

**Appropriateness (for non-advised services) (MiFID provisions)**

## Chapter 10A

Appropriateness (for non-advised services) (MiFID and insurance-based investment products provisions)

## 10A.1 Application

[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation on complex debt instruments and structured deposits, 4 February 2016/ESMA/2015/1787 (EN).

### Application

- 10A.1.1 **R** This chapter applies to a *firm* which:
- (1) provides *investment services* in the course of *MiFID* or *equivalent third country business*; or
  - (2) carries on *insurance distribution* in relation to *insurance-based investment product*,
- other than when the *firm* makes a *personal recommendation* or carries out *portfolio management*.
- 10A.1.2 **R** This chapter applies to a *firm* which assesses appropriateness on behalf of a *MiFID investment firm* so that the other *firm* may rely on the assessment under **COBS 2.4.4R** (Reliance on other investment firms: *MiFID* and equivalent business).
- 10A.1.3 **R** The effect of **GEN 2.2.22AR** is that provisions in this chapter marked "UK" and including a Note ('**Note:**') referring to the *MiFID Org Regulation* also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.
- 10A.1.4 **R** [deleted]



## 10A.2 Assessing appropriateness: the obligations

**10A.2.1** **R** A *firm* must ask the *client* to provide information regarding that *client's* knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded to enable the *firm* to assess whether the service or product envisaged is appropriate for the *client*.

[Note: article 25(3) of *MIFID*, first paragraph of article 30(2) of the *IDD*]

**10A.2.1A** **G** A *firm* carrying on *insurance distribution* is also required to comply with the requirements in ■ COBS 7.3 (additional insurance distribution obligations: demands and needs).

[Note: first paragraph of article 30(2) of the *IDD*]

### **Bundled packages: MiFID business and insurance-based investment products**

**10A.2.2** **R** Where a bundle of services or products is envisaged pursuant to ■ COBS 6.1ZA.16R (for MiFID business) or ■ COBS 6.1ZA.16AR to ■ COBS 6.1ZA.16E (for *insurance-based investment products*), the assessment made pursuant to ■ COBS 10A.2.1R must consider whether the overall bundled package is appropriate.

[Note: article 25(3) of *MiFID*, first paragraph of article 30(2) of the *IDD*]

### **Assessing a client's knowledge and experience: MiFID business**

**10A.2.3** **UK** 56(1) Investment firms, shall determine whether that client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or investment service offered or demanded when assessing whether an investment service as referred to in [■ COBS 10A.1.1R] is appropriate for a client.

An investment firm shall be entitled to assume that a professional client has the necessary experience and knowledge in order to understand the risks involved in relation to those particular investment services or transactions, or types of transaction or product, for which the client is classified as a professional client.

[Note: article 56(1) of the *MiFID Org Regulation*]

**Assessing a client's knowledge and experience: insurance-based investment product**

10A.2.3A **R**

Without prejudice to the fact that, in accordance with **COBS 7.3.4R**, any *insurance-based investment product* proposed must be consistent with the *client's* demands and needs, a *firm* must determine whether the *client* has the necessary knowledge and experience in order to understand the risks involved in relation to the service or *insurance-based investment product* proposed or demanded when assessing whether an insurance service or insurance-based investment product distributed in accordance with **COBS 10A.2.1R** and **COBS 10A.2.2R** is appropriate for the *client*.

[Note: article 15 of the *IDD Regulation*]

**Information regarding a client's knowledge and experience: MiFID business**

10A.2.4 **UK**

55(1) Investment firms shall ensure that the information regarding a client's or potential client's knowledge and experience in the investment field includes the following, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved:

- (a) the types of service, transaction and financial instrument with which the client is familiar;
- (b) the nature, volume, and frequency of the client's transactions in financial instruments and the period over which they have been carried out;
- (c) the level of education, and profession or relevant former profession of the client or potential client.

