

Chapter 9

Suitability (including basic advice) (other than MiFID and insurance-based investment products)



9.6 Special rules for giving basic advice on a stakeholder product

9.6.1 **G** This section applies to a *firm* giving *basic advice*, which has chosen to comply with the *rules* in this section instead of the other *rules* in this chapter (see **COBS 9.1.2 R**).

Range

9.6.2 **R** A *firm* is permitted to maintain more than one *range of stakeholder products*.

9.6.3 **R** A *range of stakeholder products*:

- (1) may include more than one *deposit-based stakeholder product*;
- (2) may include the *stakeholder products* of more than one *stakeholder product provider*;
- (3) must not include any more than one:
 - (a) *CIS stakeholder product* or *linked life stakeholder product*; or
 - (b) *stakeholder CTF*; or
 - (c) *stakeholder pension scheme*.

9.6.4 **R** When a *firm* provides *basic advice* it must:

- (1) explain why it chose the *stakeholder products* and *stakeholder product providers* that appear in the relevant *range*; and
- (2) give the *client* a list of the *stakeholder products* and *stakeholder product providers* that appear in that *range*;

if the *client* asks it do so.

Requirements on first contact

9.6.5 **R** When a *firm* first has contact with a retail client with a view to giving *basic advice* on a *stakeholder product*, it must give the *retail client*:

- (1) the *basic advice* initial disclosure information (**COBS 9 Annex 1**), in a *durable medium*, together with an explanation of that information, unless:

- (a) it has already done so and the *basic advice* initial disclosure information is likely still to be accurate and appropriate; or
 - (b) the contact is not face to face and is using a means of communication which makes it not practicable to provide the *basic advice* initial disclosure information in a *durable medium*; and
- (2) an explanation of how the advice will be paid for and the fact that any commission will be disclosed.

9.6.6 G [deleted]

9.6.6A G A *firm* will meet the requirements in respect of its obligation to provide written disclosure in the *rules* on describing the breadth of advice (■ COBS 6.2B.33R) by providing its *basic advice* initial disclosure information (in ■ COBS 9 Annex 1 R).

9.6.7 R [deleted]

9.6.8 R If a *firm's* first contact with a *retail client* is not face to face, it must:

- (1) inform the *client* at the outset:
 - (a) (if the communication is initiated by or on behalf of a *firm*), of the name of the *firm* and the commercial purpose of the communication;
 - (b) [deleted]
 - (c) that the *firm* will provide the *retail client* with *basic advice* without carrying out a full assessment of the *retail client's* needs and circumstances; and
 - (d) that such information will be confirmed in writing; and
- (2) (if not provided at first contact) send the *client* the *basic advice* initial disclosure information (■ COBS 9 Annex 1) in a *durable medium* as soon as reasonably practicable following the conclusion of the first contact;
- (3) (unless the relevant product is a *deposit-based stakeholder product*) if the contact is by spoken interaction, provide the *client* with the disclosure required by the *rules* on additional oral disclosure for firms providing restricted advice (■ COBS 6.2B.38R).

Sales process.....

9.6.9 R When a *firm* gives *basic advice*, it must do so using:

- (1) a single range of *stakeholder products*; and
- (2) a sales process that includes putting pre-scripted questions to the *client*.

- 9.6.10** **R** When a *firm* gives *basic advice* it must not:
- (1) describe or recommend a *stakeholder product* outside the *firm's range*; or
 - (2) describe or recommend a *smoothed linked long term stakeholder product*; or
 - (3) describe fund choice, or recommend a particular fund, if a *stakeholder product* offers a choice of funds; or
 - (4) recommend the level of contributions required to be made to a *stakeholder pension scheme* to achieve a specific income in retirement; or
 - (5) recommend or agree that a *client* makes a contribution to an *ISA* which exceeds the HM Revenue & Customs *ISA* limits.

- 9.6.11** **R**
- (1) If a *firm* starts the sales process for a *stakeholder product* that is not a *deposit-based stakeholder product*, it must not depart from that process unless it has advised the *retail client* that it will not provide *basic advice* on *stakeholder products* during the period of departure. A *firm* that does that must not provide *basic advice* during the departure period.
 - (2) Before a *firm* returns to the sales process for *stakeholder products*, it must tell the *retail client* that that process is about to recommence.

