

MiFID Connect

GUIDELINE ON THE APPLICATION OF THE INVESTMENT RESEARCH REQUIREMENTS UNDER THE FSA RULES IMPLEMENTING MIFID IN THE UK

This Guideline does not purport to be a definitive guide, but is instead a non-exhaustive statement of the measures that firms, whether subject to MiFID or not, and who produce or disseminate research material may adopt in complying with the requirements relating to investment research under the FSA Rules implementing MiFID in the UK. This Guideline focuses only on the UK implementation of MiFID requirements relating to investment research.

This Guideline is based on the Industry Guidance on COB 7.3 published in February 2004 and the joint BBA, LIBA, ISMA and IPMA Guidance on policies for managing conflicts of interest in connection with investment research published in May 2004.

This Guideline only attempts to address those areas relating to the regulation of investment research that are specifically covered by MiFID and to the extent those issues were the subject of the industry guidance described above. The relationship between the investment research requirements of MiFID and the requirements of the Market Abuse Directive is not covered in this Guideline.

This Guideline is up to date as at the date of issue¹. It may be revised from time to time in the light of any relevant changes to the FSA Handbook. If you intend to place significant reliance on it, it would be sensible to check whether there have been any such changes to the FSA Handbook.

This Guideline has taken account of "FSA Confirmation of Industry Guidance"(DP 06/5).

This Guideline does not alter the meaning of any relevant FSA Rule, nor should it be interpreted as doing so.

The FSA has reviewed this Guideline and has confirmed that it will take it into account when exercising its regulatory functions. This Guideline is not mandatory and is not FSA guidance. This FSA view cannot affect the rights of third parties.

¹ This Guideline reflects the proposed (not made) application provisions contained in FSA CP 06/9. Please note that the FSA's investment research rules will not apply to the non-MiFID business of MiFID firms or the business of non-MiFID firms until 1 May 2008. Until then, the rules will apply only to the MiFID business of MiFID investment firms. It should also be noted that the pre MiFID FSA rule on investment research - COB 7.16 - will continue to apply to business outside of the scope of MiFID until the FSA makes new rules dealing with non-scope business.

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SECTION ONE

1. INTRODUCTION TO CHANGES

This section summarises the effect of the FSA Rules implementing the investment research requirements of MiFID (the "**Implementing Rules**").

The definition of "investment research" under the pre-MiFID FSA Rules was broader in some senses than the definition of "investment research" under the Implementing Rules. The key differences between the two definitions are:

- The definition under the Implementing Rules only applies to "financial instruments" whereas the pre-MiFID FSA definition applied to "designated investments".
- The definition under the Implementing Rules requires that the information must not constitute the making of a "personal recommendation" (see Glossary at Appendix 2) whereas the pre-MiFID FSA definition covered advice or recommendations.
- The definition under the Implementing Rules applies significant emphasis to the label attached to a piece of research material (investment research vs. marketing communication) whereas the pre-MiFID FSA definition focused primarily on the content of the material.

In terms of scope, the application of the pre-MiFID FSA definition was limited by the fact that old COB 7.16 only applied in relation to investment research that was "*an impartial assessment of the value or prospects of its subject matter*" or where it was "*reasonable for those to whom the firm has published or distributed it to rely on it as an impartial assessment of the value or prospects of its subject matter*". This limitation was similar to the limitation under the Implementing Rules that states that research will be characterised only as "investment research" if it is labelled as such or otherwise presented as an objective or independent explanation of the matters contained therein. Therefore, the requirement under COBS 12.2.3R and COBS 12.2.5R to have measures and arrangements in place to manage conflicts of interest in relation to investment research (the "**Obligation**") is of substantially similar application as the pre-MiFID FSA Rules on investment research.

However, the following significant additional requirements are introduced by the Implementing Rules:

- Firms that distribute third party investment research under their own responsibility should verify that the provider is subject to equivalent rules to those set out in the Implementing Rules;
- Firms should implement arrangements designed to ensure that all relevant persons involved in the preparation of investment research (this is not limited only to financial analysts as under the pre-MiFID FSA Rules) do not engage in personal account dealing contrary to current recommendations except with prior approval from the legal or compliance function within the firm (and only in exceptional circumstances as is the case under the pre-MiFID FSA Rules);
- The Implementing Rules require firms to implement arrangements designed to ensure that issuers and other staff of the firm, such as investment banking staff, are not permitted to review draft investment research if the draft includes a recommendation or target price;
- Where firms distribute research material which is not investment research (i.e. non-independent research), they must clearly identify the material as a marketing communication and ensure that it contains a clear and prominent statement that it has not been prepared in accordance with legal requirements designed to promote the independence of investment research and is not subject to any prohibition on dealing ahead of the dissemination of investment research (it is important to remember that a marketing communication is a type of financial promotion and is therefore subject to the FSA's financial promotion rules in COBS 4, including the requirement for it to be fair, clear and not

misleading); and

- Whilst there is no specific requirement for a policy on research related conflicts of interest, a firm's conflicts of interest policy, which under the SYSC conflicts of interest rules must cover all relevant conflicts of interest, should include provisions for managing conflicts of interest arising out of the production and distribution of research (see the MiFID Connect Conflicts of Interest Information Memorandum).

SECTION TWO

2. APPLICATION OF THE OBLIGATION UNDER THE IMPLEMENTING RULES

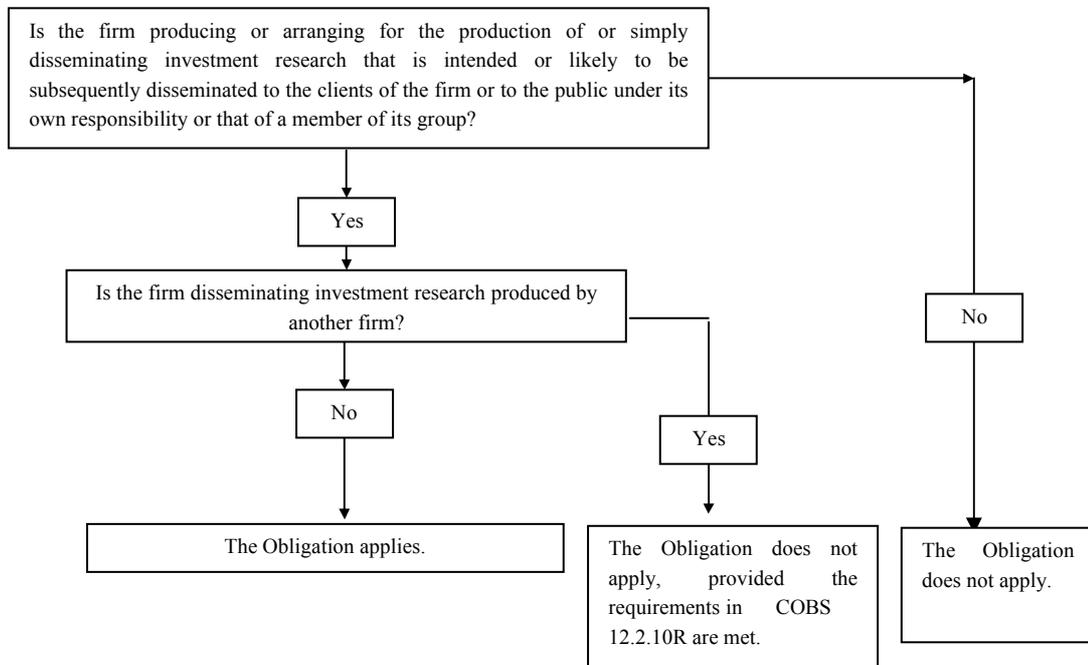
2.1 Introduction

In order to establish whether a firm is subject to the Obligation, the following factors need to be assessed:

