

## Chapter 9

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

9.1 Application and purpose provisions

Application

- 9.1.1 **R** This chapter applies to a *firm* which:
- (a) makes a *personal recommendation* to a *retail client* in relation to a *designated investment*;
  - (b) *manages investments* of a *retail client* of the *firm*;
  - (c) manages the assets of an *occupational pension scheme*, *stakeholder pension scheme* or *personal pension scheme*, other than in relation to its *MiFID*, *equivalent third country* or *optional exemption business* or to an *insurance-based investment product*.

- 9.1.1A **G** ■ COBS 9A contains suitability requirements which apply in respect of *insurance-based investment products*, or in respect of a *firm's MiFID*, *equivalent third country* or *optional exemption business* involving the provision of *investment advice* or *portfolio management*.

Providing basic advice on a stakeholder product

- 9.1.2 **R** If a *firm* to which this chapter applies makes a *personal recommendation* in relation to a *stakeholder product* it may choose to give *basic advice* under the *rules* in section 9.6 of this chapter instead of the *rules* in the remainder of this chapter.

P2P agreements

- 9.1.3 **R** [deleted]
- 9.1.3A **G** This chapter does not apply to a *firm* which *manages investments* when that *firm* takes a decision to trade for a *client* and that decision relates to a *P2P agreement*. This is because the *regulated activity* of *managing investments* does not extend to the management of assets where those assets are *P2P agreements*.
- 9.1.4 **R** [deleted]

		<b>Life policies for professional clients</b>
9.1.5	R	If the <i>firm</i> makes a <i>personal recommendation</i> to a <i>professional client</i> to take out a <i>life policy</i> which is not an <i>insurance-based investment product</i> , this chapter applies, but only those <i>rules</i> which implemented the requirements of the <i>IDD</i> .
9.1.6	G	If a <i>rule</i> implemented a requirement of the <i>IDD</i> , a Note (" <b>Note:</b> ") follows the <i>rule</i> indicating which provision was being implemented. ■ COBS 2.1 (acting honestly fairly and professionally), COBS 2.6 (additional insurance distribution obligations), ■ COBS 4 (communicating with clients), ■ COBS 6 (information about the firm, its services and remuneration) and ■ COBS 14 (product information) contains contain further <i>rules</i> which implemented the <i>IDD</i>
9.1.7	G	[deleted]
		<b>Related rules</b>
9.1.8	G	For a <i>firm</i> making <i>personal recommendations</i> in relation to pensions:  (1) ■ COBS 19.1 contains additional provisions relevant to assessing suitability and the contents of suitability reports for <i>full pension transfer or conversion advice</i> ; and  (2) ■ COBS 19.1A contains additional provisions relevant to assessing suitability and the contents of <i>suitability reports</i> for <i>abridged advice</i> .
9.1.9	G	■ COBS 6.1ZA (Insurance mediation) contains requirements relating to the basis on which certain recommendations may be made, including requirements relating to fair analysis and range and scope.

9.2 Assessing suitability

[Note: The FCA has also issued non-Handbook guidance for firms who advise on pension transfers. See <https://www.fca.org.uk/publication/finalised-guidance/fg21-3.pdf>]

Assessing suitability: the obligations

9.2.1

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- (1) A *firm* must:
  - (a) take reasonable steps to ensure that a *personal recommendation*, or a decision to trade, is suitable for its *client*; and
  - (a) ensure that any *life policy* proposed is consistent with the *client's* insurance demands and needs.
- (2) When making the *personal recommendation* or *managing his investments*, the *firm* must obtain the necessary information regarding the *client's*:
  - (a) knowledge and experience in the investment field relevant to the specific type of *designated investment* or service;
  - (b) financial situation; and
  - (c) investment objectives;so as to enable the *firm* to make the recommendation, or take the decision, which is suitable for the *client* and for a *life policy*, to propose a contract that is consistent with the *client's* insurance demands and needs.

[Note: recital 44 to, and second paragraph of article 20(1), of the *IDD*]

9.2.1A

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A *client's* insurance demands and needs are those which would need to be obtained under ■ COBS 7.3 where a contract is sold without the provision of a *personal recommendation*.

9.2.2

R

- (1) A *firm* must obtain from the *client* such information as is necessary for the *firm* to understand the essential facts about him and have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of managing:
  - (a) meets his investment objectives;
  - (b) is such that he is able financially to bear any related investment risks consistent with his investment objectives; and
  - (c) is such that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.
- (2) The information regarding the investment objectives of a *client* must include, where relevant, information on the length of time for which

