

Client agreements (MiFID provisions)

Chapter 8A

Client agreements (MiFID provisions)

8A



8A.1 Client agreements (MiFID, equivalent third country or optional exemption business)

Application and purpose provisions

- 8A.1.1 R This chapter applies to a *firm* in relation to its *MiFID, equivalent third country or optional exemption business*.
- 8A.1.2 R Provisions in this chapter marked “EU” apply to *MiFID optional exemption firms* as if they were *rules*.
- 8A.1.3 G In order to provide legal certainty and enable clients to better understand the nature of the services provided, investment firms that provide investment or ancillary services to clients should enter into a written basic agreement with the client, setting out the essential rights and obligations of the firm and the client.

[Note: recital 90 to the *MiFID Org Regulation*]

Providing a client agreement: retail and professional clients

- 8A.1.4 EU 58 Investment firms providing any investment service or the ancillary service referred to in Section B(1) of Annex I to Directive 2014/65/EC to a client after the date of application of this Regulation shall enter into a written basic agreement with the client, in paper or another durable medium, with the client setting out the essential rights and obligations of the firm and the client. Investment firms providing investment advice shall comply with this obligation only where a periodic assessment of the suitability of the financial instruments or services recommended is performed.

The written agreement shall set out the essential rights and obligations of the parties, and shall include the following:
 - (a) a description of the services, and where relevant the nature and extent of the investment advice, to be provided;
 - (b) in case of portfolio management services, the types of financial instruments that may be purchased and sold and the types of transactions that may be undertaken on behalf of the client, as well as any instruments or transactions prohibited; and
 - (c) a description of the main features of any services referred to in Section B(1) of Annex I to Directive 2014/65/EC to be provided, including where applicable the role of the firm with respect to corporate actions relating to

client instruments and the terms on which securities financing transactions involving client securities will generate a return for the client.

[Note: article 58 of the *MiFID Org Regulation*]

General requirement for information to clients

8A.1.5 EU 46(1) Investment firms shall, in good time before a client or potential client is bound by any agreement for the provision of investment services or ancillary services or before the provision of those services, whichever is the earlier to provide that client or potential client with the following information:

(a) the terms of any such agreement;

(b) the information required by Article 47 relating to that agreement or to those investment or ancillary services.

[Note: article 46(1) of the *MiFID Org Regulation*]

8A.1.6 EU 46(2) Investment firms shall, 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.

[Note: article 46(2) of the *MiFID Org Regulation*]

8A.1.7 EU 46(3) The information referred to in paragraphs 1 and 2 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*]

Avoiding duplicate information

8A.1.8 G (1) Articles 47 to 50 of the *MiFID Org Regulation* require a *firm* to provide a *client* with information about:

(a) the *firm* and its services for *clients* and potential *clients* (including information on communications, conflicts of interest and authorised status);

(b) *financial instruments*;

(c) safeguarding of *client financial instruments* or *client funds*; and

(d) costs and associated charges.

(2) Provided the information referred to in (1) is communicated to a *client* in good time before the provision of the service, a *firm* does not need to provide it either separately or by incorporating it in a *client* agreement.

(3) The requirements for *firms* to provide *clients* with the information referred to in (1) are set out at ■ COBS 6.1ZA.

[Note: recital 84 to *MiFID*]

Record keeping: client agreements

- 8A.1.9** **R** 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.
[Note: article 25(5) of *MiFID*]
- 8A.1.10** **EU** 73 Records which set out the respective rights and obligations of the investment firm and the client under an agreement to provide services, or the terms on which the firm provides services to the client, shall be retained for at least the duration of the relationship with the client.
[Note: article 73 of the *MiFID Org Regulation*]
- 8A.1.11** **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 25(5) of *MiFID*]
- 8A.1.12** **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 (principally in ■ COBS 2.2A, ■ 6.1ZA and ■ 13) and the provisions on record keeping (principally in ■ SYSC 9).

8A