



Appendix D

International practices comparison for Part III



International Practices Comparison for Part III

This comparison is based on our interpretation of the relevant rules and regulations in the respective jurisdictions.

Investor characterisation

	Europe	The United States	Australia	Singapore
<p>Relevant investor characterisation requirements relating to selling of different products</p>	<p>When providing investment service other than portfolio management and investment advice, the investment firm shall ask the client or potential client to provide information regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the investment firm to assess whether the investment service or product envisaged is appropriate for the client.</p> <p>In case that the product or service is not appropriate to the client or potential client, the investment firm shall warn the client or potential client. This warning may be provided in a standardised format.</p> <p>In cases where the client or potential client elects not to provide the information regarding his knowledge and experience, or where he provides insufficient information, the investment firm shall warn the client or potential client that such a decision will not allow the firm to determine whether the service or product envisaged is appropriate for him. This warning may be provided in a standardised format (MiFID</p>	<p>Members should consider whether purchases of structured products should be limited to investors that have accounts approved for options trading since many structured products and options have similar risk profile; or the members should develop other comparable procedures designed to ensure that structured products are only sold to investors for whom the risk of such products is appropriate (FINRA rules (NASD Notice to Members 05-59)).</p> <p>In approving a customer's account for options trading, a member or any person associated with a member shall exercise due diligence to ascertain the essential facts relative to the customer, his financial situation and investment objectives. With respect to options customers who are natural persons, members shall seek to obtain the essential information including their investment objectives, financial situation and investment knowledge and experience for options, stocks and bonds, commodities, and other financial instruments (FINRA Rule 2360(b)(16)(B)).</p> <p>No member shall recommend to a</p>	<p>In general, clients are classified into retail and wholesale clients.</p> <p>According to ASIC Regulatory Guide RG175.27, the meaning of "retail client" depends on (a) the type of financial product the advice relates to and (b) the nature of the client. The person who receives an advice on a financial product (excluding general insurance products, superannuation products and Retirement Saving Accounts) is a retail client unless under certain circumstances, e.g. the client has net assets or net income in excess of the prescribed amounts, the advice is provided for use in connection with a business that is not a small business, the licensee is satisfied on reasonable grounds that the client has previous experience in using financial services and investing in financial products, etc.</p> <p>Pursuant to ASIC Regulatory Guide 175.106, when a licensee provides personal advice to a retail client, such personal advice must comply with the "suitability rule" under section 945A of the Corporations Act 2001, which requires (i) the licensee to make reasonable inquiries about the client's relevant personal</p>	<p>Consultation Paper on Review of the Regulatory Regime Governing the Sale and Marketing of Unlisted Investment Products issued in March 2009¹ proposes to define complex investment products to include, among others, unlisted debentures which embed derivatives.</p> <p>Under paragraph 5.3 of the Consultation Paper, MAS proposes to require the sale of complex investment products be allowed only with advice. When selling complex investment products, representatives of the distributors will have to explain the nature and risks of such products to their customers. They will also have to assess that the product is suitable for their customers, taking into consideration the respective customer's personal circumstances. MAS also proposes to require distributors to put in place additional safeguards to ensure that the representatives do not sell complex investment products to customers with limited knowledge of investment products.</p>

¹ Consultation Paper on Review of the Regulatory Regime Governing the Sale and Marketing of Unlisted Investment Products issued in March 2009

	Europe	The United States	Australia	Singapore
	Article 19(5). Appropriateness requirements).	customer an opening transaction in any option contract unless the member has a reasonable basis for believing that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks of the recommended transaction, and is financially able to bear the risks of the recommended position in the option contract (FINRA Rule 2360(b)(19)(B)).	circumstances, (ii) the licensee to consider and investigate the subject matter of the advice and (iii) that the advice must be appropriate for the client.	

Investor characterisation (Continued)

	Europe	The United States	Australia	Singapore
<p>Relevant investor characterisation requirements relating to selling of different products</p>	<p><u>Exemption:</u> MiFID Article 19(6) provides exemption for Article 19(5) which applies to investment services that only consist of execution and/or the reception and transmission of client orders where all the following conditions are met:</p> <ul style="list-style-type: none"> ▪ the services relate to non-complex financial instruments; ▪ the service is provided at the initiative of the client or potential client; ▪ the client or potential client has been clearly informed that in the provision of this service the investment firm is not required to assess the suitability of the instrument or service provided or offered and that therefore he does not benefit from the corresponding protection of the relevant conduct of business rules; this warning may be provided in a standardised format; and ▪ the investment firm complies with its obligations under Article 18 "Conflicts of interest". 			