		<p>he wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.</p> <p>(3) The information regarding the financial situation of a <i>client</i> must include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.</p>
9.2.3	<b>R</b>	<p>The information regarding a <i>client's</i> knowledge and experience in the investment field includes, to the extent appropriate to the nature of the <i>client</i>, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved, information on:</p> <p>(1) the types of service, transaction and <i>designated investment</i> with which the <i>client</i> is familiar;</p> <p>(2) the nature, volume, frequency of the <i>client's</i> transactions in <i>designated investments</i> and the period over which they have been carried out;</p> <p>(3) the level of education, profession or relevant former profession of the <i>client</i>.</p>
9.2.4	<b>R</b>	<p>A <i>firm</i> must not encourage a <i>client</i> not to provide information for the purposes of its assessment of suitability.</p>
9.2.5	<b>R</b>	<p><b>Reliance on information</b>.....</p> <p>A <i>firm</i> is entitled to rely on the information provided by its <i>clients</i> unless it is aware that the information is manifestly out of date, inaccurate or incomplete.</p>
9.2.6	<b>R</b>	<p><b>Insufficient information</b>.....</p> <p>If a <i>firm</i> does not obtain the necessary information to assess suitability, it must not make a <i>personal recommendation</i> to the <i>client</i> or take a decision to trade for him.</p>
9.2.7	<b>G</b>	<p>Although a <i>firm</i> may not be permitted to make a <i>personal recommendation</i> or take a decision to trade because it does not have the necessary information, its <i>client</i> may still ask the <i>firm</i> to provide another service such as, for example, to arrange a deal or to deal as agent for the <i>client</i>. If this happens, the <i>firm</i> should ensure that it receives written confirmation of the instructions. The <i>firm</i> should also bear in mind the <i>client's best interests rule</i> and any obligation it may have under the <i>rules</i> relating to appropriateness when providing the different service (see ■ COBS 10, Appropriateness (for non-advised services)) and ■ COBS 10A, Appropriateness (for non-advised services) (MiFID and insurance-based investment products provisions)).</p>
9.2.8	<b>R</b>	<p>[deleted]</p>

Friendly society life policies

9.2.9

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- (1) When recommending a small *friendly society life policy*, a *firm*, for the purpose of assessing suitability, need only obtain details of the net income and expenditure of the *client* and his dependants.
- (2) A *friendly society life policy* is small if the *premium*:
  - (a) does not exceed £50 a year; or
  - (b) if payable weekly, £1 a week.
- (3) The *firm* must keep for five years a record of the reasons why the recommendation is considered suitable.



9.3 Guidance on assessing suitability

- 9.3.1

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  - (1) A transaction may be unsuitable for a *client* because of the risks of the *designated investments* involved, the type of transaction, the characteristics of the order or the frequency of the trading.
  - (2) In the case of *managing investments*, a transaction might also be unsuitable if it would result in an unsuitable portfolio.

[deleted]
- 9.3.2

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**Churning and switching**

  - (1) A series of transactions that are each suitable when viewed in isolation may be unsuitable if the recommendation or the decisions to trade are made with a frequency that is not in the best interests of the *client*.
  - (2) A *firm* should have regard to the *client's* agreed investment strategy in determining the frequency of transactions. This would include, for example, the need to switch a *client* within or between *packaged products*.

[deleted]
- 9.3.3

G

**Income withdrawals, short-term annuities and uncrystallised funds pension lump sum payments**

When a *firm* is making a *personal recommendation* to a *retail client* about *income withdrawals*, *uncrystallised funds pension lump sum* payments or purchase of *short-term annuities*, it should consider all the relevant circumstances including:

  - (1) the *client's investment* objectives, need for tax-free cash and state of health;
  - (2) current and future income requirements, existing pension assets and the relative importance of the plan, given the *client's* financial circumstances;
  - (3) the *client's* attitude to risk, ensuring that any discrepancy is clearly explained between his or her attitude to an *income withdrawal*, *uncrystallised funds pension lump sum* payment or purchase of a *short-term annuity* and other *investments*.

9.3.3A

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- (1) When a *firm* is making a *personal recommendation* to a *retail client* about the investment of funds in the client's *capped drawdown pension fund* or *flexi-access drawdown pension fund* its suitability assessment under ■ COBS 9.2.1R(1)(a) should include consideration of *pathway investments*.
- (2) *Pathway investments* do not need to be considered where the *personal recommendation* is to purchase a fixed-term product that:
  - (a) provides a guaranteed income, a guaranteed capital return or both; and
  - (b) does not expose the client to investment risk, if the client remains in the product for the fixed term.

### Loans and mortgages

9.3.4

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When considering the suitability of a particular *investment* product which is linked directly or indirectly to any form of loan, mortgage or *home reversion plan*, a *firm* should take account of the suitability of the overall transaction. The *firm* should also have regard to any applicable suitability *rules* in MCOB.