[Note: article 55(1) of the *MiFID Org Regulation*]

**Information regarding a client's knowledge and experience: insurance-based investment products**

10A.2.4A **R**

- (1) For the purposes of **COBS 10A.2.1R** and **COBS 10A.2.2R** in relation to *insurance-based investment products*, the necessary information to be obtained by a *firm* with regard to the *client's* knowledge and experience in the relevant investment field must include, where relevant, the following, to the extent appropriate to the nature of the *client*, and the nature and type of *insurance-based investment product* or service offered or demanded, including their complexity and the risks involved:
  - (a) the types of service, transaction, *insurance-based investment product* or *financial instrument* with which the *client* is familiar;
  - (b) the nature, number, value and frequency of the *client's* transactions in *insurance-based investment products* or *financial instruments* and the period over which they have been carried out;
  - (c) the level of education, and profession or relevant former profession of the *client*.
- (2) Where information required for the purposes of **COBS 10A.2.1R** and **COBS 10A.2.2R** has already been obtained for the purposes of **COBS 7.3.4R**, a *firm* must not request information it already has anew from the *client*.

[Note: article 17(1) and (3) of the *IDD Regulation*]

- Discouraging the provision of information: MiFID business**.....
- 10A.2.5 **UK** 55(2) An investment firm shall not discourage a client or potential client from providing information required for the purposes of [■ COBS 9A.2.1R and ■ COBS 10A.2.1R].
- [Note: article 55(2) of the *MiFID Org Regulation*]
- Discouraging the provision of information: insurance-based investment products**.....
- 10A.2.5A **R** In relation to an *insurance-based investment product*, a *firm* must not discourage a *client* from providing information required for the purposes of ■ COBS 10A.2.1R and ■ COBS 10A.2.2R.
- [Note: article 17(2) of the *IDD Regulation*]
- Reliance on information: MiFID business**.....
- 10A.2.6 **UK** 55(3) An investment firm shall be entitled to rely on the information provided by its clients or potential clients unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.
- [Note: article 55(3) of the *MiFID Org Regulation*]
- Reliance on information: insurance-based investment products**.....
- 10A.2.6A **R** In relation to an *insurance-based investment product*, a *firm* may rely on the information provided by the *client* unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.
- [Note: article 17(4) of the *IDD Regulation*]
- Use of existing information: MiFID business and insurance-based investment products**.....
- 10A.2.7 **G** When assessing appropriateness, a *firm* may use information it already has in its possession.
- Knowledge and experience: MiFID business and insurance-based investment products**.....
- 10A.2.8 **G** Depending on the circumstances, a *firm* may be satisfied that the *client's* knowledge alone is sufficient for him to understand the risks involved in a product or service. Where reasonable, a *firm* may infer knowledge from experience.
- Increasing the client's understanding: MiFID business and insurance-based investment products**.....
- 10A.2.9 **G** If, before assessing appropriateness, a *firm* seeks to increase the *client's* level of understanding of a service or product by providing information to him, relevant considerations are likely to include the nature and complexity of the information and the *client's* existing level of understanding.

- 10A.2.10** **G** **No duty to communicate firm’s assessment of knowledge and experience: MiFID business and insurance-based investment products**
- If a *firm* is satisfied that the *client* has the necessary experience and knowledge in order to understand the risks involved in relation to the product or service, there is no duty to communicate this to the *client*. If the *firm* does so, it must not do so in a way that amounts to making a *personal recommendation* unless it complies with the *rules* in ■ COBS 9A (MiFID and insurance-based investment products provisions).
- 10A.2.11** **G** **Restricted mass market investments**
- When determining whether a *client* has the necessary knowledge to understand the risks involved in relation to a *restricted mass market investment*, a *firm* should consider asking the *client* questions that cover, at least, the matters in ■ COBS 10 Annex 1G in relation to *non-readily realisable securities*.
- 10A.2.12** **G** **Assessing appropriateness: units in long-term asset funds**
- When determining whether a *client* has the necessary knowledge and experience to understand the risks involved in relation to a *unit* in a *long-term asset fund* (see ■ COBS 4.12A (Promotion of restricted mass market investments)), a *firm* should consider asking the *client* questions that cover, at least, the matters in ■ COBS 10 Annex 3G (Assessing appropriateness: units in a long-term asset fund).

