

Chapter 9

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

9.5A Additional guidance for firms with insistent clients

Purpose

9.5A.1

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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

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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

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- (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).