

Chapter 9A

Suitability (MiFID and insurance-based investment products provisions)



9A.2 Assessing suitability: the obligations

- 9A.2.1** **R** When providing *investment advice* or *portfolio management* a firm must:
- (1) obtain the necessary information regarding the *client's*:
 - (a) knowledge and experience in the investment field relevant to the specific type of *financial instrument, insurance-based investment product* or service;
 - (b) financial situation including his ability to bear losses; and
 - (c) investment objectives including his risk tolerance, so as to comply with (2);
 - (2) only recommend *investment services, financial instruments* and *insurance-based investment products*, as applicable, or take decisions to trade, which are suitable for the *client* and, in particular, in accordance with the *client's* risk tolerance and ability to bear losses.
- [Note: first paragraph of article 25(2) of *MiFID*, first paragraph of article 30(1) of the *IDD*]
- 9A.2.2** **G** *Firms* should undertake a suitability assessment not only when making a *personal recommendation* to buy a *financial instrument* or an *insurance-based investment product* but for all decisions whether to trade, including making any *personal recommendations* about whether or not to buy, hold or sell an investment.
- [Note: recital 87 to the *MiFID Org Regulation*]
- 9A.2.3** **G** Where a *firm* providing a *portfolio management* service makes a recommendation or request, or provides advice, to a *client* to the effect that the *client* should give or alter a mandate to the *firm* that defines the limits of the *firm's* discretion, that recommendation, request or advice should be considered a recommendation for the purposes of **COBS 9A.2.1R**. A *firm* should therefore undertake a suitability assessment in relation to any such recommendation, request or advice.
- [Note: recital 89 to the *MiFID Org Regulation*]
- 9A.2.3A** **R** When proposing an *insurance-based investment product* a *firm* must ensure it is consistent with the *client's* insurance demands and needs.
- [Note: recital 44 to, and second paragraph article 20(1) of, the *IDD*]

Assessing the extent of the information required: MiFID business

9A.2.4

EU

54(2) Investment firms shall determine the extent of the information to be collected from clients in light of all the features of the investment advice or portfolio management services to be provided to those clients. Investment firms shall obtain from clients or potential clients such information as is necessary for the firm to understand the essential facts about the client and to have a reasonable basis for determining, 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 providing a portfolio management service, satisfies the following criteria:

- (a) it meets the investment objectives of the client in question, including client's risk tolerance;
- (b) it is such that the client is able financially to bear any related investment risks consistent with his investment objectives;
- (c) it is such that the client has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.

[Note: article 54(2) of the *MiFID Org Regulation*]

Assessing the extent of the information required: insurance-based investment products

9A.2.4A

EU

9(1) For the purposes of providing advice on an insurance-based investment product in accordance with Article 30(1) of Directive (EU) 2016/97, insurance intermediaries or insurance undertakings shall determine the extent of the information to be collected from the customer or potential customer in light of all the features of the advice to be provided to the customer or potential customer.

9(2) Without prejudice to the fact that, in accordance with Article 20(1) of Directive (EU) 2016/97, any contract proposed shall be consistent with the customer's demands and needs, insurance intermediaries or insurance undertakings shall obtain from customers or potential customers such information as is necessary for them to understand the essential facts about the customer or potential customer and to have a reasonable basis for determining that their personal recommendation to the customer or potential customer satisfies all of the following criteria:

- (a) it meets the customer's or potential customer's investment objectives, including that person's risk tolerance;
- (b) it meets the customer's or potential customer's financial situation, including that person's ability to bear losses;
- (c) it is such that the customer or potential customer has the necessary knowledge and experience in the investment field relevant to the specific type of product or service.

17(3) Where information required for the purposes of Article 30(1) or (2) of Directive (EU) 2016/97 has already been obtained pursuant to Article 20 of Directive (EU) 2016/97, insurance intermediaries and insurance undertakings shall not request it anew from the customer.

[Note: articles 9(1) and (2) and 17(3) of the *IDD Regulation*]

9A

Professional clients: MiFID business

9A.2.5 EU

54(3) Where an investment firm provides an investment service to a professional client it shall be entitled to assume that in relation to the products, transactions and services for which it is so classified, the client has the necessary level of experience and knowledge for the purposes of point (c) of paragraph 2.

Where that investment service consists in the provision of investment advice to a professional client covered by Section 1 of Annex II to Directive 2014/65/EU, the investment firm shall be entitled to assume for the purposes of point (b) of paragraph 2 that the client is able financially to bear any related investment risks consistent with the investment objectives of that client.

