

Chapter 9

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

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]

Churning and switching

9.3.2

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- (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*.

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

9.3.3

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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

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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*).