

MIFID II DIRECTIVE:

more protection
for investors

FSMA



FINANCIAL
SERVICES
AND
MARKETS
AUTHORITY



The FSMA

This brochure is published by the Financial Services and Markets Authority (FSMA). The FSMA is an autonomous public institution that carries out the tasks in the general interest entrusted to it by the Belgian legislature.

The FSMA aims to guarantee a financial system that serves society, inspires confidence and puts consumers first. It ensures that consumers can rely on correct financial services, on open and transparent markets, and that they can buy products in line with their wishes and needs.

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What is MiFID II?

MiFID is the abbreviation for the European ‘Markets in Financial Instruments Directive’. This is a European legislative text which came into force in 2007 and regulates services relating to financial instruments rendered by investment firms (investment services). One of the principal objectives of the Directive is that of harmonizing investor protection across Europe. MiFID II came into force in 2018; it reinforces the first version of the Directive.

MiFID I and MiFID II apply only to certain types of products, such as shares, bonds, derivative products, units in open-ended investment companies (*sicavs/beveks*) and structured deposits. They don’t apply, for example, to deposits, loans, borrowings or insurance products.

As an investor, the degree of protection you will benefit from is linked to the service you request. More specifically, it depends on the way in which you wish to rely on a firm to manage your investments. As a result, if you call on a firm to execute orders to buy financial products that you decide on yourself, you will benefit from a lesser degree of protection than if you call on a firm to advise you on your investments, or if it manages your portfolio.

Three overarching principles

MiFID II requires companies to comply with three overarching principles when providing investment services:

- act honestly, fairly and professionally in your interest;
- provide you with information that is sufficient, complete, clear and not misleading. This information helps you make informed investment decisions;
- offer you services specifically tailored to your situation. Your investments must correspond to your profile and respond to your needs.

BEFORE THE INVESTMENT

1

The firm must put you in a category of clients:

- Retail client
- Professional client

2

The firm must ask you for certain items of information based on the type of service provided.

Type of service:

- sale and purchase of financial products
- investment advice
- portfolio management

3

The firm must supply you with certain items of information.

Examples:

- information on the firm
- information on the products
- information on costs and fees
- information on inducements
 - etc.

DURING AND AFTER THE INVESTMENT

4

- **Client order handling** based on order of arrival and in good time
- Best **execution**
- Duty of **care**

5

- **Information** on the tasks carried out by the firm
- **Confirmation** of the transaction and reports

Objective:
obtain the best
result for you

ONGOING OBLIGATIONS FOR COMPANIES

- **Preventing** conflicts of interest
- **Following** the rules on inducements
- **Complaints** handling

Before the
investment

Are you a retail or professional client?

Before providing you with an investment service, the firm is obliged to categorize you either as a **retail client** or a **professional client**. Most individual investors will be placed in the 'retail client' category.

As a retail client, you benefit from the highest level of protection.

MiFID II grants a higher degree of protection to investors with limited knowledge and experience of investments (retail clients) and a lesser degree of protection to investors with more knowledge and experience of investments (professional clients). The 'professional client' category includes, for example, banks, public authorities, pension funds, major companies and, exceptionally, some individual investors.

Would you like to be considered a 'professional client'?