### Investments subject to restrictions on retail distribution

9.3.5

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- (1) *Firms* should note that restrictions and specific requirements apply to the retail distribution of certain *investments*:
  - (a) *non-mass market investments* are subject to a restriction on financial promotions (see section 238 of the Act and ■ COBS 4.12B);
  - (b) *restricted mass market investments* are subject to a restriction on direct offer financial promotions (see ■ COBS 4.12A);
  - (c) *contingent convertible instruments* and *CoCo funds* are subject to a restriction on sales and on promotions (see ■ COBS 22.3);
  - (d) *mutual society shares* are subject to specific requirements in relation to *dealing* and *arranging* activities (see ■ COBS 22.3);
  - (e) deferred shares issued by a *credit union* are subject to specific requirements in relation to *dealing* and *arranging* activities (see ■ CREDS 3A.5);
  - (f) *credit union subordinated debt* is subject to a restriction on direct offer financial promotions (see ■ CREDS 3A.5).
  - (g) [deleted]
- (2) A *firm* should be satisfied that an exemption is available before recommending an *investment* subject to a restriction on distribution to a *retail client*, noting in particular that a *personal recommendation* to invest will generally incorporate a *financial promotion*.
- (3)
  - (a) In addition to assessing whether the promotion is permitted, a *firm* giving advice on a *designated investment* subject to a restriction on distribution should comply with their obligations in ■ COBS 9 and ensure any *personal recommendation* is suitable for its client.
  - (b)
    - (i) In considering its obligations under ■ COBS 9, a *firm* purchasing a *designated investment* subject to a restriction



on distribution on behalf of a *retail client* as part of a discretionary management agreement should exercise particular care to ensure the transaction is suitable and in that *client's* best interests, having regard to the *FCA's* view that such *designated investments* pose particular risks of inappropriate distribution.

- (ii) A restriction on promotion does not affect a transaction where there has been no prior communication with the *client* in connection with the investment by the *firm* or a *person* connected to the *firm*. Nonetheless, if promotion of a *designated investment* to a *retail client* would not have been permitted, then the discretionary manager's decision to purchase it on behalf of the *retail client* should be supported by detailed and robust justification of his assessment of suitability.

#### **Pension transfers, conversions and opt-outs**

9.3.6

**G**

Guidance on assessing suitability when a *firm* is making a *personal recommendation* for a *retail client* who is, or is eligible to be, a member of a *pension scheme* with *safeguarded benefits* and who is considering whether to transfer, convert or opt-out is contained in ■ [COBS 19.1.6G](#) (in respect of *full pension transfer or conversion advice* or advice on a *pension opt-out*) and ■ [COBS 19.1A.11G](#) (in respect of *abridged advice*).

## 9.4 Suitability reports

### Providing a suitability report

9.4.1

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A *firm* must provide a *suitability report* to a *retail client* if the *firm* makes a *personal recommendation* to the *client* and the *client*:

- (1) acquires a holding in, or *sells* all or part of a holding in:
  - (a) a *regulated collective investment scheme*;
  - (b) an *investment trust* where the relevant *shares* have been or are to be acquired through an *investment trust savings scheme*;
  - (c) an *investment trust* where the relevant *shares* are to be held within an *ISA* which has been promoted as the means for investing in one or more specific *investment trusts*; or
- (2) *buys, sells, surrenders, converts or cancels rights under, or suspends contributions to, a personal pension scheme or a stakeholder pension scheme*; or
- (3) elects to make *income withdrawals, an uncrystallised funds pension lump sum payment or purchase a short-term annuity*; or
- (4) enters into a *pension opt-out*.

9.4.2

R

If a *firm* makes a *personal recommendation* in relation to a *life policy*, it must provide the *client* with a *suitability report*.

[Note: first and third paragraphs of article 20(1) of the *IDD*]

9.4.2A

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If a *firm* makes a *personal recommendation* in relation to a *pension transfer or pension conversion*, it must provide:

the *client* with a *suitability report*; and

(except where the only *safeguarded benefit* involved is a *guaranteed annuity rate*) a one page summary at the front of the *suitability report*.

9.4.3

R

The obligation to provide a *suitability report* does not apply:

- (1) if the *firm*, acting as an *investment manager* for a *retail client*, makes a *personal recommendation* relating to a *regulated collective investment scheme*;
- (2) if the *client* is habitually resident outside the *United Kingdom* and the *client* is not present in the *United Kingdom* at the time of

acknowledging consent to the proposal form to which the *personal recommendation* relates;

- (3) [deleted]
- (4) if the *personal recommendation* is to increase a regular *premium* to an existing contract;
- (5) if the *personal recommendation* is to invest additional single *premiums* or single contributions to an existing *packaged product* to which a single *premium* or single contribution has previously been paid.

Timing

- 9.4.4
- R
- A *firm* must provide the *suitability report* to the *client*:
- (1) in the case of a *life policy*, before the contract is concluded;
  - (2) in the case of a *personal pension scheme* or *stakeholder pension scheme* that is not a *life policy*, where the *rules* on cancellation (■ COBS 15) require notification of the right to cancel, no later than the fourteenth day after the contract is concluded;
  - (2A) in the case of a *pension transfer* or *pension conversion*, in good time before the transaction is effected; or
  - (3) in any other case, when or as soon as possible after the transaction is effected or executed.

[Note: first and third paragraphs of article 20(1) of the *IDD*]

- 9.4.5
- R
- [deleted]

- 9.4.6
- R
- In the case of telephone selling of a *life policy*, when the only contact between a *firm* and its *client* before conclusion of a contract is by telephone, the *suitability report* must be given in accordance with ■ COBS 7.4.
- [Note: article 23(7) of the *IDD*]

Contents

- 9.4.7
- R
- The *suitability report* must, at least:
- (1) specify, on the basis of the information obtained from the *client*, the *client's* demands and needs;
  - (2) explain why the *firm* has concluded that the recommended transaction is suitable for the *client* having regard to the information provided by the *client*;
  - (3) explain any possible disadvantages of the transaction for the *client*; and

- (4) in the case of a *life policy*, include a personalised recommendation explaining why a particular *life policy* would best meet the *client's* demands and needs.

