

Chapter 8A

Client agreements (MiFID provisions)



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 “UK” 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 UK Investment firms providing any investment service or the ancillary service referred to in paragraph 1 of Part 3A of Schedule 2 to the Regulated Activities Order 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.

(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 paragraph 1 of Part 3A of Schedule 2 to the Regulated Activities Order 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

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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*]

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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*]

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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

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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

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- (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

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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

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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

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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*]

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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).