- Is the firm producing or arranging for the production of investment research that is intended or likely to be subsequently disseminated to the clients of the firm or to the public under its own responsibility or that of a member of its group?
- Is the firm publishing investment research produced by another firm and not in its own name?

Therefore, depending on the answers to the questions set out in the flowchart below, the Obligation may apply.

Figure 1: Scope of the Investment Research Obligation



2.2 *Types of entities and types of services*

Proposed² COBS 12.1.2R

This chapter applies in relation to *MiFID business* and non-*MiFID business* carried on by a *firm*.

COBS 12.2.1R

This section applies to a *firm* which produces, or arranges for the production of, *investment research* that is intended or likely to be subsequently disseminated to *clients* of the *firm* or to the public, under its own responsibility or that of a member of its *group*.

[Note: article 25(1) of the *MiFID implementing Directive*]

COBS 12.2.2 G

The concept of dissemination of *investment research* to *clients* or to the public is not intended to include dissemination exclusively to *persons* within the *group* of the *firm*.

[Note: recital 33 of the *MiFID implementing Directive*]

COBS 12.3.1R

This section applies to a *firm* that produces or disseminates *non-independent research*.

[Note: article 24(2) of the *MiFID implementing Directive*]

The Obligation applies on a home state basis. This means that firms are required to comply with the Obligation as implemented in their home state, regardless of whether they operate under the single passport on a cross-border basis or through local branches in other EEA Member States.

² This text reflects the proposed (not made) application provisions contained in FSA CP 06/9. Please note that the FSA's investment research rules will not apply to the non-MiFID business of MiFID firms or the business of non-MiFID firms until 1 May 2008. Until then, the rules will apply only to the MiFID business of MiFID investment firms. It should also be noted that the pre MiFID FSA rule on investment research - COB 7.16 - will continue to apply to business outside of the scope of MiFID until the FSA makes new rules dealing with non-scope business.

2.3 *Definition of Investment Research*

Glossary:

Investment research: means research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several *financial instruments* or the issuers of *financial instruments*, including any opinion as to the present or future value or price of such instruments, intended for *distribution channels* or for the public, and in relation to which the following conditions are met:

- (1) it is labelled or described as investment research or in similar terms, or is otherwise presented as an objective or independent explanation of the matters contained in the recommendation;
- (2) if the recommendation in question were to be made by an *investment firm* to a *client*, it would not constitute the provision of a *personal recommendation*.

[Note: article 24(1) of the *MiFID implementing Directive*]

The fact that material will not qualify as investment research unless it is labelled as investment research or otherwise presented as an objective or independent explanation of the matters contained therein means that firms are expected to be able to distinguish between investment research and other material they produce. The correct labelling of research material is therefore important, albeit that the label applied to a piece of research should reflect the context and circumstances in which it was produced and the purpose for which it was produced.

Whilst the label attached to a piece of research will often indicate whether or not the detailed rules applicable to investment research are relevant, firms should note that it is unlikely that they will be able to avoid the classification of material as investment research by simply not labelling or describing material as investment research if the material is otherwise presented as objective or independent. The actual content of research is, therefore, likely to be seen as being as important as the label attached to it in determining whether the material is investment research.

In recommending or suggesting an investment strategy and by being structured as objective and independent, material constituting investment research is likely to contain some degree of substantive analysis - i.e. the critical and careful consideration and assessment of new and existing facts. Conversely, the lack of such substantive analysis may be a factor that, in the absence of labelling, suggests that the material is not investment research.

Investment research will often be prepared by a person designated by the firm as a financial analyst. However, it should be noted that the mere fact that the author of a communication is not styled as a financial analyst might not prevent the communication from amounting to investment research if it is labelled as such or otherwise presented as an objective and independent explanation of the matters contained therein.

There are implications in the definition of investment research for material emanating from a sales and trading division - in particular, the fact that such material will be investment research if it is labelled as such, or is otherwise presented as an objective or independent explanation of the matters contained therein, and recommends or suggests an investment strategy. Recital 38 of the MiFID Implementing Directive makes clear, and the EU Commission in its Communication to the Council and European Parliament dated 12 December 2006 confirmed, that investment research is a sub-category of investment recommendations as defined in the Market Abuse Directive (and implemented into FSA Rules under the definition "research recommendation"). This has the benefit of importing the carve-out from the definition of investment recommendations that relates

to informal short-term investment recommendations originating from inside sales or trading departments (i.e. suggesting that such material neither constitutes a research recommendation nor investment research).

In practice, much sales and trading material, such as "sales notes", execution ideas, market or trader commentary and other short term recommendations, will in any event ordinarily fall outside the definition of investment research, not least because they are not labelled as investment research and are not otherwise held out or presented as being objective and independent, but some more considered material could fall within the definition; firms should not therefore assume that the carve-out described in the paragraph above applies in a blanket fashion to sales and trading material and should consider how to label such material. Whilst the scope of MiFID and the Market Abuse Directive are different in terms of the financial instruments covered by each directive, note that sales and trading material that does not fall within the definition of investment recommendation under the Market Abuse Directive is unlikely to fall within the definition of non-independent research described below. Sales and trading material that does not fall within the definition of investment research or non-independent research will still be subject to conflicts of interest requirements and to, the extent relevant, to the content requirements for marketing communications under the Implementing Rules.

Generic material (for example, reports analysing or commenting on general political, economic or market issues, industries, asset classes, types of investments or broadly based indices and material explaining models) will not be investment research unless it also recommends or suggests an investment strategy and is labelled as investment research or is otherwise presented as objective or independent. One indicator of whether or not particular generic material is potentially caught by the definition might be whether the firm or its clients are likely to undertake market activity on the basis of the material in question. However, there is nothing to prevent a firm from treating and labelling generic material that does not contain substantive analysis as investment research if the firm complies with the requirements applicable to investment research.

2.4 *Non-independent research*

Glossary

Non-independent research: means a *research recommendation* which:

- (a) relates to *financial instruments*; and
- (b) does not constitute *investment research*.