[Note: first and third paragraphs of article 20(1) of the *IDD*]

9.4.8

**R**

A *firm* must ensure the details are modulated according to the complexity of the transaction or the proposed *contract of insurance* and the type of *client*.

[Note: article 20(2) of the *IDD*]

9.4.8A

**R**

Where a *friendly society* has given a *personal recommendation* on a small *life policy* in ■ COBS 9.2.9R(2), the *suitability report* must include, at least, the information required by ■ COBS 9.4.7R(1) and (4).[Note: first and third paragraphs of article 20(1) of the *IDD*]

### Means of communication (life policies)

9.4.9

**R**

If a *firm* is providing a *suitability report* in the course of *insurance distribution activity*, the information must be in accordance with ■ COBS 7.4.

[Note: article 23 of the *IDD*]

### Additional content for income withdrawals

9.4.10

**G**

When a *firm* is making a *personal recommendation* to a *retail client* about *income withdrawals* or purchase of *short-term annuities* or making *uncrystallised funds pension lump sum* payments, explanation of possible disadvantages in the *suitability report* should include the risk factors involved in entering into an *income withdrawal*, purchase of a *short-term annuity* or making *uncrystallised funds pension lump sum* payments. These may include:

- (1) the capital value of the fund may be eroded;
- (2) the *investment* returns may be less than those shown in the illustrations;
- (3) annuity or *scheme pension* rates may be at a worse level in the future;
- (4) the levels of income provided may not be sustainable; and
- (5) there may be tax implications.

### Additional content for pension transfers and conversions

9.4.11

**R**

- (1) A *firm* must include a one page summary at the front of the *suitability report* when making a *personal recommendation* in relation to a *pension transfer* or a *pension conversion*, except where the only *safeguarded benefit* involved is a *guaranteed annuity rate*.
- (2) The one page summary must include the following:
  - (a) a summary of the *personal recommendation*;

- (b) a statement as to whether the recommendation is in relation to *abridged advice* or *full pension transfer or conversion advice*;
  - (c) information about the ongoing advice and/or services (if any) the *firm*, or any other *person*, proposes to provide to the *client* after the execution of the *pension transfer* or *pension conversion*;
  - (d) the risks associated with *pension transfers* or *pension conversions* as set out in ■ COBS 19.1.6G(4)(b), and an invitation to the *client* to consider whether they fully understand those risks and, if so, sign the one page summary to confirm that;
  - (e) all of the ongoing advice charges, all other ongoing charges and any additional charges expected to be incurred by the *client* if they proceed with the *pension transfer* or *pension conversion*, together with a comparison to the charges and revalued monthly income in the *ceding arrangement* and to the charges in any *default arrangement* in any available *qualifying scheme*; and
  - (f) information about the amounts payable (in *cash terms*) in relation to the initial advice on the *pension transfer* or *pension conversion*, and the number of months (rounded up to the nearest whole month) it would take to pay that amount out of the revalued monthly income the *client* would receive from the *ceding arrangement*.
- (3) Where the *firm* only gave *abridged advice*:
- (a) the information in (2)(c), (d) and (e) is not required;
  - (b) the information in (2)(f) must clearly state that this is only relevant if the *client* wishes to obtain *full pension transfer or conversion advice*; and
  - (c) the one page summary must also set out:
    - (i) that the *firm* has not given *full pension transfer or conversion advice*, and provide a summary of the difference between it and *abridged advice*; and
    - (ii) that where the *full pension transfer or conversion advice* is within the scope of the requirement in section 48 of the Pension Schemes Act 2015, no *firm* can arrange a *pension transfer* or a *pension conversion* unless the *client* receives *full pension transfer or conversion advice*.
- (4) The summary in (2)(a) must:
- (a) set out whether the recommendation is to effect a *pension transfer* or *pension conversion* or to remain in the *client's* current scheme or arrangement;
  - (b) set out where in the *suitability report* the *client* can obtain a more detailed explanation of the recommendation;
  - (c) invite the *client* to consider whether they accept or do not accept the recommendation and, if so, sign the one page summary to confirm that; and
  - (d) where the *firm* provides *full pension transfer or conversion advice* and any *advice on investments* (whether by the *firm* or any other *person*) in connection with the *pension transfer* or *pension conversion*, set out the summary of the advice given by the *firm* and/or any other *person* for both services.

