Chapter 8

Client agreements (non-MiFID provisions)

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8.1 Client agreements: non-MiFID designated investment business

Application

8.1.1 **R** (1) This chapter applies to a *firm* in relation to *designated investment business* carried on for a *retail client*.

(2) [deleted]

(3) But this chapter does not apply to:

(a) a *firm* in relation to its *MiFID, equivalent third country or optional exemption business*; or

(b) subject to (3A), a *firm* to the extent that it is *effecting contracts of insurance* in relation to a *life policy* issued or to be issued by the *firm* as principal.

(3A) ■ COBS 8.1.4R and ■ COBS 8.1.5R apply to a *firm* carrying on *insurance distribution* in relation to *insurance-based investment products* for any *client*.

Providing a client agreement

8.1.2 **R** If a *firm* carries on *designated investment business*, other than *advising on investments* or *advising on conversion or transfer of pension benefits*, with or for a new *retail client*, the *firm* must enter into a written basic agreement, on paper or other *durable medium*, with the *client* setting out the essential rights and obligations of the *firm* and the *client*.

8.1.3 **R** (1) A *firm* must, in good time before a *client* is bound by any agreement relating to *designated investment business* or before the provision of those services, whichever is the earlier, provide that *client* with:

(a) the terms of any such agreement; and

(b) the information about the *firm* and its services relating to that agreement or to those services required by ■ COBS 6.1.4 R, including information on communications, conflicts of interest and authorised status.

(2) A *firm* must provide the agreement and information in a *durable medium* or, where the *website conditions* are satisfied, otherwise via a website.

(3) A *firm* may provide the agreement and the information immediately after the *client* is bound by any such agreement if:

(a) the *firm* was unable to comply with (1) because, at the request of the *client*, the agreement was concluded using a means of distance communication which prevented the *firm* from doing so; and

(b) if the *rule* on voice telephony communications (■ COBS 5.1.12 R) does not otherwise apply, the *firm* complies with that *rule* in relation to the *retail client*, as if he were a *consumer*.

(4) (a) A *firm* must notify a *client* in good time about any material change to the information provided under this *rule* which is relevant to a service that the *firm* is providing to that *client*.

(b) A *firm* must provide the notification in a *durable medium* if the information to which it relates was given in a *durable medium*.

Record keeping: client agreements

8.1.4 | R | (1) A *firm* must establish a record that includes the document or documents agreed between it and a *client* which set out the rights and obligations of the parties, and the other terms on which it will provide services to the *client*.

(2) The record must be maintained for:

(a) [deleted]

(b) unless (c) applies, at least the duration of the relationship with the *client*; or

(c) in the case of a record relating to a *pension transfer*, *pension conversion*, *pension opt-out* or *FSAVC*, indefinitely.

[**Note:** article 30(4) of the *IDD*]

8.1.5 | R | For the purposes of this chapter, a *firm* may incorporate the rights and duties of the parties into an agreement by referring to other documents or legal texts.

[**Note:** article 30(4) of the *IDD*]

8.1.6 | G | When considering its approach to client agreements, a *firm* should be aware of other obligations in the *Handbook* which may be relevant. These include the *fair, clear and not misleading rule*, the *rules* on disclosure of information to a *client* before providing services, the *rules* on distance communications (principally in ■ COBS 2.2, ■ 5, ■ 6 and ■ 13) and the provisions on record keeping (principally in ■ SYSC 3, for *insurers* and *managing agents*, and ■ SYSC 9, for other *firms*.

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