[Note: article 24(2) of *MiFID implementing Directive*]

COBS 12.3.2 R

A *firm* which produces or disseminates *non-independent research* must ensure that it:

- (1) is clearly identified as a marketing communication; and
- (2) contains a clear and prominent statement that (or, in the case of an oral recommendation, to the effect that) it:
 - (a) has not been prepared in accordance with legal requirements designed to promote the independence of *investment research*; and
 - (b) is not subject to any prohibition on dealing ahead of the dissemination of *investment research*.

[Note: article 24(2) of the *MiFID implementing Directive*]

COBS 12.3.3 R

The *financial promotion rules* apply to *non-independent research* as though it were a marketing communication.

[Note: article 24(2) of the *MiFID implementing Directive*]

COBS 12.3.4 G

In accordance with *SYSC 10*, a *firm* will be expected to take reasonable steps to identify and manage conflicts of interest which may arise in the production of *non-independent research*. Situations where conflicts of interest can arise include:

- (1) *relevant persons* trading in *financial instruments* that are the subject of *non-independent research* which they know the *firm* has published or intends to publish before *clients* have had a reasonable opportunity to act on it (other than when the *firm* is acting as *market maker* in good faith and in the ordinary course of market making, or in the execution of an unsolicited *client* order); and
- (2) preparation of *non-independent research* which is intended firstly for internal use by the *firm* and then for later publication to *clients*.

The requirements of COBS 12.3 (and other requirements in COBS 4 relating to marketing communications) apply where a firm produces research that is categorised as non-independent research, for example non-independent research must be clearly identified as a marketing communication and contain a statement in accordance with COBS 12.3.2R(2). However, the detailed rules on investment research will not apply. In particular, individuals involved in the production of non-independent research will not be subject to the restrictions on the activities of financial analysts described in section 3 below, although the overarching requirement on firms to identify and manage conflicts of interest will still apply. Non-independent research will need to be clearly distinguishable from research that is held out as independent and objective, i.e. investment research.

Although the requirements under section 3.1 below do not, strictly speaking, apply to non-independent research, a firm may still choose to prohibit dealing ahead of the publication of non-independent research as set out in section 3.1 in respect of investment research. This is because a firm may take the view that it would run a high risk of breaching its obligations to manage conflicts of interest by allowing employees to deal ahead of publication of non-independent research. Firms will, therefore, need to consider the appropriateness of such dealing bearing in mind their overarching conflicts of interest requirements under the SYSC conflicts of interest rules.

Firms may conclude that some material needs to be classified as non-independent research because internal arrangements - for example reporting or remuneration structures - are such that it is not appropriate to label it as investment research. Conversely, if a firm wishes to label material as non-independent research but the circumstances in which that material is produced are such that it should be categorised as investment research, the firm should label the material as investment research and ensure that the arrangements in COBS 12.2.5R are complied with.

SECTION THREE

3. THE NATURE OF THE OBLIGATION

3.1 *Systems and controls requirements when producing Investment Research*

COBS 12.2.3R

A *firm* must ensure the implementation of all of the measures for managing conflicts of interest in SYSC 10.1.11R in relation to the *financial analysts* involved in the production of *investment research* and other *relevant persons* whose responsibilities or business interests may conflict with the interests of the *persons* to whom *investment research* is disseminated.

[Note: article 25 (1) of the *MiFID implementing Directive*]

COBS 12.2.4G

Persons whose responsibilities or business interests may reasonably be considered to conflict with the interests of the *persons* to whom *investment research* is disseminated include corporate finance personnel and *persons* involved in sales and trading on behalf of *clients* or the *firm*.

[Note: recital 30 of the *MiFID implementing Directive*]

COBS 12.2.5R

A *firm* must have in place arrangements designed to ensure that the following conditions are satisfied:

(1) if a *financial analyst* or other *relevant person* has knowledge of the likely timing or content of *investment research* which is not publicly available or available to *clients* and cannot readily be inferred from information that is so available, that *financial analyst* or other *relevant person* must not undertake *personal transactions* or trade on behalf of any other *person*, including the *firm*, other than:

- (i) as *market maker* acting in good faith and in the ordinary course of market making;
- (ii) or in the execution of an unsolicited *client* order,

in *financial instruments* to which the *investment research* relates, or in any *related financial instruments*, until the recipients of the *investment research* have had a reasonable opportunity to act on it;

[Note: article 25(2)(a) of the *MiFID implementing Directive*]

(2) in circumstances not covered by (1), *financial analysts* and any other *relevant persons* involved in the production of *investment research* must not undertake *personal transactions* in *financial instruments* to which the *investment research* relates, or in any *related financial instrument*, contrary to current recommendations, except in exceptional circumstances and with the prior approval of a member of the *firm's* legal or compliance function;

[Note: article 25(2)(b) of the *MiFID implementing Directive*]

(3) the *firm* itself, *financial analysts*, and other *relevant persons* involved in the production of *investment research* must not accept inducements from those with a material interest in the subject matter of the *investment research*;

[Note: article 25(2)(c) of the *MiFID implementing Directive*]

(4) the *firm* itself, *financial analysts*, and other *relevant persons* involved in the production of *investment research* must not promise issuers favourable research coverage; and

[Note: article 25(2)(d) of the *MiFID implementing Directive*]

(5) issuers, *relevant persons* other than *financial analysts*, and any other *persons* must not, before the dissemination of *investment research*, be permitted to review a draft of the *investment research* for the purpose of verifying the accuracy of factual statements made in that *investment research*, or for any other purpose other than verifying compliance with the *firm's* legal obligations, if the draft includes a recommendation or a target price.

[Note: article 25(2)(e) of the *MiFID implementing Directive*]

COBS 12.2.5A G

Firms are reminded that they must also comply with COBS 11.7 (Rule on personal account dealing).

COBS 12.2.6 G

Knowledge by a *financial analyst* or other *relevant person* that the *firm* intends to produce or disseminate *investment research* to its *clients* or to the public (including in circumstances where research material has not yet been written) could constitute knowledge of the likely timing and content of *investment research* under COBS 12.2.5R(1).

COBS 12.2.7 G

For the purposes of COBS 12.2.5R(2):

(1) current recommendations should be considered to be those recommendations contained in *investment research* which have not been withdrawn and which have not lapsed; and

[Note: recital 34 of the *MiFID implementing Directive*]

(2) exceptional circumstances in which *financial analysts* and other *relevant persons* may, with prior written approval, undertake *personal transactions* in *financial instruments* to which *investment research* relates should include those circumstances where, for personal reasons relating to financial hardship, the *financial analyst* or other *relevant person* is required to liquidate a position.

[Note: recital 31 of the *MiFID implementing Directive*]

COBS 12.2.8 G

Small gifts or minor hospitality below a level specified in the *firm's conflicts of interest policy* and mentioned in the description of that policy that is made available to *clients* in accordance with COBS 6.1.4R(8) should not be considered as inducements for the purposes of COBS 12.2.5R(3).