[Note: article 54(3) of the *MiFID Org Regulation*]

Obtaining information about knowledge and experience: MiFID business

9A.2.6 EU

55(1) Investment firms shall ensure that the information regarding a client's or potential client's knowledge and experience in the investment field includes the following, to the extent appropriate to the nature of the client, 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:

(a) the types of service, transaction and financial instrument with which the client is familiar;

(b) the nature, volume, and frequency of the client's transactions in financial instruments and the period over which they have been carried out;

(c) the level of education, and profession or relevant former profession of the client or potential client.

[Note: article 55(1) of the *MiFID Org Regulation*]

Obtaining information about knowledge and experience: insurance-based investment products

9A.2.6A EU

17(1) For the purposes of Article 30(1) and (2) of Directive (EU) 2016/97, the necessary information to be obtained by insurance intermediaries and insurance undertakings with regard to the customer's or potential customer's knowledge and experience in the relevant investment field shall include, where relevant, the following, to the extent appropriate to the nature of the customer, and the nature and type of product or service offered or demanded, including their complexity and the risks involved:

(a) the types of service, transaction, insurance-based investment product or financial instrument with which the customer or potential customer is familiar;

(b) the nature, number, value and frequency of the customer's or potential customer's transactions in insurance-based investment products or financial instruments and the period over which they have been carried out;

(c) the level of education, and profession or relevant former profession of the customer or potential customer.

[Note: article 17(1) of the *IDD Regulation*]

Obtaining information about a client’s financial situation: MiFID business

9A.2.7 EU 54(4) The information regarding the financial situation of the client or potential client shall 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.
 [Note: article 54(4) of the *MiFID Org Regulation*]

Obtaining information about a client’s financial situation: insurance-based investment products

9A.2.7A EU 9(3)The information regarding the customer’s or potential customer’s financial situation, including that person’s ability to bear losses, shall include, where relevant, information on the source and extent of the customer’s or potential customer’s regular income, assets, including liquid assets, investments and real property and the regular financial commitments. The level of information gathered shall be appropriate to the specific type of product or service being considered.
 [Note: article 9(3) of the *IDD Regulation*]

Obtaining information about a client’s investment objectives: MiFID business

9A.2.8 EU 54(5) The information regarding the investment objectives of the client or potential client shall include, where relevant, information on the length of time for which the client wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.
 [Note: article 54(5) of the *MiFID Org Regulation*]

Obtaining information about a client’s investment objectives: insurance-based investment products

9A.2.8A EU 9(4)The information regarding the customer’s or potential customer’s investment objectives, including that person’s risk tolerance, shall include, where relevant, information on the length of time for which the customer or potential customer wishes to hold the investment, that person’s preferences regarding risk taking, the risk profile, and the purposes of the investment. The level of information gathered shall be appropriate to the specific type of product or service being considered.
 [Note: article 9(4) of the *IDD Regulation*]

Reliability of information: MiFID business

9A.2.9 EU 54(7) Investment firms shall take reasonable steps to ensure that the information collected about their clients or potential clients is reliable. This shall include, but shall not be limited to, the following:
 (a) ensuring clients are aware of the importance of providing accurate and up-to-date information;
 (b) ensuring all tools, such as risk assessment profiling tools or tools to assess a client’s knowledge and experience, employed in the suitability assessment process are fit-for-purpose and are appropriately designed for use with their

clients, with any limitations identified and actively mitigated through the suitability assessment process;

(c) ensuring questions used in the process are likely to be understood by clients, capture an accurate reflection of the client's objectives and needs, and the information necessary to undertake the suitability assessment; and

(d) taking steps, as appropriate, to ensure the consistency of client information, such as by considering whether there are obvious inaccuracies in the information provided by clients.

[Note: article 54(7) of the *MiFID Org Regulation*]

Reliability of information: insurance-based investment products

9A.2.9A EU

10Insurance intermediaries and insurance undertakings shall take reasonable steps to ensure that the information collected about customers and potential customers for the purposes of the assessment of suitability is reliable. Such steps shall include, but shall not be limited to, the following:

- (a)ensuring that customers are aware of the importance of providing accurate and up-to-date information;
- (b)ensuring that all tools, such as risk assessment profiling tools or tools to assess a customer's knowledge and experience, employed in the suitability assessment process are fit-for-purpose and are appropriately designed for use with their customers, with any limitations identified and actively mitigated through the suitability assessment process;
- (c)ensuring that questions used in the process are likely to be understood by the customers and to capture an accurate reflection of the customer's objectives and needs and the information necessary to undertake the suitability assessment;
- (d)taking steps, as appropriate, to ensure the consistency of customer information, such as considering whether there are obvious inaccuracies in the information provided by the customer.