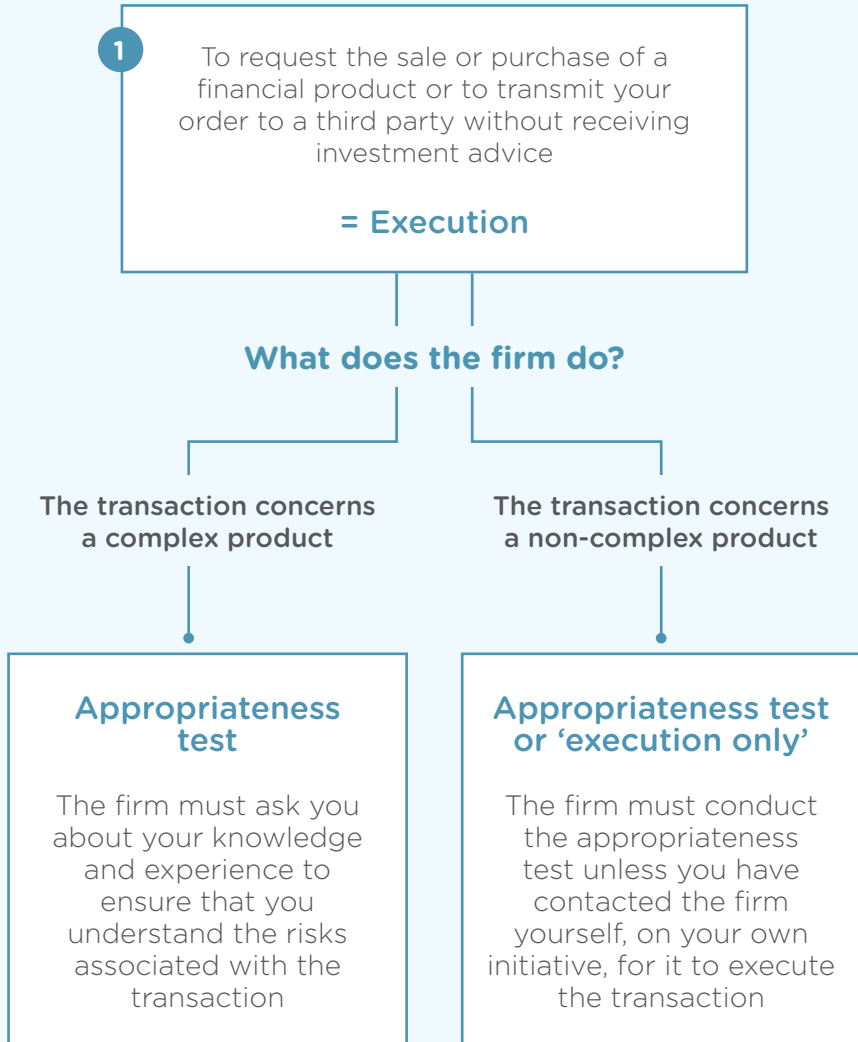
If you would like to be considered a professional client, for example to gain access to certain products that are not accessible to retail clients, you must be capable of making your own investment decisions, of evaluating the risks involved, and not require a higher degree of protection.

Before placing you in the category of 'professional client', the firm will have to evaluate whether this category is suitable for you. The firm will have to determine whether you are in a position to make your own investment decisions, and to understand the risks involved.

To be able to be considered a 'professional client', you must meet at least two of the three following conditions:

- you carry out regular transactions;
- you have a large portfolio;
- you work or have worked in investment services.

Generally, you go to a bank or an investment firm with the following aims:



2

To get
investment advice

= Advice

3

To manage your
investments

**= Portfolio
management**

What does the firm do?

Suitability test

The firm must ask you
about your investment
objectives, your financial
situation, and your
knowledge and experience
in the investment field

What level of protection do you receive?

There are **3 different types of service** for which you may call on a firm:

1. giving an order to buy or sell financial products;
2. obtaining investment advice, i.e. personalized recommendations on investments;
3. contracting a portfolio management service, i.e. the management of your investments by the firm on your behalf.

Different levels of protection will apply to these different types of service.

1. Giving an order to buy or sell financial products (without asking for investment advice)

a) Appropriateness test

If you simply give a firm an order to buy or sell a financial product, without asking for investment advice, a more moderate protection mechanism will apply. This is called the 'appropriateness test'.

This test is intended to protect investors who may not understand or may not be conscious of the consequences or the level of risk of a transaction, in particular when products are 'complex' (within the meaning of MiFID II), or when the investors haven't themselves taken the initiative to carry out the transaction.

Examples of ‘non-complex’ financial products:

- shares admitted to trading on a stock exchange;
- bonds admitted to trading on a stock exchange;
- units in certain open-ended investment companies (sicav/bevek).

