



Regulator Assessment: Qualifying Regulatory Provisions

Title of proposal: Wealth management firms and private banks - Suitability of investment portfolios, TR15/12 (the Review)

Lead regulator: FCA

Date of assessment: 23 November 2016

Commencement date: The Review was published on 9 December 2015. The relevant applicable rules have been in force since 1 December 2007 (the date the EU Markets in Financial Instruments Directive (MiFID) came into force).

Origin: Domestic

Does this include implementation of a Cutting Red Tape review? No

Which areas of the UK will be affected? Whole of UK

Brief outline of proposed new or amended regulatory activity

Under MiFID, FCA regulated firms providing discretionary or advisory portfolio management services to retail customers must ensure they can demonstrate that their customer portfolios are suitable. The Review (<https://www.fca.org.uk/publication/thematic-reviews/tr15-12.pdf>) presents findings from an assessment of suitability of retail investment portfolios provided by a sample of wealth management and private banking firms. It states the extent to which the sample meets currently applicable (and previously costed) requirements. The purpose of the report was to highlight to firms how they could comply with the current rules, with examples of good and poor practices to help firms better understand the expected standards. The good practice examples demonstrate approaches that some firms have taken to fulfil their obligations. The FCA's Handbook of rules and guidance sets out the responsibilities these firms are expected to meet, and the key requirements are stated in the Conduct of Business (COBS) part of the FCA's Handbook (<https://www.handbook.fca.org.uk/>).

Which type of business will be affected? How many are estimated to be affected?

The publication is relevant to all FCA regulated firms that provide discretionary or advisory portfolio management services to retail customers. The estimated number of businesses affected is 230.

Price base year	Implementation date	Duration of policy	Business Net Present	Net cost to business	BIT score
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		(years)	Value	(EANDCB)	
2015	2015	10	0	0	0

Please set out the impact to business clearly with a breakdown of costs and benefits

The FCA's assessment is that any changes that firms need to make as a result of the Review are limited to getting firms up to the required level of compliance.

However, firms may have incurred costs as a result of the Thematic Review from (i) familiarisation with the report's contents, and (ii) undertaking gap analysis or other work to verify their compliance in light of the report.

When the report was issued, we were not required to collect these costs and we do not consider that it would be proportionate to collect the additional cost to firms retrospectively.

The existing regulatory responsibilities: The key responsibilities are set out in chapters 2 and 9 of COBS. These require firms to take reasonable steps to ensure that a personal recommendation in relation to a designated investment, or a decision to trade in relation to managing investments, is suitable for its client. They must obtain the necessary information regarding the client including: the client's knowledge and experience in the investment field relevant to the specific type of designated investment or service; the client's financial situation; and the client's investment objectives.

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.

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; and firms must act in the best interests of clients.

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

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

In connection to the above the following requirements are also relevant: as required by the 'Senior arrangements, Systems and Controls' (SYSC), Chapter 6 (Compliance, internal audit and financial crime), part of the FCA Handbook, a firm must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the firm including its managers, employees and appointed representatives (or where applicable, tied agents) with its obligations, along with Chapter 10 of SYSC which sets out the requirements on firms regarding Conflicts of Interest.

Content of the Thematic Review: The findings from the Review varied substantially among the 15 firms sampled. A third fell substantially short of the expected standards and need to make substantial changes (for example: to IT systems, behavioural changes or training) in

order to comply with the pre-existing requirements; a third need to make some improvements; and a third raised no substantial concerns.

The Qualifying Regulatory Provisions are the examples of good practice. The following are examples of good practice taken from the TR which show how firms can comply with pre-existing requirements:

Example 1 - as required by SYSC 6.1, a firm must establish, implement and maintain adequate policies and procedures sufficient to ensure the firm, its managers, employees and appointed representatives (or where applicable, tied agents) comply with its obligations under the regulatory system. The TR had cited as a good practice example that: *In a number of firms the CEO was an active member of the Compliance committee which had responsibility for monitoring portfolio suitability. At some of these firms the Head of Compliance attended the Executive Management Committee which was responsible for key aspects of risk management of the business. This showed a close working relationship between compliance and senior management.*

Example 2 - as required by chapters 2 and 9 of COBS firms must obtain the necessary information regarding the client including: the 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. Additionally, firms are entitled to rely on the information provided by clients unless it is aware that the information is manifestly out of date, inaccurate or incomplete. The TR had cited as a good practice example that: *In a number of cases we reviewed it was noted that firms reviewed a customer's risk appetite annually. For example, they had annually updated the information held on file and considered whether any adjustments were necessary to the portfolio.*

Financial services firms have consistently told the FCA that they value the publication of good and poor practice examples as a means of improving their understanding of how to meet the requirements.

Please provide any additional information (if required) that may assist the RPC to validate the BIT Score.

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