[Note: article 10 of the *IDD Regulation*]

Maintaining adequate and up-to-date information: MiFID business

9A.2.10 EU

54(7) Investment firms having an on-going relationship with the client, such as by providing an on-going advice or portfolio management service, shall have, and be able to demonstrate, appropriate policies and procedures to maintain adequate and up-to-date information about clients to the extent necessary to fulfil the requirements under paragraph 2.

[Note: article 54(7) of the *MiFID Org Regulation*]

9A.2.11 EU **Discouraging the provision of information: MiFID business**
55(2) An investment firm shall not discourage a client or potential client from providing information required for the purposes of Article 25(2) and (3) of Directive 2014/65/EU.

[Note: article 55(2) of the *MiFID Org Regulation*]

9A.2.11A EU **Discouraging the provision of information: insurance-based investment products**

17(2) The insurance intermediary or insurance undertaking shall not discourage a customer or potential customer from providing information required for the purposes of Article 30(1) and (2) of Directive (EU) 2016/97.

[Note: article 17(2) of the *IDD Regulation*]

9A.2.12 EU **Reliance on information: MiFID business**

55(3) An investment firm shall be entitled to rely on the information provided by its clients or potential clients unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.

[Note: article 55(3) of the *MiFID Org Regulation*]

9A.2.12A EU **Reliance on information: insurance-based investment products**

17(4) The insurance intermediary or insurance undertaking shall be entitled to rely on the information provided by its customers or potential customers unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.

[Note: article 17(4) of the *IDD Regulation*]

9A.2.13 EU **Insufficient information: MiFID business**

54(8) Where, when providing the investment service of investment advice or portfolio management, an investment firm does not obtain the information required under Article 25(2) of Directive 2014/65/EU, the firm shall not recommend investment services or financial instruments to the client or potential client.

[Note: article 54(8) of the *MiFID Org Regulation*]

9A.2.13A EU **Insufficient information: insurance-based investment products**

9(5) Where the insurance intermediary or insurance undertaking does not obtain the information required under Article 30(1) of Directive (EU) 2016/97, the insurance intermediary or insurance undertaking shall not provide advice on insurance-based investment products to the customer or potential customer.

[Note: article 9(5) of the *IDD Regulation*]

Insufficient information: MiFID business and insurance-based investment products

9A.2.14 **G** Although a *firm* may not be permitted to make a *personal recommendation* or take a decision to trade because it does not have the necessary information, its *client* may still ask the *firm* to provide another service such as, for example, to arrange a deal or to deal as agent for the *client*. If this happens, the *firm* should ensure that it receives written confirmation of the instructions. The *firm* should also bear in mind the *client's best interests rule* and any obligation it may have under the *rules* relating to appropriateness when providing the different service (see ■ COBS 10A (Appropriateness (for non-advised services in relation to MiFID and insurance-based investment products provisions))).

Identifying the subject of a suitability assessment: MiFID business

9A.2.15 **EU** 54(6) Where a client is a legal person or a group of two or more natural persons or where one or more natural persons are represented by another natural person, the investment firm shall establish and implement policy as to who should be subject to the suitability assessment and how this assessment will be done in practice, including from whom information about knowledge and experience, financial situation and investment objectives should be collected. The investment firm shall record this policy.

Where a natural person is represented by another natural person or where a legal person having requested treatment as professional client in accordance with Section 2 of Annex II to Directive 2014/65/EU is to be considered for the suitability assessment, the financial situation and investment objectives shall be those of the legal person or, in relation to the natural person, the underlying client rather than of the representative. The knowledge and experience shall be that of the representative of the natural person or the person authorised to carry out transactions on behalf of the underlying client.

[Note: article 54(6) of the *MiFID Org Regulation*]

Identifying the subject of a suitability assessment: insurance-based investment products

9A.2.15A **EU** 13With regard to group insurance the insurance intermediary or insurance undertaking shall establish and implement a policy as to who shall be subject to the suitability assessment in case an insurance contract is concluded on behalf of a group of members and each individual member cannot take an individual decision to join. Such a policy shall also contain rules on how that assessment will be done in practice, including from whom information about knowledge and experience, financial situation and investment objectives shall be collected.

The insurance intermediary or insurance undertaking shall record the policy established pursuant to the first paragraph.

[Note: article 13 of the *IDD Regulation*]

Bundled packages: MiFID business and insurance-based investment products

9A.2.16 **R** Where a *firm* provides *investment advice* recommending a package of services or products bundled pursuant to ■ COBS 6.1ZA.16R (for MiFID business) or ■ COBS 6.1ZA.16AR to ■ COBS 6.1ZA.16ER (for *insurance-based investment products*), the *firm* must ensure that the overall bundled package is suitable for the *client*.

[Note: second paragraph of article 25(2) of *MiFID* and second paragraph of article 30(1) of the *IDD*]

9A.2.17 **G** When considering the suitability of a particular *financial instrument* or *insurance-based 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 have regard to any applicable suitability *rules* in *MCOB*.