- (5) The information in (2)(c) must:
- (a) set out that the *client* is not required to accept ongoing advice and/or services proposed (if any);
  - (b) explain that the *client* can opt out of receiving ongoing advice and/or services at any time;
  - (d) set out, in *cash terms*, the monthly and annual charges associated with receiving ongoing advice and/or services whether by the *firm* or any other *person*;
  - (d) where the *firm* proposes that it or another *firm* offers ongoing advice and/or services to the *client*, invite the *client* to consider whether they wish to receive this ongoing advice and/or services proposition, and whether they agree to the associated charges, and if so, sign the one page summary to consent to receiving the ongoing advice and/or services, and agree to the associated charges; and
  - (e) where the *client* declines to sign the one page summary for any of the proposals in (d), set out that the *client* is not required to accept ongoing advice and/or services, and explain that additional charges and/or other amounts may be payable by the *client* if they wish to receive ongoing advice and/or services from another *person*.
- (6) The summary of the anticipated charges associated with the *pension transfer* or *pension conversion* in (2)(e) must include the anticipated first-year charges after the *pension transfer* or *pension conversion* and be set out:
- (a) in *cash terms*;
  - (b) alongside any charges associated with the *client's ceding arrangement* (and presented as nil if there are no charges); and
  - (c) alongside any charges associated with any *default arrangement* in any *qualifying scheme* available to the *client*, if the *client* chose to transfer to that scheme.
- (7) The revalued monthly income in the *ceding arrangement* referred to in (2)(e) must:
- (a) (where the *client* has not passed the normal retirement age) be calculated by:
    - (i) revaluing the *future income benefits* to the date the *client* would normally be paid in accordance with ■ COBS 19 Annex 4B 1R(1)(1); and
    - (ii) discounting the value of the *future income benefits* to the calculation date in accordance with the assumption in ■ COBS 19 Annex 4C 1R(4)(d);
  - (b) (where the *client* has passed the normal retirement age) be calculated in line with the current income in the *ceding arrangement*.

9.4.12

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- (1) If the *personal recommendation* to the *client* is to remain in the *ceding arrangement*, and the *client* declines to sign the one page summary to confirm that they intend to accept the *personal recommendation* in accordance with ■ COBS 9.4.11R(4)(c), the *firm*

should follow the insistent *client* guidance in ■ COBS 9.5A (Additional guidance for firms with insistent clients).

- (2) If the *client* declines to sign the one page summary of the advice to confirm their understanding of the risks in ■ COBS 9.4.11R(2)(d), the *firm* should take further steps to establish whether the *client* has fully understood the risks, and if not, consider changing its *personal recommendation*.
- (3) The other ongoing charges in ■ COBS 9.4.11R(2)(e) include (but are not limited to):
  - (a) ongoing product charges, including those in relation to *investments* within the product;
  - (b) discretionary fund management charges; and/or
  - (c) platform charges.
- (4) The additional charges in ■ COBS 9.4.11R(2)(e) include initial product charges, charges associated with accessing existing funds or moving funds to a different scheme.



9.5 Record keeping and retention periods for suitability records

- 9.5.1

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A *firm* to which ■ SYSC 9 applies is required to keep orderly records of its business and internal organisation (see ■ SYSC 9, General rules on record-keeping). Other *firms* are required to take reasonable care to establish and maintain such systems and controls as are appropriate to their business (see ■ SYSC 3, Systems and controls). The records may be expected to reflect the different effect of the *rules* in this chapter depending on whether the *client* is a *retail client* or a *professional client*: for example, in respect of the information about the *client* which the *firm* must obtain and whether the *firm* is required to provide a *suitability report*.
- 9.5.2

R

A *firm* must retain its records relating to suitability for a minimum of the following periods:

(1) if relating to a *pension transfer*, *pension conversion*, *pension opt-out* or *FSAVC*, indefinitely;

(2) if relating to a *life policy*, *personal pension scheme*, *stakeholder pension scheme* or benefits in a *defined contribution occupational pension scheme* (unless otherwise falling in (1) above), five years; and

(3) [deleted]

(4) in any other case, three years.
- 9.5.3

R

A *firm* need not retain its records relating to suitability if the *client* does not proceed with the recommendation



## 9.5A Additional guidance for firms with insistent clients

### Purpose

- 9.5A.1** G The *guidance* in this section is relevant where a *client* of a *firm* becomes an insistent *client*. The purpose of the *guidance* is to set out how a *firm*, when dealing with an insistent *client*, can comply with its obligations under:
- (1) the *Principles* (see ■ PRIN 2);
  - (2) the *client's best interests rule* (see ■ COBS 2.1.1R);
  - (3) the *fair, clear and not misleading rule* (see ■ COBS 4.2.1R);
  - (4) the *rules* on suitability in this chapter (■ COBS 9 (Suitability (including basic advice))); and
  - (5) the *rules* on record-keeping (see ■ COBS 9.5 (Record keeping and retention periods for suitability reports) and ■ SYSC 9 (General rules on record-keeping)).

### Who is an insistent client?

- 9.5A.2** G In this section, a *client* should be considered an insistent *client* where:
- (1) the *firm* has given the *client* a *personal recommendation*;
  - (2) the *client* decides to enter into a transaction which is different from that recommended by the *firm* in the *personal recommendation*; and
  - (3) the *client* wishes the *firm* to facilitate that transaction.

