

Chapter 9

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



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** When a *firm* gives *basic advice* it must not:
- (1) describe or recommend a *stakeholder product* outside the *firm's range*; or
 - (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*;
 - (2) provides the *client* with a summary sheet, which is in a *durable medium* and sets out, for each product it recommends:
 - (a) the specific amount the *client* wishes to pay into the product; and
 - (b) the reasons for the recommendation, including the *client's* attitude to risk and any information provided by the *client* on which the recommendation is based; and
 - (3) informs the *client* that in determining any subsequent complaint, the *Ombudsman* 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 *client's* financial needs and circumstances not covered by the *firm's* sales process.
- 9.6.15** R Notwithstanding ■ **COBS 9.6.14R** (2) a *firm* may provide the summary sheet (■ **COBS 9.6.14R** (2)) as soon as reasonably practicable after the conclusion of the contract if the *client* 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 *durable medium* before the conclusion of the contract, but only if the *firm*:
- (1) reads the summary sheet to the *client* before it concludes the contract; and
 - (2) sends the summary sheet to the *client* as soon as practicable after the conclusion of the contract.
- 9.6.16** R **Concluding the contract**.....
If a *firm* concludes a contract for a *stakeholder product* with or for a *retail client* it must provide a copy of the completed questions and answers to the *client* in a *durable medium* as soon as reasonably practicable afterwards.
- 9.6.17** R **Basic advice on stakeholder products: other issues**.....
(1) [deleted]
- (2) When a *firm* provides *basic advice* on a *stakeholder product*, it may use the facilities and stationery it uses for other business in respect of which it does hold itself out as acting or advising independently.
- 9.6.18** R A *firm* must ensure that none of its *representatives*:
- (1) is likely to be influenced by the structure of his or her *remuneration* to give unsuitable *basic advice* on *stakeholder products* to a *retail client*; or
 - (2) refers a *retail client* to another *firm* in circumstances which would amount to the provision of any fee, commission or non-monetary benefit.

9.6.18A R

- (1) A firm providing basic advice on a stakeholder product that is a life policy must, in addition to providing the statement of demands and needs required under COBS 7.3.1R, provide the client with a personalised explanation of why a particular life policy would best meet the client's demands and needs.
- (2) The details must be modulated according to the complexity of the life policy proposed and the type of client.
- (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.