Switching: MiFID business

9A.2.18 **EU** 54(11) When providing investment advice or portfolio management services that involve switching investments, either by selling an instrument and buying another or by exercising a right to make a change in regard to an existing instrument, investment firms shall collect the necessary information on the client's existing investments and the recommended new investments and shall undertake an analysis of the costs and benefits of the switch, such that they are reasonably able to demonstrate that the benefits of switching are greater than the costs.

[Note: article 54(11) of the *MiFID Org Regulation*]

Switching: insurance-based investment products

9A.2.18A **EU** 9(7) When providing advice that involves switching between underlying investment assets, insurance intermediaries and insurance undertakings shall also collect the necessary information on the customer's existing underlying investment assets and the recommended new investment assets and shall undertake an analysis of the expected costs and benefits of the switch, such that they are reasonably able to demonstrate that the benefits of switching are expected to be greater than the costs.

[Note: article 9(7) of the *IDD Regulation*]

Adequate policies and procedures: MiFID business

9A.2.19 **EU** 54(9) Investment firms shall have, and be able to demonstrate, adequate policies and procedures in place to ensure that they understand the nature, features, including costs and risks of investment services and financial instruments selected for their clients and that they assess, while taking into account cost and complexity, whether equivalent investment services or financial instruments can meet their client's profile.

[Note: article 54(9) of the *MiFID Org Regulation*]

Unsuitability: MiFID business

9A.2.20 EU

54(10) When providing the investment service of investment advice or portfolio management, an investment firm shall not recommend or decide to trade where none of the services or instruments are suitable for the client.

[Note: article 54(10) of the *MiFID Org Regulation*]

Unsuitability: insurance-based investment products

9A.2.20A EU

9(6) When providing advice on an insurance-based investment product in accordance with Article 30(1) of Directive (EU) 2016/97, an insurance intermediary or insurance undertaking shall not make a recommendation where none of the products are suitable for the customer or potential customer.

[Note: article 9(6) of the *IDD Regulation*]

Guidance on assessing suitability: MiFID business and insurance-based investment products

9A.2.21 G

- (1) A transaction may be unsuitable for a *client* due to the risks of the associated *financial instruments*, the type of transaction, the characteristics of the order or the frequency of the trading.
- (1A) An *insurance-based investment product* may be unsuitable for a *client* due to the risks of the underlying investment assets, the type or characteristics of the product or the frequency of switching of underlying investment assets.
- (2) A series of transactions, each of which are 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*.
- (3) In the case of *portfolio management*, a transaction might be unsuitable if it would result in an unsuitable portfolio.

[Note: recital 88 to the *MiFID Org Regulation*, recital 9 to the *IDD Regulation*]

Investments subject to restrictions on retail distribution: MiFID business and insurance-based investment products

9A.2.22 G

- (1) *Firms* should note that restrictions and specific requirements apply to the retail distribution of certain *investments*:
 - (a) *non-mainstream pooled investments* are subject to a restriction on *financial promotions* (see section 238 of the Act and ■ COBS 4.12);
 - (b) *non-readily realisable securities* are subject to a restriction on *direct offer financial promotions* (see ■ COBS 4.7);
 - (c) *mutual society shares* are subject to specific requirements in relation to *dealing* and *arranging activities* (see ■ COBS 22.2);
 - (d) *contingent convertible instruments* and *CoCo funds* are subject to a restriction on sales and on promotions (see ■ COBS 22.3).

- (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) In addition to assessing whether the promotion is permitted, a firm giving advice on an investment subject to a restriction on distribution should comply with their obligations in ■ COBS 9A and ensure any personal recommendation is suitable for its client.
- (4) In considering its obligations under ■ COBS 9A, a firm purchasing an 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 the client's best interests, having regard to the FCA's view that such investments pose particular risks of inappropriate distribution.
- (5) 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 an 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.

Automated or semi-automated systems: MiFID business

9A.2.23 EU

54(1) Where investment advice or portfolio management services are provided in whole or in part through an automated or semi-automated system, the responsibility to undertake the suitability assessment shall lie with the investment firm providing the service and shall not be reduced by the use of an electronic system in making the personal recommendation or decision to trade.

[Note: second paragraph of article 54(1) of the MiFID Org Regulation]

Automated or semi-automated systems: insurance-based investment products

9A.2.24 EU

12The insurance intermediary's or insurance undertaking's responsibility to perform the suitability assessment in accordance with Article 30(1) of Directive (EU) 2016/97 shall not be reduced due to the fact that advice on insurance-based investment products is provided in whole or in part through an automated or semi-automated system.

[Note: article 12 of the IDD Regulation]