[Note: recital 32 of the *MiFID implementing Directive*]

COBS 12.2.10R

A *firm* which disseminates *investment research* produced by another *person* to the public or to *clients* is exempt from complying with the requirements in COBS 12.2.3R and COBS 12.2.5R if

the following criteria are met:

- (1) the *person* that produces the *investment research* is not a member of the *group* to which the *firm* belongs;
- (2) the *firm* does not substantially alter the recommendations within the *investment research*;
- (3) the *firm* does not present the *investment research* as having been produced by it; and
- (4) the *firm* verifies that the producer of the *investment research* is subject to requirements equivalent to those in COBS 12.2.3R and COBS 12.2.5R in relation to the production of that *investment research*, or has published a policy setting such requirements.

[Note: article 25(3) of the *MiFID implementing Directive*]

3.1.1 Conflicts relating to dealing ahead of investment research

The reference to "knowledge" in COBS 12.2.5 R(1) relates to specific knowledge and not to market knowledge or expectation. Therefore the dealing ahead restriction does not bite on any knowledge shared by the market, such as regular reporting, or reasonable market expectations that research will be issued (e.g. around the reporting of company results). Consequently, dealing is not precluded merely because the relevant employees (on the basis of information available generally) expect or think it likely that the firm will publish research in accordance with a regular cycle or following the impending announcement of a company's quarterly, interim or annual results.

The effect of COBS 12.2.5R(1) is not specifically to limit the necessary interaction between financial analysts and sales and trading personnel designed to assist financial analysts in their work. However, firms should ensure that their financial analysts take reasonable care that they do not intimate the timing or content of research in their interactions with sales and trading personnel. The key is that a firm's systems and controls should be sufficiently robust to ensure that no reasonable expectation of the timing or content of investment research is given. Firms might consider providing appropriate training to financial analysts in this regard.

The ability of firms to deal in the circumstances referred to in COBS 12.2.5R(1) (acting in good faith as a market maker in the ordinary course of market making or executing unsolicited client orders) means that those individuals engaged in market making may continue to deal even though they have specific knowledge about the content and timing of publication of investment research (i.e. where they have been "brought over the information barrier" between the relevant trading desk and the firm's research function) where the firm has an existing obligation to the market or clients, or where there is a reasonable expectation on the part of the market or clients that the firm will participate in the market in order to provide liquidity. Where an individual has been brought over the information barrier, the firm will have to have appropriate procedures and controls in place to address how the individual should act. The key principle is that the individual engaged in market making must act in good faith and must not exploit any knowledge that he or she has about the content or timing of relevant investment research. The exceptions therefore do not sanction the improper use of specific knowledge about the content and timing of publication. Firms should maintain appropriate controls over dealing in those limited situations where market makers may have specific knowledge about the content and timing of publication of investment research to ensure that the provision of liquidity by those doing the dealing complies with the intent of the rule. In addition, firms should be mindful of other relevant

provisions such as section 118 of FSMA, the Code of Market Conduct and the legislation on insider dealing.

The knowledge referred to in the rule is in practice that of the employees carrying out the relevant dealing. Therefore, individuals on one side of an information barrier will not be regarded as being in possession of information denied to them by the information barrier. The question of whether the employees carrying out the dealing are in law treated as being in possession of information will need to be approached case by case, taking into account any relevant internal procedures and controls on the dissemination of information and the appropriateness and effectiveness of any information barriers put in place.

3.1.2 Means and timing of publication of investment research

COBS 12.2.11G

The FSA would expect a *firm's conflicts of interest policy* to provide for *investment research* to be published or distributed to its *clients* in an appropriate manner. For example, the FSA considers it will be:

- (1) appropriate for a *firm* to take reasonable steps to ensure that its *investment research* is published or distributed only through its usual *distribution channels*; and
- (2) inappropriate for an *employee* (whether or not a *financial analyst*) to communicate the substance of any *investment research*, except as set out in the *firm's conflicts of interest policy*.

COBS 12.2.12G

The FSA would expect a *firm* to consider whether or not other business activities of the *firm* could create the reasonable perception that its *investment research* may not be an impartial analysis of the market in, or the value or prospects of, a *financial instrument*. A *firm* would therefore be expected to consider whether its *conflicts of interest policy* should contain any restrictions on the timing of the publication of *investment research*. For example, a *firm* might consider whether it should restrict publication of relevant *investment research* around the time of an investment offering.

A *firm* may, in theory, make its investment research available simultaneously to clients and to other parts of the *firm* who had no prior knowledge of publication (including proprietary traders) without imposing a waiting period before trading desks and proprietary traders in those parts of the *firm* with no prior knowledge of publication can act upon the investment research. Firms should note, however, that proprietary trading in stock immediately following publication of research may move the market in the relevant stock. This represents a potential conflict of interest, which the *firm* should manage in accordance with its conflicts of interest policy (see below).

Firms should consider whether, in addition to observing any legal, regulatory or contractual requirements for black-out periods, their conflicts of interest policy should, as a form of conflicts management, include provisions for restricting the publication of investment research (generally by or in consultation with the legal or compliance department) at times when activities elsewhere in the *firm* might be thought to give rise to a reasonable perception of lack of independence of investment research or a conflict of interest (whether actual or simply perceived). For example, a *firm's conflicts of interest policy* may restrict publication of investment research, or limit its content (for

example by removing a recommendation and/or price target) for certain periods before, during or after marketing of a securities offering or during other significant transactions in relation to which investment banking services are being provided. Firms' conflicts of interest policies may need to provide that the nature and extent of such restrictions will vary depending on the type of transaction and even upon the individual circumstances of the transaction.

For those parts of the firm with prior knowledge of the likely timing or content of a piece of investment research, the restriction on a firm dealing ahead of investment research applies until the "recipients of the investment research have had a reasonable opportunity to act on it". Firms do not necessarily have to treat all recipients of investment research as persons for whom the research was primarily intended. As such, firms may regard some (and therefore not all) of the recipients of the investment research that it produces as persons for whom it was primarily intended and need only apply the dealing ahead restriction in relation to the distribution to those persons - so, for example, if a firm distributes investment research to its institutional clients (for whom the material is primarily intended) and then later distributes the material via account executives to retail clients for their information, the dealing ahead restriction will apply only until the firm's institutional clients have had reasonable opportunity to act upon it.

(Note that in these circumstances a firm should consider having arrangements in place to prevent retail clients receiving stale information, as this could constitute a potential conflict of interest (in the sense that those who receive the information first could benefit from the staggered dissemination) and also lead to the provision of misleading information. Firms should also ensure that the distribution of investment research in these circumstances does not breach the market abuse regime and does not breach the obligation to act honestly, fairly and professionally in accordance with the best interests of the client).

3.1.3 Remuneration of Financial Analysts

A financial analyst's remuneration should be structured so as not to create an incentive that is inconsistent with the provision of an independent assessment of the subject matter of investment research by the financial analyst.

