

Corporate Finance Strategy and Advice

Edition 1 Addendum, published August 2021

These amendments cover exams to 14 June 2022.

1. Page x – syllabus:

Learning Objective 4.17 has been amended to read:

Critically appraise the techniques and concepts of employee share participation and pensions arrangements, examining the following concepts and techniques used in share participation arrangements:

- unapproved share option schemes
- approved share option schemes
- long term incentive plans (LTIPs)
- other options and warrants
- SAYE plans

2. Chapter 14, Section 7 – has been incorporated to read:

7. Conduct of Business Sourcebook (COBS)

7.1 Overview of COBS

The UK financial regulatory requirements are exhaustively described within the FCA handbook (<https://www.handbook.fca.org.uk/handbook/>). The handbook is a comprehensive list of:

High Level Standards (eg, Principles for Businesses, Senior Management Arrangements, Systems and Controls, Code of Conduct)
Prudential Standards (eg, capital and liquidity requirements)
Business Standards (eg, rules for conduct of business)
Regulatory Processes and Redress
Specialist Sourcebooks (eg, Credit Union Sourcebook), and
Requirements for Listing, Prospectus and Disclosure.

Within the FCA handbook the rules regulating the conduct of the business with respect to designated investment business (<https://www.handbook.fca.org.uk/handbook/glossary/G283.html>), deposits, long-term insurance business in relation to life policies, and activities connected with them are explained in the Conduct of Business Sourcebook (COBS). Hence, COBS forms part of the FCA Handbook and came into force on 1 November 2007 (<https://www.handbook.fca.org.uk/handbook/COBS>).

The rules impose detailed obligations on firms that carry out regulated investment business, specifically client categorisation, client's best interest (honest, fair and professional), inducements, information disclosure, communicating with clients (including financial promotions), best execution, suitability and appropriateness.

Most of the rules impact the day-to-day operations and their purpose is to provide detailed guidance on how staff and representatives of regulated businesses should deal with customers. For example, vulnerable clients (on account of their age, state of health or current circumstances) require an extra duty of care. Advisers need to ensure that the client fully understands the advice process and if not another closely related individual should be with them. Another example is client classification records. A record of each client's classification must be made at the time of their classification and be retained for five years after the firm ceases to carry on business with or for the client.

Although COBS does not reproduce the MiFID Org Regulation in its entirety, it contains a number of provisions which transposed Markets in Financial Instruments Directive (MiFID) – a European regulation for investments and securities.

COBS consists of the following main sections:

- **Application of Rules (COBS 1)** designated investment business
 - deposits (including structured deposits)
 - long-term insurance business.
- **Conduct of Business Obligations (COBS 2)** acting honestly, fairly and professionally
 - information disclosure before providing services
 - inducements
 - research and execution services
 - agent as client and reliance on others
 - optional additional products.
- **Client Categorisation and Communication (COBS 3–5)** retail, professional and eligible counterparty
 - appropriate levels of protection
 - policies, procedures and records
 - promotions that are fair, clear and not misleading
 - communication with retail clients
 - direct offer financial promotions and cold calls
 - identification and approval – process and records
 - distance communications.
- **Information about the Firm; Insurance Distribution and Client Agreements (COBS 6–8)**
 - information about the firm
 - charging and remuneration, commissions
 - product providers and platform services
 - descriptions and disclosure
 - additional insurance distribution obligations
 - client agreements (eg, must enter into a written basic agreement, on paper or other durable medium).
- **Suitability and Appropriateness (COBS 9–10)**
 - suitability versus appropriateness (financial situation, investment objectives, risk elements (attitude, capacity, knowledge and experience)
 - assessing suitability and appropriateness
 - appropriateness – assessment, obligations, client warnings, guidance and applicability.
- **Dealing and Managing; Preparing and Providing Product Information; Cancellation (COBS 11–15)**
 - best execution
 - quality of execution, client order handling, limit orders
 - personal account dealing
 - recording telephone and electronic communications
 - cancellation – rights, communication, exercising and effects of cancellation.
- **Reporting Information to Clients, Claims Handling for Long-Term Care Insurance, Specialist Regimes (such as energy markets and stocklending) (COBS 16–18)**
 - pensions supplementary provisions
 - the with-profits funds
 - permitted and restricted distribution of certain complex investment products.