Professional Investors

	The United Kingdom	The United States	Australia	Singapore
Qualifying Criteria for Professional Investors	<p>There are 2 types of Professional Investors: <i>per se professional clients</i> and <i>elective professional clients</i> (New Conduct of Business Sourcebook (COBS) 3.5.1R)</p> <p><u>Per se professional client</u> includes (but is not limited to) regulated investment firms, authorised financial institutions as well as large undertakings meeting 2 of the following size requirements on a company basis:</p> <p>(1) balance sheet total of EUR 20,000,000 (2) net turnover of EUR 40,000,000 (3) own funds of EUR 2,000,000. (COBS 3.5.2R)</p> <p>At the client's request, a firm may treat a client as an <u>elective professional client</u> if:</p> <p>(1) it 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 his own investment decisions and understanding the risks involved; and</p> <p>(2) at least 2 of the following are satisfied:</p> <p>(a) the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous 4 quarters;</p>	<p>Relevant categories of investors include <i>accredited investors</i>, <i>qualified investors</i>, and <i>institutional customers</i>.</p> <p>The term <u>accredited investor</u> includes:</p> <p>(1) a natural person whose individual net worth, or joint net worth with his/her spouse exceeds 1,000,000 at the time of the purchase;</p> <p>(2) a natural person who had an individual income in excess of 200,000 in each of the 2 most recent years or joint income with his/her spouse in excess of 300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;</p> <p>(3) a trust, with total assets in excess of 5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person (a person who has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment); and</p> <p>(4) an entity in which all of the equity owners are accredited investors. (section 2(15)(ii) Securities Act of 1933 (15 U.S.C. 77b(15)(ii)), 17 CFR 230.215 and 17 CFR 230.506(b)(2)(ii))</p>	<p>The regulatory requirements differentiate between retail and wholesale clients. s.761G(4) Corporations Act 2001: if the client is not a retail client, then the client is a wholesale client</p> <p>A financial product (excluding general insurance products, superannuation products and retirement savings accounts) is provided to a <u>wholesale client</u> if:</p> <p>(1) the price for the provision of the financial product is at least AUD500,000; (s.761G(7)(a) & Corporations Regulations 2001 Reg 7.1.28)</p> <p>(2) the financial product, or the financial service, is provided for use in connection with a business that is not a small business; (s.761G(7)(b))</p> <p>(3) the financial product is not provided for use in connection with a business and before the provision of the product, the client gives to the provider a copy of a certificate issued within the preceding 6 months by a qualified accountant stating that the client has (i) net assets of at least AUD2.5 million or (ii) gross income of at least AUD250,000 per annum for each of the last 2 financial years; (s.761G(7)(c), Reg 7.1.28 & s.761G(4))</p> <p>(4) the purchaser is a professional investor (which includes financial services licensees and other regulated entities, as well as any</p>	<p><i>"Accredited investor"</i> includes:</p> <p>(1) an individual:</p> <ul style="list-style-type: none"> ▪ whose net personal assets exceed in value SGD2 million (or such other amount as the Monetary Authority of Singapore (MAS) may prescribe); or ▪ whose income in the preceding 12 months is not less than SGD300,000 (or such other amount as the MAS may prescribe); <p>(2) a corporation with net assets exceeding SGD10 million in value (or such other amount as the MAS may prescribe). (s.4A Securities and Futures Act)</p>

Professional Investors (Continued)

	The United Kingdom	The United States	Australia	Singapore
Qualifying Criteria for Professional Investors	<p>(b) the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds EUR 500,000;</p> <p>(c) the client works or has worked in the financial sector for at least 1 year in a professional position, which requires knowledge of the transactions or services envisaged. (COBS 3.5.3R)</p>	<p>The term <u>qualified investor</u> includes:</p> <p>(1) a natural person who owns and invests on a discretionary basis, not less than 25,000,000 in investments. (section 3(54) Securities and Exchange Act of 1934 (15 U.S.C. 78c(54))</p> <p>An <u>institutional customer</u> is a customer who qualifies as an <i>institutional account</i>, the definition of which includes the account of:</p> <p>(1) an entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least 50 million. (NASD Rule 3110(c)(4))</p>	<p>person who controls at least AUD 10 million). (s.761G(7)(d) & Reg 7.1.28)</p> <p>A financial product is also provided to a <u>wholesale client</u> if the financial product is not provided for use in connection with a business, and the financial services licensee is satisfied on reasonable grounds that the client has previous experience in using financial services and investing in financial products that allows the client to assess:</p> <p>(1) the merits and value of the product;</p> <p>(2) the risks associated with holding the product;</p> <p>(3) the client's own information needs; and</p> <p>(4) the adequacy of the information given by the licensee and the product issuer. (s.761GA)</p>	—
Procedural Requirement	<p>Prior to treating a retail client as an <u>elective professional client</u>:</p> <p>(1) the client must state in writing that it wishes to be treated as a professional client either generally or in respect of a particular service or transaction or type of transaction or product;</p> <p>(2) the firm must give the client a clear written warning of the protections and investor compensation rights the client may lose; and</p> <p>(3) the client must state in writing, in a separate document from the contract, that it is aware of the consequences of losing such protections. (COBS 3.5.3R(3))</p>	—	<p>Before, or at the time when, the product or advice is provided to a <u>wholesale client</u> (as per s.761GA):</p> <p>(1) the licensee must give to the client a written statement of its reasons for being satisfied that the client has the requisite previous experience in using financial services and investing in financial products; and</p> <p>(2) the client is required to sign a written acknowledgment that: (i) the licensee has not provided him with any document which would be required if he were a retail client and (ii) the licensee does not have any other obligations to him that relate to retail clients.</p>	—

