

Chapter 9

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

9.2 Assessing suitability

Assessing suitability: the obligations

9.2.1

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(1) A *firm* must:

- (a) take reasonable steps to ensure that a *personal recommendation*, or a decision to trade, is suitable for its *client*; and
- (a) ensure that any *life policy* proposed is consistent with the *client's* insurance demands and needs.

(2) When making the *personal recommendation* or *managing his investments*, the *firm* must obtain the necessary information regarding the *client's*:

- (a) knowledge and experience in the investment field relevant to the specific type of *designated investment* or service;
- (b) financial situation; and
- (c) investment objectives;

so as to enable the *firm* to make the recommendation, or take the decision, which is suitable for the *client* and for a *life policy*, to propose a contract that is consistent with the *client's* insurance demands and needs.

[**Note:** recital 44 to, and second paragraph of article 20(1), of the *IDD*]

9.2.1A

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A *client's* insurance demands and needs are those which would need to be obtained under **COBS 7.3** where a contract is sold without the provision of a *personal recommendation*.

9.2.2

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(1) A *firm* must obtain from the *client* such information as is necessary for the *firm* to understand the essential facts about him and have a reasonable basis for believing, 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 managing:

- (a) meets his investment objectives;
- (b) is such that he is able financially to bear any related investment risks consistent with his investment objectives; and
- (c) is such that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.

- (2) The information regarding the investment objectives of a *client* must include, where relevant, information on the length of time for which he wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.
- (3) The information regarding the financial situation of a *client* must 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.

9.2.3

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The information regarding a *client's* knowledge and experience in the investment field includes, 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, information on:

- (1) the types of service, transaction and *designated investment* with which the *client* is familiar;
- (2) the nature, volume, frequency of the *client's* transactions in *designated investments* and the period over which they have been carried out;
- (3) the level of education, profession or relevant former profession of the *client*.

9.2.4

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A *firm* must not encourage a *client* not to provide information for the purposes of its assessment of suitability.

Reliance on information

9.2.5

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A *firm* is entitled to rely on the information provided by its *clients* unless it is aware that the information is manifestly out of date, inaccurate or incomplete.

Insufficient information

9.2.6

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If a *firm* does not obtain the necessary information to assess suitability, it must not make a *personal recommendation* to the *client* or take a decision to trade for him.

9.2.7

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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 10, Appropriateness (for non-advised services)) and ■ COBS 10A, Appropriateness (for non-advised services) (MiFID and insurance-based investment products provisions)).

9.2.8 **R** [deleted]

Friendly society life policies

- 9.2.9 **R**
- (1) When recommending a small *friendly society life policy*, a *firm*, for the purpose of assessing suitability, need only obtain details of the net income and expenditure of the *client* and his dependants.
 - (2) A *friendly society life policy* is small if the *premium*:
 - (a) does not exceed £50 a year; or
 - (b) if payable weekly, £1 a week.
 - (3) The *firm* must keep for five years a record of the reasons why the recommendation is considered suitable.