Suitability of recommendations

- 9.6.12** **R** A *firm* must only recommend a *stakeholder product* to a *retail client* if:
- (1) it has taken reasonable steps to assess the *client's* answers to the scripted questions and any other facts, circumstances or information disclosed by the *client* during the sales process;
 - (2) (unless the relevant product is a *deposit-based stakeholder product*) having done so, it has reasonable grounds for believing that the *stakeholder product* is suitable for the *client*; and
 - (3) the *firm* reasonably believes that the *client* understands the *firm's* advice and the basis on which it was provided.

- 9.6.13** **G** ■ COBS 9 Annex 2 gives *guidance* on the steps a *firm* could take to help it meet these suitability obligations.

- 9.6.14** **R** If a *firm* giving *basic advice* recommends to a *retail client* to acquire a *stakeholder product*, it must ensure that, before the conclusion of the contract, its *representative*:
- (1) (unless the relevant product is a *deposit-based stakeholder product*) explains to the *client*, if necessary in summary form, but always in a way that will allow the *client* to make an informed decision about the *firm's* recommendation:

- (a) the nature of the *stakeholder product*; and
 - (b) the "aims", "commitment" and "risks" sections of the appropriate *key features document*;
- (2) provides the *client* with a summary sheet, which is in a *durable medium* and sets out, for each product it recommends:
- (a) the specific amount the *client* wishes to pay into the product; and
 - (b) the reasons for the recommendation, including the *client's* attitude to risk and any information provided by the *client* on which the recommendation is based; and
- (3) informs the *client* that in determining any subsequent complaint, the *Ombudsman* may take into account the limited information on which the recommendation was based and the fact that it was not tailored to take account of those aspects of the *client's* financial needs and circumstances not covered by the *firm's* sales process.

9.6.15 **R** Notwithstanding **■** COBS 9.6.14R (2) a *firm* may provide the summary sheet (**■** COBS 9.6.14R (2)) as soon as reasonably practicable after the conclusion of the contract if the *client* asks it to do so, or the contract will be concluded using a means of distance communication that does not enable the provision of the summary sheet in a *durable medium* before the conclusion of the contract, but only if the *firm*:

- (1) reads the summary sheet to the *client* before it concludes the contract; and
- (2) sends the summary sheet to the *client* as soon as practicable after the conclusion of the contract.

Concluding the contract.....

9.6.16 **R** If a *firm* concludes a contract for a *stakeholder product* with or for a *retail client* it must provide a copy of the completed questions and answers to the *client* in a *durable medium* as soon as reasonably practicable afterwards.

Basic advice on stakeholder products: other issues.....

9.6.17 **R** (1) [deleted]

(2) When a *firm* provides *basic advice* on a *stakeholder product*, it may use the facilities and stationery it uses for other business in respect of which it does hold itself out as acting or advising independently.

9.6.18 **R** A *firm* must ensure that none of its *representatives*:

- (1) is likely to be influenced by the structure of his or her *remuneration* to give unsuitable *basic advice* on *stakeholder products* to a *retail client*; or
- (2) refers a *retail client* to another *firm* in circumstances which would amount to the provision of any fee, commission or non-monetary benefit.

9.6.18A **R**

- (1) A *firm* providing basic advice on a *stakeholder product* that is a *life policy* must, in addition to providing the statement of demands and needs required under **COBS 7.3.1R**, provide the *client* with a personalised explanation of why a particular *life policy* would best meet the *client's* demands and needs.
- (2) The details must be modulated according to the complexity of the *life policy* proposed and the type of *client*.
- (3) The information in (1) must be provided in accordance with **COBS 7.4**.

[Note: third paragraph of article 20(1) and 20(2) of the *IDD*]

Records

9.6.19 **R**

A *firm* must record that it has chosen to give *basic advice* to a *retail client* and make a record of the *range* used and the summary sheet (**COBS 9.6.14R (2)**) prepared for each *retail client*. That record must be retained for at least five years from the date of the relevant *basic advice*.

9.6.20 **R**

- (1) A *firm* must make an up-to-date record of:
 - (a) its *scope of basic advice*, and the *scope of basic advice* used by its *appointed representatives* (if any); and
 - (b) its *range (or ranges) of stakeholder products*, and the *range (or ranges)* used by its *appointed representatives* (if any).
- (2) Those records must be retained for five years from the date on which they are replaced by a more up-to-date record.