Pre-Sale Disclosure of Monetary and Non-Monetary Benefits

	The United Kingdom	The United States	Australia	Singapore
What activities to cover	<ul style="list-style-type: none"> Carrying out designated investment management business for a client [Glossary in FSA Handbook; 6.4.1 in COBS 6: Information about the firm, its services and remuneration] 	<ul style="list-style-type: none"> Providing investment advice on securities to clients [Section 202(a)(11) of the Investment Advisers Act of 1940] 	<ul style="list-style-type: none"> Provision of financial product advice to a retail client [RG 36.2 & 36.34 in Regulatory Guide 36: Licensing: Financial product advice and dealing; RG 175.7 in Regulatory Guide 175: Licensing: Financial product advisers – Conduct and disclosure] 	<ul style="list-style-type: none"> Provision of financial advisory services (i.e. making of investment recommendation to a client or execution of purchase and sale contract for a client) [Para 1 in Practice Note on The Disclosure of Remuneration by Financial Advisers]
What to disclose	<ul style="list-style-type: none"> Fee, commission or non-monetary benefit receivable by a regulated firm from a third party in relation to designated investment management business to a client [2.3.1 in COBS 2: Conduct of business obligations] <p><u>Specific disclosure</u></p> <ul style="list-style-type: none"> In circumstances where a regulated firm personally recommends or arranges the sale of a packaged product to a retail client, the firm must disclose to the client (when the client requests it) commission / commission equivalent receivable by it or any of its associates in connection with the transaction [6.4.3 in COBS 6: Information about the firm, its services and remuneration] <p><u>Current development</u></p> <ul style="list-style-type: none"> The FSA is proposing to ban product providers from offering commission to secure sales from adviser firms [Page 4 in Consultation Paper 09/18: Distribution of retail investments: Delivering the RDR] 	<ul style="list-style-type: none"> All material information regarding an investment adviser's compensation and all potential conflicts of interest between the adviser and its clients [SEC "General Information: Regulation of Investment Advisers"] 	<ul style="list-style-type: none"> Remuneration, commission (including upfront and trailing commission) or other benefits (including soft dollar benefits) attributable to the financial services provided by the providing entity that is to be paid to the providing entity and other related parties specified in the Corporations Act [RG 175.37 & 175.51 in Regulatory Guide 175: Licensing: Financial product advisers – Conduct and disclosure] 	<ul style="list-style-type: none"> Fees, commissions and other benefits (such as trailer fees, soft dollars, sales bonuses) that the financial adviser receives or will receive in relation to its financial advisory activities [Para 7 in Practice Note on The Disclosure of Remuneration by Financial Advisers]

Pre-Sale Disclosure of Monetary and Non-Monetary Benefits (Continued)

	The United Kingdom	The United States	Australia	Singapore
Extent of disclosure	<ul style="list-style-type: none"> ▪ Disclosure in actual amount [2.3.1 in COBS 2: Conduct of business obligations] ▪ Where the amount cannot be ascertained, the method of calculating that amount is to be disclosed to the client [2.3.1 in COBS 2: Conduct of business obligations]. Further, the COBS also sets out the basis on which a firm should determine the value of cash payments, benefits and services to be disclosed as commission equivalent [COBS Annex 6] <p><u>Specific disclosure</u></p> <ul style="list-style-type: none"> ▪ Disclosure in actual amount [6.4.3 in COBS 6: Information about the firm, its services and remuneration] 	—	<ul style="list-style-type: none"> ▪ When dollar amount can be ascertained, disclosure are be made in dollars (except where ASIC has provided class order relief) [RG 182.8, 182.11 & 182.19 in Regulatory Guide 182: Dollar disclosure] ▪ When dollar amount cannot be ascertained, depending on the circumstances, the disclosure could be made in relation to the particulars of the remuneration or other benefits (including range or rates) and/or the manner in which the remuneration or other benefits are to be calculated [RG 175.38 in Regulatory Guide 175: Licensing: Financial product advisers – Conduct and disclosure; Corporations Regulations 2001 - Reg 7.7.04 & 7.7.07] 	<ul style="list-style-type: none"> ▪ Disclosure in actual amount or percentage [Para 12 in Practice Note on The Disclosure of Remuneration by Financial Advisers] ▪ Where the amount is not quantifiable, a description of how each item will be computed, or provide a range of amounts or rate of remuneration for each item [Para 13 in Practice Note on The Disclosure of Remuneration by Financial Advisers]