Examples of ‘complex’ financial products:

- options, futures, swaps and any other kind of derivatives contracts;
- convertible bonds;
- warrants.

In the appropriateness test, the firm must assess your knowledge and experience in the investment field. Firms generally conduct this test using a questionnaire they have drawn up themselves and that they give you before you make an investment.

- **If the firm concludes that you have the necessary knowledge and experience to understand the risks involved,** it may proceed with the transaction.
- **If the firm concludes that you do not have the necessary knowledge and experience, or if you haven’t provided sufficient information to allow it to form an opinion,** it will issue you with a warning either alerting you that it does not think the envisaged transaction is appropriate for you, or that it lacks information to enable it to make a decision. If you insist on the transaction being executed, you must accept the risk it entails.

b) Sale and purchase of ‘non-complex’ financial products on an execution-only basis

For certain types of transactions that do not rely on advice, the appropriateness test is not mandatory. The service provided by the firm may in that case be qualified as ‘execution only’. This is so if the following conditions are fulfilled:

- the envisaged transaction is based on a product that MiFID II qualifies as ‘non-complex’.
- you have contacted the firm on your own initiative for it to execute the transaction. In other words, you are not responding to a proposal by the firm.

The firm must warn you that it is not issuing any advice on the transaction and that it is up to you to judge its appropriateness.

In such a case, you will not have to answer any questions about your knowledge and experience in the investment field, on your financial situation or on your investment objectives.

2. Investment advice

When you ask for investment advice, you will rely on the firm more than if you execute transactions on your own initiative without first having received advice. You should therefore be absolutely sure that the firm understands your individual needs and your personal situation and that it is recommending products that are suited to you. **This is why MiFID II obliges firms to conduct the ‘suitability test’.** For the purposes of this test, firms will ask you certain questions in order to determine the types of investments that suit you.

The suitability test must cover the following aspects:

- **your investment objectives**
What is your risk profile and what types of investments do you prefer? Would you like your capital to be fully protected or are you prepared to take high risks? What are your investment objectives (for example, are you investing for your retirement or to finance your children’s studies)?
- **your financial situation**
What is your usual income, where does it come from and how much is it? Do you have assets or property? Do you have any current debts or financial commitments? To what extent are you able to bear financial losses?
- **your knowledge and experience**
What financial products and services do you have knowledge of? What was the nature of your previous transactions, their volume and frequency? What level of education do you have?

If the firm doesn’t obtain the necessary information to evaluate the suitability of the product or service, it will not be able to make any recommendations. It is therefore crucial that you respond to the questions asked: this will determine the nature of the service that the firm will be authorized to provide to you.

3. Portfolio management

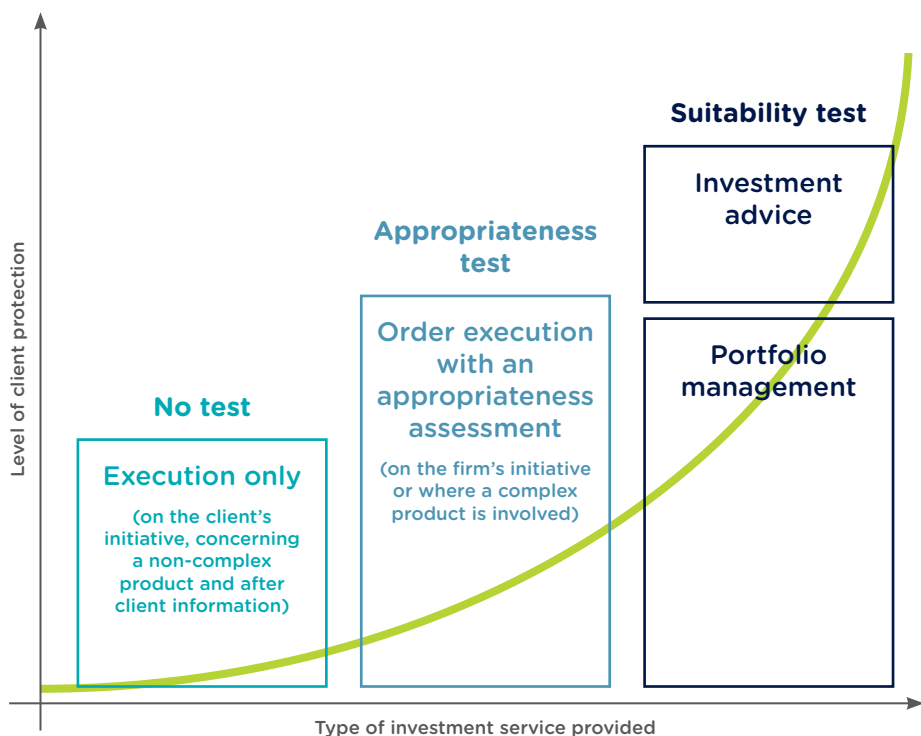
Finally, if you decide to entrust the management of your portfolio to a firm, you will depend on its decisions and choices. Because the firm does not have to inform you of every investment it makes on your behalf, it will first of all have to have sufficient information to be able to provide you with the service desired. **As with investment advice, the firm must therefore conduct a ‘suitability test’.** If you do not give it the necessary information, the firm will not be able to provide you with portfolio management services.

