plus or minus 2.

Element Number	Element	Questions
1	The Regulatory Environment	12
2	Conduct of Business and Client Assets	35
3	Enhancing Market Integrity	19
4	Complaints and Redress	9
Total		**75**

CISI
CHARTERED INSTITUTE FOR SECURITIES & INVESTMENT

Expand your connections

Tap into a global network of 54,000+ CISI members today!

Join a thriving professional community and take your career to the next level. Become a CISI member to access:

Mentoring Scheme

Get guidance from an experienced mentor or offer to reverse mentor a senior professional.

LinkedIn Community

Connect with like-minded professionals in our exclusive CISI LinkedIn group.

Events

Attend hundreds of in-person and online events every year to expand your knowledge and network.

Young Professionals' Network

Your go-to hub for career support, expert tips, and valuable networking opportunities. Join the network today for exclusive content and events.

Connect with us:

The_CISI | CISI | The CISI | CISITV | thecisi | The_CISI

CISI
CHARTERED INSTITUTE FOR SECURITIES & INVESTMENT

Endless opportunities await with CISI qualifications

Elevate your skills, advance your career and strengthen your personal brand with globally recognised CISI qualifications – designed to open doors worldwide.

Find your next CISI qualification today

Book your exam