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10A.3 Warning the client

10A.3.1 **R** (1) If a *firm* considers, on the basis of information received to enable it to assess appropriateness, that the product or service is not appropriate for the *client*, the *firm* must warn the *client*.

(2) This warning may be provided in a standardised format.

[Note: article 25(3) of *MiFID*, second paragraph of article 30(2) of the *IDD*]

10A.3.2 **R** (1) If the *client* does not provide the information to enable the *firm* to assess appropriateness, or if the *client* provides insufficient information regarding their knowledge and experience, the *firm* must warn the *client* that the *firm* is not in a position to determine whether the service or product envisaged is appropriate for the *client*.

(2) This warning may be provided in a standardised format.

[Note: article 25(3) of *MiFID*, third paragraph of article 30(2) of the *IDD*]

10A.3.3 **G** If a *client* asks a *firm* to go ahead with a transaction, despite being given a warning by the *firm*, it is for the *firm* to consider whether to do so having regard to the circumstances.

## 10A.4 Assessing appropriateness: when it need not be done due to type of investment

### 10A.4.1 **R**

- (1) A *firm* is not required to ask its *client* to provide information or assess appropriateness if either (a) or (aa), and both (b) and (c), are met:
- (a) the service:
    - (i) only consists of execution or reception and transmission of *client* orders, with or without *ancillary services*, excluding *ancillary service* (2) in section B of Annex I to *MiFID* (granting of credits or loans), where the relevant credits or loans do not comprise existing credit limits of loans, current accounts and overdraft facilities of *clients*;
    - (ii) relates to particular *financial instruments* (see paragraph (2)); and
    - (iii) is provided at the initiative of the *client*; or
  - (aa) the *insurance distribution* activity:
    - (i) relates to particular types of *insurance-based investment products* (see (2A)); and
    - (ii) is carried out at the initiative of the *client*; and
  - (b) the *client* has been clearly informed (whether in a standardised format or not) that, in the provision of the service or *insurance distribution* activity, the *firm* is not required to assess the appropriateness of the *financial instrument* or service or *insurance-based investment product* provided or offered and that therefore the *client* does not benefit from the protection of the *rules* on assessing appropriateness; and
  - (c) the *firm* complies with its obligations in relation to conflicts of interest.
- (2) The *financial instruments* referred to in (1)(a)(ii) are any of the following:
- (a) shares in companies admitted to trading on:
    - (i) a *regulated market* or an *EU regulated market*; or
    - (ii) an equivalent third country market; or
    - (iii) an *MTF*,  
except shares that embed a derivative and *units* in a collective investment undertaking that is not a *UCITS*; or
  - (b) bonds or other forms of securitised debt admitted to trading on:
    - (i) a *regulated market* or an *EU regulated market*; or



(ii) an equivalent third country market; or

(iii) an *MTF*,

except those that embed a derivative or incorporate a structure which makes it difficult for the *client* to understand the risk involved; or

(c) *money-market instruments*, excluding those that embed a derivative or incorporate a structure which makes it difficult for the *client* to understand the risk involved; or

(d) shares or *units* in a *UCITS*, excluding structured *UCITS* as referred to in the second subparagraph of article 36(1) of the *KII Regulation*; or

(e) *structured deposits*, excluding those that incorporate a structure which makes it difficult for the *client* to understand the risk of return or the cost of exiting the product before term; or

(f) other non-complex *financial instruments*.

(2A) The *insurance-based investment products* referred to in (1)(aa) are:

(a) *insurance-based investment products* which only provide investment exposure to *financial instruments* referred to in (2) and do not incorporate a structure which makes it difficult for the *client* to understand the risks involved; or

(b) other non-complex *insurance-based investment products*.

(3) For the purposes of this *rule*, a third country market is considered to be equivalent to a *regulated market* if it is a market in relation to which the Treasury has adopted an affirmative equivalence decision in accordance with the requirements and procedure in paragraph 8 of Part 1 of Schedule 3 to *MiFIR*.