A financial analyst's remuneration should not be linked to a specific transaction, or to recommendations contained in investment research, but it may be linked to the general profits of the firm. Depending on the firm's structure and circumstances, it may also be possible to base remuneration on an aggregated result which includes other factors, including the performance of divisions or departments that relate to or cover the markets covered by the analyst, provided this does not impair the independence of the analyst.

The Obligation does not deal specifically with factors to be taken into account in determining an individual analyst's remuneration; it therefore seems reasonable to continue to regard as relevant personal factors such as productivity, quality and accuracy of research, experience and individual reputation and evaluations by investor clients and employees in other parts of the firm with whom financial analysts interact, provided that these factors are not assessed in a way which is likely to put financial analysts under improper pressure and does not impair their independence.

It is unlikely that research published by sales and trading personnel could be categorized as objective or independent if the author reports directly to sales and trading personnel

or is remunerated by reference to specific transactions or the level of business or profits of his or her sales or trading desk.

3.1.4 Supervision of persons producing investment research

If an individual (such as someone involved in raising capital for a corporate client) has responsibilities that might reasonably be considered to conflict with the interests of the clients to whom the investment research is published or distributed, it will not usually be appropriate for him to be responsible for the day to day supervision or control of a financial analyst or the decisions on the subject matter or content of investment research or the timing of its publication or for determining the remuneration of a financial analyst.

Firms should ensure that financial analysts who publish investment research are not directly supervised by, and do not report directly to, investment banking or sales and trading personnel. Firms should not deliberately structure their reporting lines in order to achieve indirectly what they should not do directly. This does not necessarily mean that both those supervising financial analysts and those supervising investment banking or sales and trading personnel cannot report to the same person at a more senior level, or that those responsible for supervision of financial analysts cannot report to senior sales and trading personnel; the appropriate reporting structure at more senior levels will depend on the structure and circumstances of the firm, the nature and range of its businesses and the need to comply with other regulatory requirements regarding supervision. However, firms will need to consider whether such reporting structures could in fact prejudice the financial analyst's independence.

In addition, a firm should not give effective editorial control over investment research to someone whose role or commercial interests might conflict with the interests of the clients to whom the investment research is to be published or distributed.

3.1.5 Inducements relating to investment research

In relation to COBS 12.2.5R(3) and COBS 12.2.8G, the payment of reasonable travel and accommodation expenses by an issuer (whose securities are the subject of research) should be acceptable if such expenses are incurred during and in the course of the production of investment research. Note that when receiving reasonable travel and accommodation expenses, the firm must comply with the inducement rules in COBS 2.3 and, in particular, COBS 2.3.1(2)(a).

3.1.6 Financial analysts in a marketing capacity

COBS 12.2.9 G

A *financial analyst* should not become involved in activities other than the preparation of *investment research* where such involvement is inconsistent with the maintenance of the *financial analyst's* objectivity. The following should ordinarily be considered as inconsistent with the maintenance of a *financial analyst's* objectivity:

- (1) participating in investment banking activities such as corporate finance business and underwriting; or
- (2) participating in 'pitches' for new business or 'road shows' for new issues of *financial instruments*; or
- (3) being otherwise involved in the preparation of issuer marketing.

[Note: recital 36 of the *MiFID implementing Directive*]

It will be inappropriate for a firm's conflicts of interest policy to allow the firm to use a financial analyst in a marketing capacity (for example in pitches to solicit or obtain corporate finance business from the issuer of a relevant investment), if this would create a lack of independence in their investment research or give rise to a conflict with the interests of persons to whom their investment research is disseminated.

A financial analyst should not be involved in activities in a way which suggests that he is representing the interests of the firm or a client if this is inconsistent with providing an independent assessment of the value or prospects of relevant investments. It will therefore be inappropriate for a firm's conflicts of interest policy to allow:

- (a) the use of a financial analyst in a marketing capacity, for example by appearing with investment bankers at sales pitches for investment banking mandates, if this would be inconsistent with the maintenance of the financial analyst's objectivity; or
- (b) a financial analyst to act in a way which reasonably appears to be representing the issuer of a relevant investment, for example at roadshows relating to issues or allocations of investments.

In order to add value to investor clients, a financial analyst may wish to put himself or herself in a position to respond to individual client queries about an issuer's roadshow presentation. Listening in for information purposes only in a roadshow, in a manner that could not reasonably be perceived as an endorsement of the issuer, should not be seen as compromising the independence of a financial analyst. In contrast, asking and answering questions during a roadshow will be inconsistent with the maintenance of a financial analyst's objectivity. Firms will need to consider their approach to this aspect of a financial analysts' activity especially carefully.

3.1.7 Interaction of financial analysts with other personnel

The possible restrictions described in section 3.1.6 above do not entail a general restriction on contacts between financial analysts and investment banking or sales and trading employees, or between financial analysts and investment clients of the firm. In practice, however, the circumstances in which the participation of a financial analyst in a securities offering would not compromise the independence of the analyst are likely to

be fairly exceptional. Note that some firms may also be subject to limitations imposed by the laws of other jurisdictions on the interaction of financial analysts with other personnel. A firm's conflicts of interest policy may allow it to use a financial analyst's knowledge and information to provide ideas to sales and trading staff in some circumstances, and a financial analyst may advise the firm's investment clients, so long as this does not give rise to a lack of independence in the financial analyst's research or give rise to a conflict with the interests of persons to whom their investment research is disseminated. So, for example, provided it does not give rise to a lack of independence in the financial analyst's research, a financial analyst should be able to participate in investor education meetings with investor clients or in advising investment banking colleagues on market sentiment and the likely reception of an offering.

Similarly, the Implementing Rules do not expressly preclude financial analysts from maintaining an active dialogue with sales and trading personnel, just as they do with investor clients, provided that they do not disclose the timing or content of forthcoming research reports or disclose or receive other material non-public information, and that this does not give rise to a conflict with the interests of persons to whom their investment research is disseminated.

The matters which a firm will need to consider in structuring its arrangements will include the physical location of financial analysts. The Implementing Rules do not expressly state that physical separation of financial analysts from the trading floor is a prerequisite for the preparation of independent research and the prevention of inappropriate influence, or for appropriate procedures to combat dealing ahead of publication of investment research - firms will need to consider what is appropriate in their circumstances. However, a firm must have effective procedures to prevent or control the exchange of information - indeed such controls on information are a prerequisite for the production of research. Such procedures are unlikely to be effective if traders and research analysts sit together. A firm may therefore conclude that the physical separation of financial analysts is the most effective way to reinforce its dealing ahead policies and manage its conflicts of interest. Where this is not the case, firms should consider which procedures are necessary to effectively prevent or control the exchange of information between financial analysts and traders (and other relevant persons). Some of these procedures could include providing desks away from the trading floor at which investment research is prepared, enforcing a strict clean-desk policy or ensuring that discussions about draft investment research are held outside the ear-shot of traders.

