

Chapter 9A

Suitability (MiFID and insurance-based investment products provisions)



9A.3 Information to be provided to the client

Explaining the reasons for assessing suitability: MiFID business

9A.3.1 EU 54(1) Investment firms shall not create any ambiguity or confusion about their responsibilities in the process when assessing the suitability of investment services or financial instruments in accordance with Article 25(2) of Directive 2014/65/EU. When undertaking the suitability assessment, the firm shall inform clients or potential clients, clearly and simply, that the reason for assessing suitability is to enable the firm to act in the client’s best interest.

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

9A.3.1A EU 11 Insurance intermediaries and insurance undertakings shall not create any ambiguity or confusion about their responsibilities in the process of assessing the suitability of insurance-based investment products in accordance with Article 30(1) of Directive (EU) 2016/97. Insurance intermediaries and insurance undertakings shall inform customers, clearly and simply, that the reason for assessing suitability is to enable them to act in the customer's best interest.

[Note: article 11 of the *IDD Regulation*]

Suitability reports: MiFID business and insurance-based investment products

9A.3.2 R

- (1) [deleted]
- (2) When providing *investment advice* to a *retail client*, a *firm* must, before the transaction is concluded, provide the *client* with a *suitability report* in a *durable medium*:
 - (a) specifying the advice given and how that advice meets the preferences, objectives and other characteristics of the *client*;
 - (b) (for an *insurance-based investment product*):
 - (i) specifying, on the basis of the information obtained from the *client*, the *client’s* demands and needs; and
 - (ii) including a personalised recommendation explaining why a particular *insurance-based investment product* would best meet the *client’s* demands and needs.

The details in (i) and (ii) must be modulated according to the complexity of the *contract of insurance* proposed and the type of *client*.

- (3) Where the transaction is concluded using a means of distance communication which prevents the prior delivery of the *suitability report*, the *firm* may provide the *suitability report* in a *durable medium* immediately after the *client* is bound by the transaction, provided both the following conditions are met:
 - (a) the *client* has consented to receiving the *suitability report* without undue delay after the conclusion of the transaction; and
 - (b) the *firm* has given the *client* the option of delaying the transaction in order to receive the *suitability report* in advance.
- (4) Where a *firm* provides a *portfolio management* service or has informed the *client* that it will carry out periodic assessment of suitability, the periodic report, provided under ■ COBS 16A.2.1R, must contain an updated statement of how the *client's* investments meet the preferences, objectives and other characteristics of the *client*.

[Note: second, third and fourth paragraphs of article 25(6) of, and recital 82 to, *MiFID*; article 20(1), article 20(2), second paragraph of article 22(1) and second, third and fourth paragraphs of article 30(5) of the *IDD*]

9A.3.2A R Where a *firm* makes a *personal recommendation* to a *professional client* on an *insurance-based investment product* it must, prior to the conclusion of the contract, provide to the client the information in ■ COBS 9A.3.2R(2)(b) in accordance with ■ COBS 7.4.

[Note: article 20(1) and 20(2) of the *IDD*]

Providing a suitability report: MiFID business

9A.3.3 EU 54(12) When providing investment advice, investment firms shall provide a report to the retail client that includes an outline of the advice given and how the recommendation provided is suitable for the retail client, including how it meets the client's objectives and personal circumstances with reference to the investment term required, client's knowledge and experience and client's attitude to risk and capacity for loss.

Investment firms shall draw clients' attention to and shall include in the suitability report information on whether the recommended services or instruments are likely to require the retail client to seek a periodic review of their arrangements.

Where an investment firm provides a service that involves periodic suitability assessments and reports, the subsequent reports after the initial service is established may only cover changes in the services or instruments involved and/or the circumstances of the client and may not need to repeat all the details of the first report.

[Note: article 54(12) of the *MiFID Org Regulation*]

Providing a suitability report: insurance-based investment products

9A.3.3A **EU**

14(1)When providing advice on the suitability of an insurance-based investment product in accordance with Article 30(1) of Directive (EU) 2016/97, insurance intermediaries and insurance undertakings shall provide a statement to the customer (suitability statement) that includes the following:

- (a)an outline of the advice given;
- (b)information on how the recommendation provided is suitable for the customer, in particular how it meets:
 - (i)the customer’s investment objectives, including that person’s risk tolerance;
 - (ii)the customer’s financial situation, including that person’s ability to bear losses;
 - (iii)the customer’s knowledge and experience.

14(2)Insurance intermediaries and insurance undertakings shall draw customers’ attention to, and shall include in the suitability statement, information on whether the recommended insurance-based investment products are likely to require the customer to seek a periodic review of their arrangements.

14(3)Where an insurance intermediary or insurance undertaking has informed the customer that it will carry out a periodic assessment of suitability, the subsequent statements after the initial service is established may be limited to changes in the services or underlying investment assets, and/or the circumstances of the customer without repeating all the details contained in the first statement.

[Note: article 14(1) to (3) of the *IDD Regulation*]

9A.3.4 **G**

When providing a *suitability report*, a firm should consider the requirements in ■ COBS 4.2.1R to ensure that the contents of the suitability report are fair, clear and not misleading.

9A.3.5 **G**

Situations that are likely to require a *retail client* to seek a periodic review of their arrangements include where a *client* is likely to need to seek advice to bring a portfolio of investments back in line with the original recommended allocation where there is a probability that the portfolio could deviate from the target asset allocation.

[Note: recital 85 to the *MiFID Org Regulation*]

Periodic assessments: MiFID business and insurance-based investment products

9A.3.6 **R**

A firm must:

- (1) in relation to an *insurance-based investment product*, at least in good time prior to the conclusion of the contract;
- (2) otherwise, in good time before it provides its *investment advice*;

inform the *client* whether it will provide the *client* with a periodic assessment of the suitability of the financial instruments or the *insurance-based investment products* recommended to the *client*.

[Note: article 24(4)(a)(iii) of *MiFID*, article 29(1)(a) of the *IDD*]

9A.3.7 G ■ COBS 9A.3.6R supplements ■ COBS 2.2A.2R (information disclosure before providing services (MiFID provisions and insurance distribution)).

Periodic assessments: MiFID business.....

9A.3.8 EU 52(5) Investments firms providing a periodic assessment of the suitability of the recommendations provided pursuant to Article 54(12) shall disclose all of the following:

- (a) the frequency and extent of the periodic suitability assessment and where relevant, the conditions that trigger that assessment;
- (b) the extent to which the information previously collected will be subject to reassessment; and
- (c) the way in which an updated recommendation will be communicated to the client.

[Note: article 52(5) of the *MiFID Org Regulation*]

9A.3.9 EU 54(13) Investment firms providing a periodic suitability assessment shall review, in order to enhance the service, the suitability of the recommendations given at least annually. The frequency of this assessment shall be increased depending on the risk profile of the client and the type of financial instruments recommended.

[Note: article 54(13) of the *MiFID Org Regulation*]

Periodic assessments: insurance-based investment products.....

9A.3.10 EU 14(4) Insurance intermediaries and insurance undertakings providing a periodic assessment of suitability shall review, in accordance with the best interests of their customers, the suitability of the recommended insurance-based investment products at least annually. The frequency of this assessment shall be increased depending on the characteristics of the customer, such as the risk tolerance, and the nature of the recommended insurance-based investment product.

[Note: article 14(4) of the *IDD Regulation*]