### Information to be communicated to an insistent client

- 9.5A.3** G
- (1) Where a *firm* proceeds to execute a transaction for an insistent *client* which is not in accordance with the *personal recommendation* given by the *firm*, the *firm* should communicate to the insistent *client*, in a way which is clear, fair and not misleading, and having regard to the information needs of the insistent *client* so that the *client* is able to understand, the information set out in (2).
  - (2) The information which the *firm* should communicate to the insistent *client* is:

- (a) that the *firm* has not recommended the transaction and that it will not be in accordance with the *firm's personal recommendation*;
- (b) the reasons why the transaction will not be in accordance with the *firm's personal recommendation*;
- (c) the risks of the transaction proposed by the insistent *client*; and
- (d) the reasons why the *firm* did not recommend that transaction to the *client*.

#### **Acknowledgement from the insistent client**

- 9.5A.4** G
- (1) The *firm* should obtain from the insistent *client* an acknowledgement that:
    - (i) the transaction is not in accordance with the *firm's personal recommendation*; and
    - (ii) the transaction is being carried out at the request of the *client*.
  - (2) Where possible, the acknowledgment should be in the *client's* own words.

#### **Further personal recommendations given to an insistent client**

- 9.5A.5** G
- Where a *firm* gives a further *personal recommendation* in relation to the transaction proposed by the insistent *client*, the *firm* should make clear to the *client* that this *personal recommendation* is distinct from, but does not affect the conclusions of, the initial *personal recommendation*.

#### **Record keeping**

- 9.5A.6** G
- (1) A *firm* dealing with an insistent *client* should retain a record of:
    - (a) the advice and transaction process followed, including the communications with the *client*; and
    - (b) the acknowledgment from the *client* referred to in ■ COBS 9.5A.4G.
- 9.5A.7** G
- A *firm* dealing with an insistent *client* should also refer to the record keeping requirements in ■ COBS 9.5 (Record keeping and retention periods for suitability records) and ■ SYSC 9.1 (General rules on record-keeping).



## 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:

		<div><div>(a) it has already done so and the <i>basic advice</i> initial disclosure information is likely still to be accurate and appropriate; or</div><div>(b) the contact is not face to face and is using a means of communication which makes it not practicable to provide the <i>basic advice</i> initial disclosure information in a <i>durable medium</i>; and</div></div> <div>(2) an explanation of how the advice will be paid for and the fact that any commission will be disclosed.</div>
9.6.6	G	[deleted]
9.6.6A	G	A <i>firm</i> will meet the requirements in respect of its obligation to provide written disclosure in the <i>rules</i> on describing the breadth of advice (■ COBS 6.2B.33R) by providing its <i>basic advice</i> initial disclosure information (in ■ COBS 9 Annex 1 R).
9.6.7	R	[deleted]
9.6.8	R	<div>If a <i>firm's</i> first contact with a <i>retail client</i> is not face to face, it must:</div> <div><div>(1) inform the <i>client</i> at the outset:<div><div>(a) (if the communication is initiated by or on behalf of a <i>firm</i>), of the name of the <i>firm</i> and the commercial purpose of the communication;</div><div>(b) [deleted]</div><div>(c) that the <i>firm</i> will provide the <i>retail client</i> with <i>basic advice</i> without carrying out a full assessment of the <i>retail client's</i> needs and circumstances; and</div><div>(d) that such information will be confirmed in writing; and</div></div></div><div>(2) (if not provided at first contact) send the <i>client</i> the <i>basic advice</i> initial disclosure information (■ COBS 9 Annex 1) in a <i>durable medium</i> as soon as reasonably practicable following the conclusion of the first contact;</div><div>(3) (unless the relevant product is a <i>deposit-based stakeholder product</i>) if the contact is by spoken interaction, provide the <i>client</i> with the disclosure required by the <i>rules</i> on additional oral disclosure for firms providing restricted advice (■ COBS 6.2B.38R).</div></div>
		<div>Sales process</div> <div></div>
9.6.9	R	<div>When a <i>firm</i> gives <i>basic advice</i>, it must do so using:</div> <div><div>(1) a single range of <i>stakeholder products</i>; and</div><div>(2) a sales process that includes putting pre-scripted questions to the <i>client</i>.</div></div>
9.6.10	R	<div>When a <i>firm</i> gives <i>basic advice</i> it must not:</div> <div>(1) describe or recommend a <i>stakeholder product</i> outside the <i>firm's</i> range; or</div>

- 9.6.11

R

(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*;
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		<div><div>(2) provides the <i>client</i> with a summary sheet, which is in a <i>durable medium</i> and sets out, for each product it recommends:<div><div>(a) the specific amount the <i>client</i> wishes to pay into the product; and</div><div>(b) the reasons for the recommendation, including the <i>client's</i> attitude to risk and any information provided by the <i>client</i> on which the recommendation is based; and</div></div></div><div>(3) informs the <i>client</i> that in determining any subsequent complaint, the <i>Ombudsman</i> 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 <i>client's</i> financial needs and circumstances not covered by the <i>firm's</i> sales process.</div></div>
9.6.15	R	<div><div>Notwithstanding ■ COBS 9.6.14R (2) a <i>firm</i> may provide the summary sheet (■ COBS 9.6.14R (2)) as soon as reasonably practicable after the conclusion of the contract if the <i>client</i> 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 <i>durable medium</i> before the conclusion of the contract, but only if the <i>firm</i>:</div><div><div>(1) reads the summary sheet to the <i>client</i> before it concludes the contract; and</div><div>(2) sends the summary sheet to the <i>client</i> as soon as practicable after the conclusion of the contract.</div></div></div>
		<div>Concluding the contract</div>

- (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.