7.2 COBS regarding the Corporate Finance Business

Corporate finance business involves, for example, advice and arranging activities for issuing new debt or equity, corporate restructuring and M&A activities. Therefore, firms carrying out corporate finance business routinely have access to inside and confidential information. This presents a risk of improper disclosure, insider dealing and market abuse behaviours, and therefore potentially undermines the market integrity. The FCA

found that there are poor systems and controls in respect of the handling of confidential and inside information within some of these firms.

Record keeping (ie, records of telephone conversations and electronic communications) has the benefit that it reduces or removes the scope for misconduct in wholesale markets and to protect and enhance market integrity. Therefore, record keeping is a useful tool for firms' compliance with the FCA requirements and for the FCA to assess how the firm is complying with their wider regulatory requirements. This includes the management of conflicts of interest which are inherent in the provision of corporate finance business, particularly in respect of underwriting and placing.

Certain corporate finance activities, such as advice and underwriting, do not fall under MiFID, as MiFID does not require the recording of all activities where detriment may arise, for example, in relation to all corporate finance business or the service of portfolio management. This raises a potential gap in oversight and provides regulatory arbitrage. It also raises the risk that detriment caused by market abuse and non-compliance with conduct of business obligations will not be sufficiently addressed in the UK. Therefore, MiFID requires the UK to introduce a regime 'at least analogous' to the taping requirements articulated under the Directive.

MiFID requires member states to implement an 'analogous' record keeping regime – in line with the new requirements – for firms exempt from MiFID under Article 3, which receive, transmit or execute orders on behalf of their clients or deal on own account (Article 3 firms primarily are retail investment advisors and corporate finance boutiques, with a very small number of venture capital firms).

While the FCA applies the revised requirements to Article 3 retail investment advisers and venture capital firms, it kept the existing dis-application of the record keeping requirements under COBS 11.5 to Article 3 corporate finance boutiques, as for the most part these firms are not undertaking the relevant activities which require the revised provisions to apply. However, they will be subject to the taping requirements as well as the general record keeping requirements under SYSC 9.

Given that these firms will be subject to the new taping requirements and the enhanced general record keeping requirement from revised SYSC 9 provisions, the FCA believes, when taken collectively, that these requirements provide a level of investor protection comparable to the specific record-keeping requirements and meets the requirement of having an 'analogous' regime.

3. Chapter 17, Section 6 – has been incorporated to read:

6. The Investment Association (The IA)

The UK investment management industry has a major role in the UK economy, helping millions of individuals and families achieve their life goals by helping grow their investments (mainly through workplace pensions). According to the IA, 75% of UK households use an investment manager's services (directly or indirectly). The industry also invests billions of pounds in companies and the financing of transport networks, hospitals, schools and housing projects. The investment management industry supports more than 100,000 jobs in the UK and is the largest industry of its kind in Europe, and the second largest in the world, after America. The IA's members range from small, independent UK investment firms to Europe-wide and global players. Collectively they manage over £9.4 trillion of assets on behalf of their clients in the UK and around the world. This equals to 13% of the £75 trillion global assets under management.

In summary, the IA:

- acts as their voice and represents their interests to policymakers and regulators, and helps explain to the wider world what the industry does
- leads learning, training and development initiatives to ensure compliance with the regulatory requirements and best practice
- consults widely with members on issues affecting the industry, such as market trends, new technology, and data use
- has five key policy divisions, covering every aspect of the investment management industry:
 - policy, strategy and research (including funds, pensions and statistics)

- investments and capital markets
- stewardship and corporate governance
- business – risk, culture and resilience
- international and European.