

Appropriateness (for non-advised services) (MiFID provisions)

Chapter 10A

Appropriateness (for non-advised services) (MiFID and insurance-based investment products provisions)

10A.4 Assessing appropriateness: when it need not be done due to type of investment

10A.4.1 **R**

- (1) A *firm* is not required to ask its *client* to provide information or assess appropriateness if either (a) or (aa), and both (b) and (c), are met:
- (a) the service:
 - (i) only consists of execution or reception and transmission of *client* orders, with or without *ancillary services*, excluding *ancillary service* (2) in section B of Annex I to *MiFID* (granting of credits or loans), where the relevant credits or loans do not comprise existing credit limits of loans, current accounts and overdraft facilities of *clients*;
 - (ii) relates to particular *financial instruments* (see paragraph (2)); and
 - (iii) is provided at the initiative of the *client*; or
 - (aa) the *insurance distribution* activity:
 - (i) relates to particular types of *insurance-based investment products* (see (2A)); and
 - (ii) is carried out at the initiative of the *client*; and
 - (b) the *client* has been clearly informed (whether in a standardised format or not) that, in the provision of the service or *insurance distribution* activity, the *firm* is not required to assess the appropriateness of the *financial instrument* or service or *insurance-based investment product* provided or offered and that therefore the *client* does not benefit from the protection of the *rules* on assessing appropriateness; and
 - (c) the *firm* complies with its obligations in relation to conflicts of interest.
- (2) The *financial instruments* referred to in (1)(a)(ii) are any of the following:
- (a) shares in companies admitted to trading on:
 - (i) a *regulated market*; or
 - (ii) an equivalent third country market; or
 - (iii) an *MTF*,
except shares that embed a derivative and *units* in a collective investment undertaking that is not a *UCITS*; or
 - (b) bonds or other forms of securitised debt admitted to trading on:

- (i) a *regulated market*; or
- (ii) an equivalent third country market; or
- (iii) an *MTF*,
except those that embed a derivative or incorporate a structure which makes it difficult for the *client* to understand the risk involved; or
- (c) *money-market instruments*, excluding those that embed a derivative or incorporate a structure which makes it difficult for the *client* to understand the risk involved; or
- (d) shares or *units* in a *UCITS*, excluding structured *UCITS* as referred to in the second subparagraph of article 36(1) of the *KII Regulation*; or
- (e) *structured deposits*, excluding those that incorporate a structure which makes it difficult for the *client* to understand the risk of return or the cost of exiting the product before term; or
- (f) other non-complex *financial instruments*.

(2A) The *insurance-based investment products* referred to in (1)(aa) are:

- (a) *insurance-based investment products* which only provide investment exposure to *financial instruments* referred to in (2) and do not incorporate a structure which makes it difficult for the *client* to understand the risks involved; or
- (b) other non-complex *insurance-based investment products*.

(3) For the purposes of this *rule*, a third country market is considered to be equivalent to a *regulated market* if it is a market in relation to which the Commission has, at the request of a *competent authority*, adopted an affirmative equivalence decision in accordance with the requirements and procedure in article 25(4) of *MiFID*.

[**Note:** article 25(4) of *MiFID*, article 30(3) of the *IDD*]

[**Note:** *ESMA* has published guidelines which specify criteria for the assessment of (i) debt instruments incorporating a structure which makes it difficult for the client to understand the risk involved, and (ii) structured deposits incorporating a structure which makes it difficult for the client to understand the risk of return or the cost of exiting the product before term. The guidelines can be found here: [https://www.esma.europa.eu/sites/default/files/library/2015-1787_-_guidelines_on_complex_debt_instruments_and_structured_deposits.pdf].]

[**Note:** *EIOPA* has published guidelines under the *IDD* which specify criteria for the assessment of insurance-based investment products that incorporate a structure which makes it difficult for the customer to understand the risk involved. The guidelines can be found here: https://eiopa.europa.eu/Publications/Guidelines/EIOPA-17-651-IDD_guidelines_execution_only_EN.pdf].]

Other non-complex financial instruments

10A.4.2 EU

57 A financial instrument which is not explicitly specified in Article 25(4)(a) of Directive 2014/65/EU shall be considered as non-complex for the purposes of Article 25(4)(a)(vi) of Directive 2014/65/EU if it satisfies the following criteria:

(a) it does not fall within Article 4(1)(44)(c) of, or points (4) to (11) of Section C of Annex I to Directive 2014/65/EU;

(b) there are frequent opportunities to dispose of, redeem, or otherwise realise that instrument at prices that are publicly available to market participants and that are either market prices or prices made available, or validated, by valuation systems independent of the issuer;

(c) it does not involve any actual or potential liability for the client that exceeds the cost of acquiring the instrument;

(d) it does not incorporate a clause, condition or trigger that could fundamentally alter the nature or risk of the investment or pay out profile, such as investments that incorporate a right to convert the instrument into a different investment;

(e) it does not include any explicit or implicit exit charges that have the effect of making the investment illiquid even though there are technically frequent opportunities to dispose of, redeem or otherwise realise it;

(f) adequately comprehensive information on its characteristics is publicly available and is likely to be readily understood so as to enable the average retail client to make an informed judgment as to whether to enter into a transaction in that instrument.

[Note: article 57 of the *MiFID Org Regulation*]

Other non-complex insurance-based investment products

10A.4.3 **EU**

16 An insurance-based investment product shall be considered as non-complex for the purposes of Article 30(3)(a)(ii) of Directive (EU) 2016/97 where it satisfies all of the following criteria:

(a) it includes a contractually guaranteed minimum maturity value which is at least the amount paid by the customer after deduction of legitimate costs;

(b) it does not incorporate a clause, condition or trigger that allows the insurance undertaking to materially alter the nature, risk, or pay-out profile of the insurance-based investment product;

(c) it provides options to surrender or otherwise realise the insurance-based investment product at a value that is available to the customer;

(d) it does not include any explicit or implicit charges which have the effect that, even though there are technically options to surrender or otherwise realise the insurance-based investment product, doing so may cause unreasonable detriment to the customer because the charges are disproportionate to the cost to the insurance undertaking;

(e) it does not in any other way incorporate a structure which makes it difficult for the customer to understand the risks involved.

[Note: article 16 of the *IDD Regulation*]