Firms should consider whether a financial analyst's knowledge of the firm's trading positions in financial instruments which are the subject of the financial analyst's research (other than positions that are broadly publicised to investor clients) could represent an inappropriate influence or otherwise prejudice the financial analyst's independence.

3.1.8 Perception of independence

See COBS 12.2.12G above.

Decisions relating to the restrictions on the timing of publication of investment research should generally be made by senior research personnel, but this does not preclude those responsible for such decisions from taking into account input from other business areas. The timing of publication of pre-deal research will in practice be dictated by the

timetable for the transaction as well as the firm's policy regarding any quiet period prior to the commencement of the issuers' marketing of the transaction.

The effect of the additional requirements imposed in relation to investment research, when taken in conjunction with the general restrictions on conflicts management, is that financial analysts will not generally be able to obtain a personal benefit from their recommendations where such benefit would conflict with the interests of the client and contravene the specific requirements set out above.

3.2 *Record keeping*

Please refer to section 3.9 of the MiFID Connect Conflicts of Interest Information Memorandum for record keeping requirements.

SECTION FOUR

4. THE POLICY

4.1 *General*

SYSC 10.1.10R

(1) A *common platform firm* must establish, implement and maintain an effective conflicts of interest policy that is set out in writing and is appropriate to the size and organisation of the *firm* and the nature, scale and complexity of its business.

....

[Note: article 22(1) of *MiFID implementing Directive*]

See COBS 12.2.11G above and see SYSC 10.1.11R.

Please refer to section 4 of the MiFID Connect Conflicts of Interests Information Memorandum for a firm's overarching obligation to have a conflicts of interest policy and the requirements relating to the policy under the Implementing Rules.

Where a firm produces research material (including investment research and non-independent research), the firm's conflicts of interest policy should provide for specific measures to deal with possible conflicts of interest that may arise in that context. There is, however, no requirement for the firm to publish a specific policy in relation to research related conflicts of interest as existed under the pre-MiFID FSA Rules.

In addition to complying with the contents requirements of SYSC 10.1.11R and COBS 12.2.11G, a firm might consider covering some of the following items in its conflicts of interest policy:

- the extent to which (if at all) inducements offered by issuers, or others with material interest in the subject matter of research, may be accepted by financial analysts or senior employees of the firm;
- who may comment on draft research before publication, and the process for taking account of their comments;
- the timing and manner of publication and distribution of research and of the communication of its substance;
- personal account dealing restrictions focused on financial analysts; and
- what information or disclosures are appropriate to include in the research (taking due account of matters required by law).

Appendix 1

Investment Research under MiFID - Level 1 and Level 2 Text

MiFID

Article 13(3)

An investment firm shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest as defined in Article 18 from adversely affecting the interests of its clients.

Article 18

1. *Member States shall require investment firms to take all reasonable steps to identify conflicts of interest between themselves, including their managers, employees and tied agents, or any person directly or indirectly linked to them by control and their clients or between one client and another that arise in the course of providing any investment and ancillary services, or combinations thereof.*

2. *Where organisational or administrative arrangements made by the investment firm in accordance with Article 13(3) to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to client interests will be prevented, the investment firm shall clearly disclose the general nature and/or sources of conflicts of interest to the client before undertaking business on its behalf.*

...

MiFID implementing Directive

Recital 26

In complying with its obligation to draw up a conflict of interest policy under Directive 2004/39/EC which identifies circumstances which constitute or may give rise to a conflict of interest, the investment firm should pay special attention to the activities of investment research and advice, proprietary trading, portfolio management and corporate finance business, including underwriting or selling in an offering of securities and advising on mergers and acquisitions. In particular, such special attention is appropriate where the firm or a person directly or indirectly linked by control to the firm performs a combination of two or more of those activities.

Recital 28

Investment research should be a sub-category of the type of information defined as a recommendation in Commission Directive 2003/125/EC of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the fair presentation of investment recommendations and the disclosure of conflicts of interest [3], but it applies to financial instruments as defined in Directive 2004/39/EC. Recommendations, of the type so defined, which do not constitute investment research as defined in this Directive are nevertheless subject to the provisions of Directive 2003/125/EC as to the fair presentation of investment recommendations and the disclosure of conflicts of interest.

Recital 29

The measures and arrangements adopted by an investment firm to manage the conflicts of interests that might arise from the production and dissemination of material that is presented as investment research should be appropriate to protect the objectivity and independence of financial analysts and of the investment research they produce. Those measures and arrangements should ensure that financial analysts enjoy an adequate degree of independence from the interests of persons whose responsibilities or

business interests may reasonably be considered to conflict with the interests of the persons to whom the investment research is disseminated.

Recital 30

Persons whose responsibilities or business interests may reasonably be considered to conflict with the interests of the persons to whom investment research is disseminated should include corporate finance personnel and persons involved in sales and trading on behalf of clients or the firm.

Recital 31

Exceptional circumstances in which financial analysts and other persons connected with the investment firm who are involved in the production of investment research may, with prior written approval, undertake personal transactions in instruments to which the research relates should include those circumstances where, for personal reasons relating to financial hardship, the financial analyst or other person is required to liquidate a position.

Recital 32

Small gifts or minor hospitality below a level specified in the firm's conflicts of interest policy and mentioned in the summary description of that policy that is made available to clients should not be considered as inducements for the purposes of the provisions relating to investment research.

Recital 33

The concept of dissemination of investment research to clients or the public should not include dissemination exclusively to persons within the group of the investment firm.

Recital 34

Current recommendations should be considered to be those recommendations contained in investment research which have not been withdrawn and which have not lapsed.

Recital 35

The same requirements should apply to the substantial alteration of investment research produced by a third party as apply to the production of research.

Recital 36

Financial analysts should not become involved in activities other than the preparation of investment research where such involvement is inconsistent with the maintenance of that person's objectivity. The following involvements should ordinarily be considered as inconsistent with the maintenance of that person's objectivity: participating in investment banking activities such as corporate finance business and underwriting, participating in "pitches" for new business or "road shows" for new issues of financial instruments; or being otherwise involved in the preparation of issuer marketing.

Recital 37

Without prejudice to the provisions of this Directive relating to the production or dissemination of investment research, it is recommended that producers of investment research that are not investment firms should consider adopting internal policies and procedures designed to ensure that they also comply with the principles set out in this Directive as to the protection of the independence and objectivity of that research.

Recital 38

Requirements imposed by this Directive, including those relating to personal transactions, to dealing with knowledge of investment research and to the production or dissemination of investment research, apply without prejudice to other requirements of Directive 2004/39/EC and Directive 2003/6/EC of the European parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) [4] and their respective implementing measures.

Recital 39

For the purposes of the provisions of this Directive concerning inducements, the receipt by an investment firm of a commission in connection with investment advice or general recommendations, in circumstances where the advice or recommendations are not biased as a result of the receipt of commission, should be considered as designed to enhance the quality of the investment advice to the client.

