

Chapter 14

Providing product information to clients

14.3A Information about financial instruments (MiFID provisions)

Application

14.3A.1 **R** This section applies to a *firm* in relation to its *MiFID*, *equivalent third country* or *optional exemption business*.

Effect of provisions marked “UK” for third country investment firms and MiFID optional exemption firms

14.3A.2 **R** Provisions in this section marked “UK” apply in relation to *MiFID optional exemption business* as if they were *rules* (see **■** COBS 1.2.2G).

14.3A.2A **G** The effect of **■** GEN 2.2.22AR is that provisions in this section marked “UK” also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.

Providing a description of the nature and risks of financial instruments

14.3A.3 **R** A *firm* must provide a *client* with:

- (1) appropriate guidance on, and warnings of, the risks associated with investments in *financial instruments* or in respect of particular investment strategies;
- (2) information on whether a particular *financial instrument* is intended for *retail* or *professional clients*, taking account of the identified target market in accordance with the *rules* in **■** PROD 3; and
- (3) the information required by this section in a comprehensible form in such a manner that the *client* is reasonably able to understand the nature and risks of the *investment service* and of the specific type of *financial instrument* that is being offered and, consequently, to take investment decisions on an informed basis. That information may be provided in a standardised format.

[**Note:** article 24(4)(b) and article 24(5) of *MiFID*]

14.3A.4 **G** **■** COBS 14.3A.3R supplements **■** COBS 2.2A.2R (Information disclosure before providing services (MiFID provisions)).

14.3A.5 **UK**

48(1) Investment firms shall provide clients or potential clients in good time before the provision of investment services or ancillary services to clients or potential clients with a general description of the nature and risks of financial instruments, taking into account, in particular, the client's categorisation as either a retail client, professional client or eligible counterparty. That description shall explain the nature of the specific type of instrument concerned, the functioning and performance of the financial instrument in different market conditions, including both positive and negative conditions, as well as the risks particular to that specific type of instrument in sufficient detail to enable the client to take investment decisions on an informed basis.

48(2) The description of risks referred to in paragraph 1 shall include, where relevant to the specific type of instrument concerned and the status and level of knowledge of the client, the following elements:

(a) the risks associated with that type of financial instrument including an explanation of leverage and its effects and the risk of losing the entire investment including the risks associated with insolvency of the issuer or related events, such as bail in;

(b) the volatility of the price of such instruments and any limitations on the available market for such instruments;

(c) information on impediments or restrictions for disinvestment, for example as may be the case for illiquid financial instruments or financial instruments with a fixed investment term, including an illustration of the possible exit methods and consequences of any exit, possible constraints and the estimated time frame for the sale of the financial instrument before recovering the initial costs of the transaction in that type of financial instruments;

(d) the fact that an investor might assume, as a result of transactions in such instruments, financial commitments and other additional obligations, including contingent liabilities, additional to the cost of acquiring the instruments;

(e) any margin requirements or similar obligations, applicable to instruments of that type.

48(3) Where an investment firm provides a retail client or potential retail client with information about a financial instrument that is the subject of a current offer to the public and a prospectus has been published in connection with that offer in accordance with the law of the United Kingdom which was relied on immediately before IP completion day to implement Directive 2003/71/EC, as that law is amended from time to time, that firm shall in good time before the provision of investment services or ancillary services to clients or potential clients inform the client or potential client where that prospectus is made available to the public.

48(4) Where a financial instrument is composed of two or more different financial instruments or services, the investment firm shall provide an adequate description of the legal nature of the financial instrument, the components of that instrument and the way in which the interaction between the components affects the risks of the investment.

48(5) In the case of financial instruments that incorporate a guarantee or capital protection, the investment firm shall provide a client or a potential client with information about the scope and nature of such guarantee or capital protection. When the guarantee is provided by a third party, information about the guarantee shall include sufficient detail about the

guarantor and the guarantee to enable the client or potential client to make a fair assessment of the guarantee.

[Note: article 48 of the *MiFID Org Regulation*]

Satisfying the provision rules

14.3A.6

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- (1) Where a *firm* is required to provide information to a *client* before the provision of a service, each transaction in respect of the same type of *financial instrument* should not be considered as the provision of a new or different service.

[Note: recital 69 to the MiFID Org Regulation]

- (2) But a *firm* should ensure that the *client* has received all relevant information in relation to a transaction which subsequently takes place, such as details of product charges that differ from those disclosed in respect of the prior transaction or transactions.

Timing of disclosure

14.3A.7

UK

46(2) Subject to paragraph 2A, investment firms must, in good time before the provision of investment services or ancillary services to clients or potential clients, to provide the information required under Articles 47 to 50.

46(2A) Where the agreement to buy or sell a financial instrument is concluded using a means of distance communication, which prevents the delivery of the information on costs and charges before that conclusion:

(a) the investment firm must give the client or potential client the option of receiving the information on costs and charges over the telephone before the conclusion of the transaction; and

(b) subject to meeting the conditions referred to in paragraph 2B(a) and (b), the investment firm may provide the information on costs and charges to clients in:

(i) electronic format; or

(ii) where requested by a retail client or potential retail client, on paper, without undue delay after the conclusion of the transaction.

46(2B) The conditions referred to in paragraph 2A(b) are:

(a) the client or potential client has requested and consented to receiving the information without undue delay after the conclusion of the transaction; and

(b) the investment firm has given the client or potential client the option of delaying the conclusion of the transaction until the client has received the information.

Note: article 46(2), (2A) and (2B) of the *MiFID Org Regulation*]

14.3A.8

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The provisions in *COBS* that reproduce the information requirements contained in articles 47 to 50 of the *MiFID Org Regulation* are:

■ COBS 6.1ZA.5UK, ■ COBS 6.1ZA.8UK, ■ COBS 6.1ZA.9UK, ■ COBS 6.1ZA.14UK and ■ COBS 14.3A.5UK.

Medium of disclosure

14.3A.9 **UK**

46(3)The information referred to in paragraphs 1 to 2B shall be provided in a durable medium or by means of a website (where it does not constitute a durable medium) provided that the conditions specified in Article 3(2) are satisfied.

[Note: article 46(3) of the *MiFID Org Regulation*]

Keeping the client up-to-date

14.3A.10 **UK**

46(4)Investment firms shall notify a client in good time about any material change to the information provided under Articles 47 to 50 which is relevant to a service that the firm is providing to that client. That notification shall be given in a durable medium if the information to which it relates is given in a durable medium.

[Note: article 46(4) of the *MiFID Org Regulation*]

Information provided in relation to units in collective investment undertakings or PRIIPs

14.3A.11 **UK**

51Investment firms distributing units in collective investment undertakings or PRIIPs shall additionally inform their clients about any other costs and associated charges related to the product which may have not been included in the UCITS KID or PRIIPs KID and about the costs and charges relating to their provision of investment services in relation to that financial instrument.

[Note: article 51 of the *MiFID Org Regulation*]