

MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE
Application of Key MiFID Provisions by Client Category

Obligation	L1 Article	L2 Article	Retail Client (RC)	Professional Client (PC)	Eligible Counter-party (ECP)	Comments
Organisational requirements						
Complaints handling: procedures and records	Art 13.2	Art 10 ID	✓	x	x	
Conflicts of interest policy, including research	Art 13.3 & 18	Art 21 - 25 ID	✓	✓	✓	Firms must provide summary of conflicts policy to RC under Art 30.1 ID
Record-keeping of client orders and transactions	Art 13.6	Art 7 & 8 IR	✓	✓	✓	
Safeguarding of client assets; use of client assets	Art 13.7 & 13.8	Art 16-19 ID	✓✓	✓	✓	Prior consent for use of assets. Signature required from RCs
Other organisational requirements e.g. compliance, personal transactions, etc.	Art 13	Art 5-9, 11-15, 20 ID	✓	✓	✓	
Conduct of business obligations when providing investment services to clients						
General duty to act honestly, fairly, professionally and in best interests of client	Art 19.1		✓	✓	x	
Inducements: Disclose to the client in advance any inducements		Art 26 ID	✓	✓	x	
Information to clients and potential clients						
Information for clients must be fair, clear and not misleading	Art 19.2	Art 24.2 & 27 ID	✓✓	✓	x	Art 27 specifies additional requirements applicable to information for RCs
Information concerning client classification	Art 19.3 & 24, Annex II	Art 28 & 50 ID	✓	✓	✓	Notify client of possibility to opt for other classification and consequences
General requirements for information to clients	Art 19.3	Art 29 ID	✓✓	✓	x	Inform client of any material changes to information provided under Art 30-33 ID
Information about the investment firm and its services		Art 30 ID	✓✓	✓	x	
Information about financial instruments		Art 31 ID	✓✓	✓	x	
Information re safeguarding client financial instruments/funds		Art 32 ID	✓	x	x	Art 29.3 ID requires firms to provide some of this information to PCs as well
Information about costs/charges		Art 33	✓	x	x	
Requirement for client agreement	Art 19.1 & 19.7	Art 39	✓	x	x	
Assessment of suitability and appropriateness						
Assessment of suitability	Art 19.4	Art 35 & 37 ID	✓✓	✓	x	More extensive information required from RCs
Assessment of appropriateness	Art 19.5	Art 36 & 37 ID	✓✓	✓	x	Firm can assume appropriateness for PCs
Provision of services in non-complex instruments	Art 19.6	Art 38 ID	✓	x	x	Give prior warning of non-suitability/appropriateness
Reporting to clients						
Reporting obligations in respect of execution of orders other than for portfolio management	Art 19.8	Art 40 ID	✓✓	✓	x	

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Reporting obligations in respect of portfolio management		Art 41 ID	✓✓	✓	x	
Additional reporting obligations for portfolio management or contingent liability transactions		Art 42 ID	✓	x	x	Obligation to report losses exceeding any agreed pre-determined threshold
Statement of client financial instruments or client funds		Art 43 ID	✓	✓	x	
Best execution obligations						
Execute orders on terms most favourable to the client in accordance with a best execution policy, which must be agreed with client	Art 21	Art 44 & 46 ID	✓✓	✓	x	Firm must treat price as most important factor for RC Firms must provide details of execution policy to RC
Best execution: application to portfolio management and reception and transmission of orders	Art 19.1	Art 45 ID	✓✓	✓	x	Firm must treat price as most important factor for RC
Handling of client orders						
Handling of client orders	Art 22.1	Art 47 - 49 ID	✓✓	✓	x	Firm must notify RC of material difficulty in execution of orders
Limit order display requirement	Art 22.2		✓	✓	✓	
Tied Agents						
Tied agent requirements	Art 23.2		✓	✓	✓	Ensure prior disclosure of tied-agent status
Market transparency and integrity						
General duty to uphold market integrity, transaction reporting, record keeping	Art 25	Art 9 - 16 IR	✓	✓	✓	
Pre-trade transparency for systematic internalisers	Art 27	Art 21 - 26 IR	✓✓	✓	✓	Limits on price improvement when dealing with RCs
Post-trade transparency	Art 28		✓	✓	✓	
Operation of MTFs	Art 26, 29 & 30	Art 27-28 IR	✓	✓	✓	
Passport rights and duties						
Passporting procedures, rights and obligations	Art 31-35		✓	✓	✓	

ID = Implementing Directive
 IR = Implementing Regulation
 ✓✓ = Additional rules apply

Firms have to treat ECPs as PCs when providing services (such as investment advice or portfolio management) falling outside article 24 MiFID.

This note is not intended to be comprehensive or to provide legal advice. For more information, contact Chris Bates, Nick O'Neill, Tim Plews or Dermot Turing at Clifford Chance (+44 20 7006 1000, email: Firstname.lastname@cliffordchance.com).