Article 24

1. For the purposes of Article 25, "investment research" means research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public, and in relation to which the following conditions are met:

(a) it is labelled or described as investment research or in similar terms, or is otherwise presented as an objective or independent explanation of the matters contained in the recommendation;

(b) if the recommendation in question were made by an investment firm to a client, it would not constitute the provision of investment advice for the purposes of Directive 2004/39/EC.

2. A recommendation of the type covered by Article 1(3) of Directive 2003/125/EC but relating to financial instruments as defined in Directive 2004/39/EC that does not meet the conditions set out in paragraph 1 shall be treated as a marketing communication for the purposes of Directive 2004/39/EC and Member States shall require any investment firm that produces or disseminates the recommendation to ensure that it is clearly identified as such.

Additionally, Member States shall require those firms to ensure that any such recommendation contains a clear and prominent statement that (or, in the case of an oral recommendation, to the effect that) it has not been prepared in accordance with legal requirements designed to promote the independence of investment research, and that it is not subject to any prohibition on dealing ahead of the dissemination of investment research.

Article 25

1. Member States shall require investment firms which produce, or arrange for the production of, investment research that is intended or likely to be subsequently disseminated to clients of the firm or to the public, under their own responsibility or that of a member of their group, to ensure the implementation of all the measures set out in Article 22(3) in relation to the financial analysts involved in the production of the investment research and other relevant persons whose responsibilities or business interests may conflict with the interests of the persons to whom the investment research is disseminated.

2. Member States shall require investment firms covered by paragraph 1 to have in place arrangements designed to ensure that the following conditions are satisfied:

(a) financial analysts and other relevant persons must not undertake personal transactions or trade, other than as market makers acting in good faith and in the ordinary course of market making or in the execution of an unsolicited client order, on behalf of any other person, including the investment firm, in financial instruments to which investment research relates, or in any related financial instruments, with

knowledge of the likely timing or content of that investment research which is not publicly available or available to clients and cannot readily be inferred from information that is so available, until the recipients of the investment research have had a reasonable opportunity to act on it;

(b) in circumstances not covered by point (a), financial analysts and any other relevant persons involved in the production of investment research must not undertake personal transactions in financial instruments to which the investment research relates, or in any related financial instruments, contrary to current recommendations, except in exceptional circumstances and with the prior approval of a member of the firm's legal or compliance function;

(c) the investment firms themselves, financial analysts, and other relevant persons involved in the production of the investment research must not accept inducements from those with a material interest in the subject-matter of the investment research;

(d) the investment firms themselves, financial analysts, and other relevant persons involved in the production of the investment research must not promise issuers favourable research coverage;

(e) issuers, relevant persons other than financial analysts, and any other persons must not before the dissemination of investment research be permitted to review a draft of the investment research for the purpose of verifying the accuracy of factual statements made in that research, or for any other purpose other than verifying compliance with the firm's legal obligations, if the draft includes a recommendation or a target price.

For the purposes of this paragraph, "related financial instrument" means a financial instrument the price of which is closely affected by price movements in another financial instrument which is the subject of investment research, and includes a derivative on that other financial instrument.

3. Member States shall exempt investment firms which disseminate investment research produced by another person to the public or to clients from complying with paragraph 1 if the following criteria are met:

(a) the person that produces the investment research is not a member of the group to which the investment firm belongs;

(b) the investment firm does not substantially alter the recommendations within the investment research;

(c) the investment firm does not present the investment research as having been produced by it;

(d) the investment firm verifies that the producer of the research is subject to requirements equivalent to the requirements under this Directive in relation to the production of that research, or has established a policy setting such requirements.

Appendix 2

GLOSSARY

Client: means a person to whom a firm provides, intends to provide or has provided: (a) a service in the course of carrying on a regulated activity; or (b) in the case of MiFID or equivalent third country business, an ancillary service. See COBS 3.2 for further details.

Common platform firm: means a firm that is (a) a BIPRU firm; or (b) an exempt CAD firm; or (c) a UK MiFID investment firm which falls within the definition of 'local firm' in article 3.1P of the Capital Adequacy Directive.

Conflicts of interest policy: means the policy established and maintained in accordance with SYSC 10.1.10R.

Designated Investment: means a security or a contractually-based investment (other than a funeral plan contract and a right to or interest in a funeral plan contract), that is, any of the following investments, specified in Part III of the Regulated Activities Order (Specified Investments), and a long-term care insurance contract which is a pure protection contract: (a) life policy (subset of article 75 (Contracts of insurance)); (b) share (article 76); (c) debenture (article 77); (d) government and public security (article 78); (e) warrant (article 79); (f) certificate representing certain securities (article 80); (g) unit (article 81); (h) stakeholder pension scheme (article 82); (ha) personal pension scheme (article 82(2)); (i) option (article 83); for the purposes of the permission regime, this is sub-divided into: (i) option (excluding a commodity option and an option on a commodity future); (ii) commodity option and option on a commodity future; (j) future (article 84); for the purposes of the permission regime, this is sub-divided into: (i) future (excluding a commodity future and a rolling spot forex contract); (ii) commodity future; (iii) rolling spot forex contract; (k) contract for differences (article 85); for the purposes of the permission regime, this is sub-divided into: (i) contract for differences (excluding a spread bet and a rolling spot forex contract); (ii) spread bet; (iii) rolling spot forex contract; (l) rights to or interests in investments in (a) to (k) (article 89) but not including rights to or interests in rights under a long-term care insurance contract which is a pure protection contract.

Distribution channels: means a channel through which information is, or is likely to become, publicly available. Information which is "likely to become publicly available" means information to which a large number of persons have access. [Note: article 2(1) of MiFID implementing Directive]

Employee: an individual: (a) who is employed or appointed by a person in connection with that person's business, whether under a contract of service or for services or otherwise; or (b) whose services, under an arrangement between that person and a third party, are placed at the disposal and under the control of that person; but excluding an appointed representative of that person.

Financial analyst: means a relevant person who produces the substance of investment research. [Note: article 2(4) of the MiFID implementing Directive]

Financial instrument: means (1) (other than in (2)) instruments specified in Section C of Annex I of MiFID, that is: (a) transferable securities; (b) money-market instruments; (c) units in collective investment undertakings; (d) options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash; (e) options, futures, swaps, forward rate agreements 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 (otherwise than by reason of a default or other termination event); (f) options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market and/or an MTF; (g) options, futures, swaps, forwards and any other derivative contracts relating to commodities,

that can be physically settled not otherwise mentioned in (f) and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls (see articles 38(1), (2) and (4) of the MiFID Regulation); (h) derivative instruments for the transfer of credit risk; (i) financial contracts for differences; and (j) options, futures, swaps, forward rate agreements and any other derivative contracts relating to (i) climatic variables; (ii) freight rates; (iii) emission allowances; (iv) inflation rates or other official economic statistics; (v) telecommunications bandwidth; (vi) commodity storage capacity; (vii) transmission or transportation capacity relating to commodities, whether cable, pipeline or other means; (viii) an allowance, credit, permit, right or similar asset which is directly linked to the supply, distribution or consumption of energy derived from renewable resources; (ix) a geological, environmental or other physical variable; (x) any other asset or right of a fungible nature, other than a right to receive a service, that is capable of being transferred; (xi) an index or measure related to the price or value of, or volume of transactions in any asset, right, service or obligation; where the conditions in Articles 38(3) and (4) of the MiFID Regulation are met... (2) ...