Sales Disclosure Document

	The United Kingdom	The United States	Australia	Singapore
When to disclose	<ul style="list-style-type: none"> Before the provision of the service [2.3.1 in COBS 2: Conduct of business obligations] <p><u>Specific disclosure</u></p> <ul style="list-style-type: none"> As close as practicable to the time that a firm sells, personally recommends or arranges the sale of a packaged product [6.4.5 in COBS 6: Information about the firm, its services and remuneration] 	<ul style="list-style-type: none"> A written disclosure statement or “brochure” must be delivered to a client at least 2 days before entering into an advisory contract, or at the time of entering into a contract, if the client has the right to terminate the contract without penalty within 5 business days [Rule 204-3 of the Investment Advisers Act of 1940] 	<ul style="list-style-type: none"> A “Financial Services Guide (FSG)” will normally be provided to the client before the provision of financial service (including provision of financial product advice and dealing in financial product), but in time critical cases, the “Financial Services Guide” may be given after the financial service is provided, but has to be provided the latest within 5 days of providing the service [RG 175.58 & 175.59 in Regulatory Guide 175: Licensing: Financial product advisers – Conduct and disclosure] 	<ul style="list-style-type: none"> At the time of making a recommendation or prior to the execution of a purchase or sale of any designated investment product [Para 9 in Practice Note on The Disclosure of Remuneration by Financial Advisers]
How to disclose	<ul style="list-style-type: none"> Disclosure must be made in a durable medium [6.4.5 in COBS 6: Information about the firm, its services and remuneration] For disclosure made orally, there should be written confirmation to the client no later than 5 business days after the transaction [6.4.5 in COBS 6: Information about the firm, its services and remuneration] 	<ul style="list-style-type: none"> A written disclosure statement or “brochure” specified above [Rule 204-3 of the Investment Advisers Act of 1940] 	<ul style="list-style-type: none"> A “Financial Services Guide” as specified above is to be provided in printed or electronic form to a client either personally or sent to an address including an electronic address or fax number nominated by the client or otherwise making it available to the client [RG 175.66 in Regulatory Guide 175: Licensing: Financial product advisers – Conduct and disclosure] 	<ul style="list-style-type: none"> Disclosure must be made to a client in writing whether electronically or otherwise. [Para 9 in Practice Note on The Disclosure of Remuneration by Financial Advisers] For disclosure made in telesales or advice/deals concluded over the phone, oral disclosure is permitted provided the written confirmation of the same is to be given to the client as soon as possible but no later than 3 business days after the transaction [Para 10 in Practice Note on The Disclosure of Remuneration by Financial Advisers]

Audio Recording

	The United Kingdom	The United States	Australia	Singapore
Requirement	<ul style="list-style-type: none"> FSA mandated a taping requirement in March 2009, requiring all firms to use audio-recording to record client's order across equity, bonds and financial commodity and derivatives markets. The retention period is for at least 6 months [Paragraph 1.5 and 1.7, "Telephone Recording: recording of voice conversations and electronic communications"] 	<ul style="list-style-type: none"> Audio-recording is not a mandatory requirement in FINRA regulatory regime. There are only few brokers and dealers specifically requested by FINRA to implement audio-recording for investor's order placement [Rule 3010 (b) Notice to Members: Guidance – Taping Rule] 	<ul style="list-style-type: none"> ASIC issued a Regulatory Guide ("RG") 175 – Licensing: Financial Product Advisers – Conduct and Disclosure, RG175.195 indicates the audio-recording is one way of satisfying Record of Advice under S946B(3A) Corporations Act [ASIC Regulatory Guide 175 - Licensing: Financial product advisers—Conduct and disclosure] 	<ul style="list-style-type: none"> Audio-recording is not a mandatory requirement in MAS [Paragraph 3.10.2, MAS Internal Control], except for carrying out Treasury Activities such as interest rate swaps, forward rate agreement. The tape should be maintained for at least 2 months [Paragraph 8.1 – Telephone Recording "The Singapore Guide to Conduct & Market Practices, For Treasury Activities"]