How do the appropriateness or suitability tests work if you invest as a couple or when you are representing someone else?

Every firm must adopt a policy that defines who will be subject to the appropriateness or suitability test and how this test will be conducted in practice, including from whom the information on knowledge and experience and, for

the suitability test, the financial situation and investment objectives should be collected when the investment is made as a couple or by someone who represents one or several other people. This policy must be established pursuant to the rules of common law.

In the case of an investment made by a couple, the firm may opt to ask you to designate a representative (for example you or your partner) or decide to con-



duct the required test for each member of the couple. If a representative is designated, the test will be conducted as it would be for a legal representative (see below), unless the firm asks you to agree with your partner on your investment objectives. You must be aware of the fact that in case of representation, the situation of the person represented may be taken less into account in the test to be conducted.

If you legally represent one or more people, the firm must evaluate the financial situation and investment objectives of the person or people you represent, while evaluating your knowledge and experience (and not that of the people you represent).

Information you should receive before investing

All the information you receive as part of your commercial relationship with the firm must be correct, clear and not misleading. This principle applies both to the content and the presentation of the information.

The firm is obliged to communicate the pertinent information to you in sufficient time before investing, so that you can make an informed decision.

You must in particular receive the following information:

Marketing communications

Whether you are client of a firm or not, you may receive marketing communications from it. All marketing communications and information that contains an advertisement should be identifiable as such.

Contracts

If you are a new retail client to whom the firm provides an investment service for the first time (other than investment advice that does not involve regular assessment of the suitability of the advice provided), it will ask you to sign a contract specifying the main rights and obligations of each party.

Information on the firm

To help you understand the nature of the services proposed and the risks involved, the firm must provide you with general information about itself, and especially on the supervisory authority to which it is subject and on the services it offers its clients.

Information on investment advice

The firm must explain the nature and scope of the advice it provides, by specifying for example if the advice is independent and whether it is based on a broad or limited analysis of financial products. It must also indicate whether or not it will provide you with a regular assessment of the suitability of the advice it has given you (and if so, how it will provide this regular assessment).

Suitability report

When a firm provides you with investment advice, it must issue a report in which it summarises the advice given and explains why this advice is tailored to your situation. This report must specify in particular the extent to which the advice is in line with your objectives and your specific situation (as regards the duration of the investment, your knowledge and experience and your attitude to risk, as well as your ability to bear losses). The report must also indicate whether the products or services recommended are likely to require a regular re-assessment.

Information on portfolio management

If you have asked a firm to manage your portfolio in your name and on your behalf, this firm must agree the management objectives with you and inform you of the degree of risk associated therewith, of the types of products that may be included in your portfolio, of the transactions that may be made and of the method and frequency with which your investments are assessed.