[Note: article 4(1)(17) and section C of Annex I to MiFID and articles 38 and 39 of the MiFID Regulation]

Financial promotion rules: means (in relation to COBS) any or all of the rules in COBS 4 that impose requirements in relation to a financial promotion but only to the extent that they apply to a financial promotion.

Firm: means an authorised person, but not a professional firm unless it is an authorised professional firm. (see also GEN 2.2.18 R for the position of an authorised partnership or unincorporated association which is dissolved.)

Group: (in relation to a common platform firm) means the group of which that firm forms a part, consisting of a parent undertaking, its subsidiaries and the entities in which the parent undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship within the meaning of article 12(1) of Directive 83/349/EEC on consolidated accounts. [Note: article 2(5) of the MiFID implementing Directive]

Investment firm: means any person whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis. [Note: article 4(1)(1) of MiFID]

Investment research: means research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public, and in relation to which the following conditions are met: (a) it is labelled or described as investment research or in similar terms, or is otherwise presented as an objective or independent explanation of the matters contained in the recommendation; (b) if the recommendation in question were to be made by an investment firm to a client, it would not constitute the provision of a personal recommendation. [Note: article 24(1) of the MiFID implementing Directive]

MAD Investment Recommendations Directive: means the Commission Directive of 22 December 2003 implementing the Market Abuse Directive as regards the fair presentation of investment recommendations and the disclosure of conflicts of interest (No. 2003/125/EC).

Market maker: (in COBS) means a person who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against his proprietary capital at prices defined by him. [Note: article 4(1)(8) of MiFID]

MiFID: means Directive 2004/39/EC of the European Parliament and the Council of 21 April 2004 on markets in financial instruments.

MiFID business: means investment services and activities and, where relevant, ancillary services carried on by a MiFID investment firm.

MiFID implementing Directive: means Commission Directive No. 2006/73/EC implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

MiFID investment firm: means a firm which is: (1) an investment firm with its head office in the EEA (or, if it has a registered office, that office); (2) a BCD credit institution (only when providing an investment service or activity in relation to the rules implementing the Articles referred to in Article 1(2) of MiFID); (3) a UCITS investment firm (only when providing the services referred to in Article 5(3) of the UCITS Directive in relation to the rules implementing the articles of MiFID referred to in Article 5(4) of that Directive); unless, and to the extent that, MiFID does not apply to it as a result of Article 2 (Exemptions) or Article 3 (Optional exemptions) of MiFID.

Non-independent research: means a research recommendation which: (a) relates to financial instruments; and (b) does not constitute investment research. [Note: article 24(2) of the MiFID implementing Directive]

Person: means (in accordance with the Interpretation Act 1978) any person, including a body of persons corporate or unincorporate (that is, a natural person, a legal person and, for example, a partnership).

Personal recommendation: means a recommendation that is advice on investments, or advising on a home finance transaction and is presented as suitable for the person to whom it is made, or is based on a consideration of the circumstances of that person. A recommendation is not a personal recommendation if it is issued exclusively through distribution channels or to the public. [Note: article 52 of the MiFID implementing Directive]

Personal transaction: means a trade in a designated investment effected by or on behalf of a relevant person, where at least one of the following criteria are met: (1) that relevant person is acting outside the scope of the activities he carried out in that capacity; (2) the trade is carried out for the account of any of the following persons: (a) the relevant person; (b) the spouse or civil partner of the relevant person or any partner of that person considered by national law as equivalent to a spouse; (c) a dependent child or stepchild of the relevant person; (d) any other relative of the relevant person who has shared the same household as that person for at least one year on the date of the personal transaction concerned; (e) any person with whom he has close links; (f) a person whose relationship with the relevant person is such that the relevant person has a direct or indirect material interest in the outcome of the trade, other than a fee or commission for the execution of the trade. [Note: article 2(7) and article 11 of the MiFID implementing Directive]

Related financial instrument: means a financial instrument, the price of which is closely affected by price movements in another financial instrument which is the subject of investment research, and includes a derivative on that other financial instrument. [Note: article 25(2) of the MiFID implementing Directive]

Relevant person: means any of the following: (a) a director, partner or equivalent, manager or appointed representative (or where applicable, tied agent) of the firm; (b) a director, partner or equivalent, or manager of any appointed representative (or where applicable, tied agent) of the firm; (c) an employee of the firm or of an appointed representative (or where applicable, tied agent) of the firm; as well as any other natural person whose services are placed at the disposal and under the control of the firm or an appointed representative or a tied agent of the firm and who is involved in the provision by the firm of regulated activities; (d) a natural person who is directly involved in the provision of services to the firm or its appointed representative (or where applicable, tied agent) under an outsourcing arrangement for the purpose of the provision by the firm of regulated activities. [Note: article 2(3) of the MiFID implementing Directive]

Research recommendation: means research or other information:

(a) concerning one or several financial instruments admitted to trading on regulated markets, or in relation to which an application for admission to trading has been made, or issuers of such financial instruments;

(b) intended for distribution so that it is, or is likely to become, accessible by a large number of persons, or for the public, but not including:

(i) an informal short-term investment personal recommendation expressed to clients, which originates from inside the sales or trading department, and which is not likely to become publicly available or available to a large number of persons; or

(ii) advice given by a firm to a body corporate in the context of a takeover bid and disclosed only as a result of compliance with a legal or regulatory obligation, including rule 3 of the Takeover Code or its equivalents outside the UK; and

(c) which:

(i) explicitly or implicitly, recommends or suggests an investment strategy; or

(ii) directly or indirectly, expresses a particular investment recommendation; or

(iii) expresses an opinion as to the present or future value or price of such instruments.

In this definition, "financial instruments" means the following (as defined in Article 5 of the Prescribed Markets and Qualifying Investments Order and Article 1(3) of the Market Abuse Directive, and which consequently carries the same meaning in the Buy-back and Stabilisation Regulation):

(a) transferable securities;

(b) units in collective investment undertakings;

(c) money-market instruments;

(d) financial futures contracts, including equivalent cash-settled instruments;

(e) forward interest-rate agreements;

(f) interest-rate, currency and equity swaps;

(g) options to acquire or dispose of any instrument falling into these categories, including equivalent cash-settled instruments. This category includes in particular options on currency and on interest rates;

(h) derivatives on commodities; and

(i) any other instrument admitted to trading on a regulated market in an EEA State or for which a request for admission to trading on such a market has been made.