[**Note:** article 25(4) of *MIFID*, article 30(3) of the *IDD*]

[**Note:** *ESMA* has published guidelines which specify criteria for the assessment of (i) debt instruments incorporating a structure which makes it difficult for the client to understand the risk involved, and (ii) structured deposits incorporating a structure which makes it difficult for the client to understand the risk of return or the cost of exiting the product before term (see *ESMA/2015/1787* (EN), 4 February 2016).]

[**Note:** *EIOPA* has published guidelines under the *IDD* which specify criteria for the assessment of insurance-based investment products that incorporate a structure which makes it difficult for the customer to understand the risk involved (see *EIOPA-17/651*, 4 October 2017).]

### Other non-complex financial instruments

#### 10A.4.2 UK

57 A financial instrument which is not explicitly specified in ■ **COBS 10A.4.1R(2)**] shall be considered as non-complex for the purposes of paragraph (2)(f) of that rule if it satisfies the following criteria:

(a) it does not fall within Article 2(1)(24)(c) of Regulation (EU) No 600/2014 or paragraphs 4 to 11 of Part 1 of Schedule 2 to the Regulated Activities Order;

(b) there are frequent opportunities to dispose of, redeem, or otherwise realise that instrument at prices that are publicly available to market participants and that are either market prices or prices made available, or validated, by valuation systems independent of the issuer;

(c) it does not involve any actual or potential liability for the client that exceeds the cost of acquiring the instrument;

(d) it does not incorporate a clause, condition or trigger that could fundamentally alter the nature or risk of the investment or pay out profile, such as investments that incorporate a right to convert the instrument into a different investment;

(e) it does not include any explicit or implicit exit charges that have the effect of making the investment illiquid even though there are technically frequent opportunities to dispose of, redeem or otherwise realise it;

(f) adequately comprehensive information on its characteristics is publicly available and is likely to be readily understood so as to enable the average retail client to make an informed judgment as to whether to enter into a transaction in that instrument.

[Note: article 57 of the *MiFID Org Regulation*]

**10A.4.2A** **G** As explained in ■ COBS 4.12A.33G, ■ COBS 10A.4 is not relevant for the purpose of complying with the *rules* requiring an appropriateness assessment under ■ COBS 4.12A in relation to *restricted mass market investments*.

### Other non-complex insurance-based investment products.....

**10A.4.3** **R** An *insurance-based investment product* may be considered as non-complex for the purposes of ■ COBS 10A.4.1R where it satisfies all of the following criteria:

- (1) it includes a contractually guaranteed minimum maturity value which is at least the amount paid by the *client* after deduction of legitimate costs;
- (2) it does not incorporate a clause, condition or trigger that allows the insurance undertaking to materially alter the nature, risk, or pay-out profile of the *insurance-based investment product*;
- (3) it provides options to surrender or otherwise realise the *insurance-based investment product* at a value that is available to the *client*;
- (4) it does not include any explicit or implicit charges which have the effect that, even though there are technically options to surrender or otherwise realise *insurance-based investment product*, doing so may cause unreasonable detriment to the *client* because the charges are disproportionate to the cost to the insurance undertaking;
- (5) it does not in any other way incorporate a structure which makes it difficult for the *client* to understand the risks involved.

[Note: article 16 of the *IDD Regulation*]



## 10A.5 Assessing appropriateness: guidance

### The initiative of the client: MiFID business and insurance-based investment products

**10A.5.1** **G** A service should be considered to be provided, or carried out, at the initiative of a *client* (see ■ COBS 10A.4.1R(1)(a)(iii) and (aa)(ii)), unless the *client* demands it in response to a personalised communication from or on behalf of the *firm* to that *client* which contains an invitation or is intended to influence the *client* in respect of a specific *financial instrument financial instrument, insurance-based investment product* or specific transaction.

[Note: recital 85 to MIFID]

**10A.5.2** **G** A service can be considered to be provided, or carried out, at the initiative of a *client* notwithstanding that the *client* demands it on the basis of any communication containing a promotion for, or offer of, *financial instruments or insurance-based investment products* made by any means and that by its very nature is general and addressed to the public or a larger group or category of *clients*.