## Basic advice initial disclosure information

This Annex belongs to ■ COBS 9.6.5R (1)

Information that comprises the following:

1. the name and address (head office or principal place of business if more appropriate) of the *firm*;
2. [deleted]
3. a statement that the service being offered is *basic advice* on a limited range of *stakeholder products* by asking questions about income, savings and other circumstances but without carrying out a full assessment of the *retail client's* needs and without offering advice on whether a non-stakeholder product may be more suitable;
4. a statement, in accordance with GEN 4 that the *firm* is regulated by the FCA (or if an *appointed representative*, a statement of whom it is an *appointed representative* and that that *firm* is regulated by the FCA) to give basic advice, together with the registration number of the firm and the fact that the *firm's* status can be checked with the FCA on 0800 111 6768 or on the FCA website at <http://www.fca.org.uk>;
5. a statement disclosing any product provider loans (where such credit exceeds 10% of share and loan capital) and direct or indirect ownership (where that ownership exceeds 10% of share capital or voting power) either by, or of, a single *product provider* or *operator*; (See also notes 32-35 in COBS 6 Annex 1 and notes 45-50 of COBS 6 Annex 2)
6. a description of the arrangements concerning complaints and the circumstances in which the *retail client* can refer the matter to the *Financial Ombudsman Service*; (See also notes 36-37 in COBS 6 Annex 1 and notes 51-54 of COBS 6 Annex 2)
7. a description of the circumstances and the extent to which the *firm* is covered by the *compensation scheme* and the *retail client* will be entitled to compensation from the *compensation scheme*; (See also notes 38-39 of COBS 6 Annex 1 and notes 55-58 of COBS 6 Annex 2)
8. any relevant disclosure required by the *rules* on describing the breadth of advice (COBS 6.2B.33R).

[Note: in respect of 7, article 10 of the *Investors compensation directive*]



Sales processes for stakeholder products

This Annex gives *guidance* on the standards and requirements to which a *firm* may have regard in designing a sales process for *stakeholder products* and assumes that *firms* will provide *basic advice* to *retail clients* who have no practical knowledge of investing in *stakeholder products* or *investments*.

General Standards – all sales

- 1. A sales process for *stakeholder products* may allow the *representative* administering it to depart from scripted questions where this is desirable to enable the *retail client* to better understand the points that need to be made provided this is compatible with the *representative's* competence and the degree of support offered by the *firm's* software and other systems. A software-based system is more likely to provide an adaptable means of providing prompts and support for *representatives* which may accordingly support a more flexible sales process.
- 2. Questions, statements and warnings provided should be short, simple and in plain language. Questions should address one issue at a time.
- 3. The sales process should enable the *retail client* to exit freely and without pressure at any stage. It should also allow the *representative* to terminate the process at any stage if it appears unlikely (for affordability, mis-match, risk or other reasons) that there is a suitable product for the *retail client*.
- 4. Where necessary the sales process should incorporate procedures to allow uncertainties in the *retail client's* answers to be addressed before proceeding and should generally reflect caution about proceeding if clarification or further information cannot be obtained during the process (for example if a *retail client* cannot confirm whether he or she is eligible for membership of an *occupational pension scheme*).

Preliminary - all sales

- 5. The *retail client* should be given the following preliminary information:
  - (a) the *retail client* will only be given *basic advice* about *stakeholder products*;
  - (b) *stakeholder products* are intended to provide a relatively simple and low-cost way of investing and saving;
  - (c) the *range of stakeholder products* on which the *representative* will give advice to that *retail client*;
  - (d) the *retail client* will be asked a series of questions about his or her needs and circumstances and, at the end of the procedure, he or she may be recom-