[Note: recital 85 to MIFID]

### Personalised communications: MiFID business and insurance-based investment products

**10A.5.3** **G**

- (1) Communications to the world at large, such as those in newspapers or in billboards, are likely to be by their very nature general and therefore not personalised communications.
- (2) Communications addressed to a *client* (such as, for example, an email, telephone call or letter), may or may not be personalised depending on the content.
- (3) A communication is not personalised solely because it contains the name and address of the *client* or because a mailing list has been filtered.
- (4) If a *firm* is satisfied that a communication does not contain any personalised content, it may wish to make clear that it does not intend the communication to be personalised and that the personal circumstances of the recipient have not been taken into account.



## 10A.6

### Assessing appropriateness: when a firm need not assess appropriateness due to suitability assessment

- 10A.6.1** **G** A *firm* need not assess appropriateness if it is receiving or transmitting an order or carrying on *insurance distribution* in relation to an *insurance-based investment product*, for which it has assessed suitability under **■ COBS 9A** (Suitability (MiFID and insurance-based investment products provisions)).
- 10A.6.2** **G** A *firm* may not need to assess appropriateness if it is able to rely on a recommendation made by an *investment firm* (see **■ COBS 2.4.5G** (Reliance on other investment firms: MiFID and equivalent business)) or, in relation to an *insurance-based investment product*, made by an *insurance distributor* (see **■ COBS 2.4.5AR** (Reliance on other insurance distributors)).



## 10A.7 Record keeping and retention periods for appropriateness records

- 10A.7.1 **G** A *firm* is required to keep orderly records of its business and internal organisation, including all services and transactions undertaken by it. The records may be expected to include the *client* information a *firm* obtains to assess appropriateness and should be adequate to indicate what the assessment was.

### Record keeping: MiFID business

- 10A.7.2 **UK** 56(2) Investment firms shall maintain records of the appropriateness assessments undertaken which shall include the following:

- (a) the result of the appropriateness assessment;
- (b) any warning given to the client where the investment service or product purchase was assessed as potentially inappropriate for the client, whether the client asked to proceed with the transaction despite the warning and, where applicable, whether the firm accepted the client's request to proceed with the transaction;
- (c) any warning given to the client where the client did not provide sufficient information to enable the firm to undertake an appropriateness assessment, whether the client asked to proceed with the transaction despite this warning and, where applicable, whether the firm accepted the client's request to proceed with the transaction.

[Note: article 56(2) of the *MiFID Org Regulation*]

### Record keeping: insurance-based investment products

- 10A.7.2A **R**
- (1) Without prejudice to the application the *General data protection regulation*, a *firm* must maintain records of the assessment of appropriateness undertaken in accordance with **COBS 10A.2.1R** and **COBS 10A.2.2R** in relation to an *insurance-based investment product*.
  - (2) The records maintained under (1) must include the information obtained from the *client* and any documents agreed with the *client*, including documents that set out the rights of the parties and the other terms on which the *firm* will provide services to the *client*.

- (3) The records in (1) must be retained for at least the duration of the relationship between the *firm* and the *client*.
- (4) The record in (1) must also include the following:
  - (a) the result of the appropriateness assessment;
  - (b) any warning given to the *client* where the *insurance-based investment product* was assessed as potentially inappropriate for the *client*, whether the *client* asked to proceed with concluding the *policy* despite the warning and, where applicable, whether the *firm* accepted the *client's* request to proceed with concluding the *policy*;
  - (c) any warning given to the *client* where the *client* did not provide sufficient information to enable the *firm* to assess the appropriateness of the *insurance-based investment product*, whether the *client* asked to proceed with concluding the *policy* despite the warning and, where applicable, whether the *firm* accepted the *client's* request to proceed with concluding the *policy*.

[Note: article 19(1) and (3) of the *IDD Regulation*]

#### **Record keeping: MiFID business and insurance-based investment products**

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10A.7.3

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A *firm* should refer to ■ SYSC 3.3 (for *insurers* and *managing agents*) and ■ SYSC 9 (for other *firms*) for its obligations in relation to record keeping. These provisions require records kept for the purposes of this chapter to be retained for a period of at least five years.