		mended to acquire a <i>stakeholder product</i> ;
	(e)	the assessment of whether a <i>stakeholder product</i> is suitable will be made without a detailed assessment of the <i>retail client's</i> needs but will be based only on the information disclosed during the questioning process; and
	(f)	the <i>retail client's</i> answers will be noted and, at the end of the process, if a recommendation to acquire a <i>stakeholder product</i> is made, the <i>retail client</i> will be provided with a copy of the completed questionnaire.
6.	Following 5, the <i>retail client</i> should be asked if he or she wishes to proceed and, if not, the sales process should cease.	
Affordability - all sales		
7.	If it appears that the <i>retail client</i> is unlikely to be able to afford a <i>stakeholder product</i> , the sale should be terminated and the <i>retail client</i> given an explanation together with a copy of the questions and answers completed to that point.	
Financial Priorities and Debt - all sales		
8.	A <i>retail client</i> should be assessed to ascertain other possible financial priorities -for example, does the <i>retail client</i> need (a) insurance protection; (b) access to liquid cash to meet an emergency; or (c) to reduce existing debts? If appropriate, the <i>retail client</i> should be given an unambiguous warning about the desirability of meeting those priorities before acquiring a <i>stakeholder product</i> .	
9.	A stronger warning about the desirability of addressing debt as a priority should be given if it appears that the <i>retail client</i> is significantly indebted, especially if there is a strong indication that the debt commitments may render any new commitment unaffordable in the short-term. For this purpose a <i>firm</i> should consider using a threshold or indicator to decide whether a <i>retail client</i> should be excluded on the basis of affordability. Examples may include where the <i>retail client</i> has (a) annual unsecured debt repayments in excess of 20% of gross annual income or (b) four or more active forms of unsecured debt or (c) has consistently reached his overdraft limit. A <i>firm</i> should review its chosen indicator or threshold regularly to ensure that it reflects prevailing economic conditions and takes account of industry best practice.	
10.	A <i>firm</i> should clearly explain what it needs to know about a <i>retail client's</i> debt and consider using a range of alternative words (eg 'loans', 'student loans', 'borrowing' and 'other forms of credit') to ensure all relevant information is obtained. A <i>firm</i> may use a simple reckoner to assess <i>retail client</i> debt, but should be conscious of the nature of, and not give the impression that it is providing more than, <i>basic advice</i> .	
11.	If a <i>firm</i> gives a warning about the desirability of meeting other priorities before acquiring a <i>stakeholder product</i> , or about affordability, it should also invite the <i>retail client</i> to consider terminating the sales process.	
Saving and investment objectives - all sales (except establishing a stakeholder CTF)		

12. A *retail client's* savings and investment objectives, including the period over which the *retail client* wishes to save or invest, should be ascertained including whether the *retail client*:
    - (a) may need early access to some or all of the amount saved or invested; or
    - (b) wishes to save or invest for retirement; or
    - (c) wants to accumulate a specific sum by a specific date.
  13. If that information indicates that the *retail client's* objective is:
    - (a) to accumulate a specific sum by a specific date; or
    - (b) to save or invest only for the short term; or
    - (c) early access may be required to the whole of the sum saved or invested;the *firm* should not normally recommend a *CIS stakeholder product*, a *linked life stakeholder product*, a *stakeholder pension scheme* or topping up of a *stakeholder CTF*.
- Tolerance of risk - all sales
14. If a *retail client* is not willing to accept any risk of the capital value of an investment being reduced then *CIS stakeholder products*, *linked life stakeholder products* and *stakeholder CTFs* should not usually be recommended. However, a *firm* may, if appropriate, explain the effect of inflation on long-term savings especially in relation to pensions and invite the *retail client* to consider his attitude to risk in the light of that explanation.
  15. If a *retail client* is willing to accept the risk of capital reduction in some circumstances but not others then, before any recommendation to acquire a *CIS stakeholder product* or *linked life stakeholder product* is made, the *retail client* should be reminded of the other circumstances in which he or she is unwilling to accept risk to capital.
- Stakeholder pensions
16. A *stakeholder pension scheme* should not be recommended, and the *retail client* should be advised to seek alternative or further advice, if it appears that the *retail client*:
    - (a) has or will have access to an *occupational pension scheme*; or
    - (b) is likely to view income in retirement from state benefits as sufficient; or
    - (c) already has a pension to which he or she could make further contributions; or
    - (d) wishes to retire within five years.
  17. It may also be appropriate to advise the *retail client* that other courses of action may be more beneficial than buying a *stakeholder pension scheme* (for example joining an *occupational pension scheme*).

18. A *firm* designing a sales process for use in the workplace may take account of the benefits offered by the employer. If a *firm* recommends a *stakeholder pension scheme* on the basis of benefits provided by an employer, then it should explain the basis of the recommendation to the *retail client* and suggest that the *retail client* seek advice if he or she has any concerns.
19. A *firm* should design its processes with a view to addressing the risk that *retail clients* will fail to appreciate the significance of questions about their pension provision and should accordingly incorporate a range of questions and information designed to foster the *retail client's* understanding of the issues and to elicit appropriate information.
20. *Retail client* should be told that a *stakeholder pension scheme* is life-styled and what this means.
21. A *firm* may provide a copy of the table setting out initial monthly pension amounts, found within the "Stakeholder pension decision tree" factsheet, available on <https://www.moneyhelper.org.uk> in accordance with COBS 13 Annex 2 1.8R, but in doing so should also provide and explain the caveats and assumptions behind the table. A *firm* should make it clear that the decision on how much to invest is the *retail client's* responsibility and that they should get further advice if they have any concerns.
- ISAs
22. A *firm* should ascertain whether the *retail client* has already opened a mini or maxi *ISA* and, if so, whether it would be appropriate for the *retail client* to open a non-*ISA* version of the same product.