Information on financial products

The firm will explain the nature of the financial products proposed, how they work and what their performance is under different market conditions, as well as the associated costs. It will in particular explain the risks inherent in the products and specify whether their price or value may fluctuate. It will also indicate the potentially limited nature of the market on which the products may be traded and the constraints or restrictions that will apply to the resale of the products. The amount of information provided will depend on the type, the complexity and the risk profile of the product as well as on your level of knowledge.

Information on costs and fees

You will be informed of the direct and indirect costs and fees related to a service or a product as well as of any commission that will be charged or paid. The information received must in particular clearly show, in absolute amounts and in percentages, all of the costs and fees charged for the service or services provided to you (showing the inducements, i.e. The payments the firm has received from third parties, separately), all of the costs and fees associated with the production and management of the financial products to which the services pertain, and the cumulative effect of these different costs and fees on the return expected from the financial products. You have the right to ask the firm to detail these costs and fees.

Information on inducements

Unless it supplies portfolio management services and independent investment advice, a firm is likely to receive payments and benefits from third parties or provide payments and benefits to third parties in connection with a service it provides to you. These payments or advantages are called 'inducements'. Before providing you with a service, the firm must clearly inform you about the existence, nature and amount of such payments or benefits, or, where the amount cannot be ascertained, the method of calculating that amount, in a manner that is comprehensive, accurate and understandable. If the firm is unable to inform you of the exact amount of these inducements before providing you with a service, it will have to communicate this amount to you after the provision of the service. At least once a year, as long as the firm is receiving inducements in connection with services it has provided to you, it must inform you individually of the real amount of these inducements it has received or paid.

Before investing, make sure you are aware of the complaints procedure and the modes of recourse against the firm, as well as of the investor-compensation scheme the firm is affiliated with. This information should be provided to you by the firm.

During and after
the investment

Order handling and best execution

1. Order handling

When you instruct a firm to buy or sell a product, the firm must execute this instruction based on the order of arrival (the firm handles client instructions in the order in which it receives them) and in good time.

If the firm encounters a serious difficulty likely to affect the proper execution of your order, it must immediately inform you thereof.

2. The principle of ‘best execution’

During the sale or purchase of financial products, the firm must execute your orders in such a way as to constantly obtain the best possible result for you. This is what we call the principle of ‘best execution’.

The firm will, for example, make sure it identifies the ‘execution venues’ that allow it to obtain the best execution. This may be, for example, certain stock exchanges or certain trading venues.

To achieve the best execution of your orders, the firm will take into account a range of factors such as price, costs, speed, and likelihood of execution.

However, the most important factors will be the total price and costs, which make up the total price you will be invoiced by transaction. This total price includes, on the one hand, the price of the transaction, and on the other hand, all the expenses incurred, execution venue fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.

Information you should receive during and after the investment

1. What information must the firm that executes your orders give you?

You should receive information on the tasks carried out by the firm to achieve the best execution of your order. This information must include:

- a description of the process used by the firm to determine the relative importance of the best-execution factors;
- a list of the execution venues it has selected;
- a list of the factors used to select the execution venue;
- a clear warning specifying that if you have given it specific instructions, there is the risk that, as regards the aspects covered by these instructions, the firm will not be able to take the measures provided for and applied within its execution policy with a view to obtaining the best possible result for the execution of these orders;
- a summary of the selection process for the execution platform, of the execution strategies used, the procedures and processes used to analyse the quality of execution obtained, and the way in which the firm checks and verifies that the best possible results are obtained for its clients.

Recording of telephone conversations and electronic communications

When you place an order, whether by telephone or electronic means, the firm must record the telephone conversation or the electronic communication. It must inform you in advance of this recording.

2. What reports should you receive?

After having bought or sold a financial product on your behalf, the firm will send you a confirmation of the transaction. This confirmation will include the essential information such as the name of the product, the date, the time, the identification of the execution venue, the price, and the total amount of the commissions and fees invoiced.

If the firm gives you investment advice that requires a regular re-examination of the suitability assessments, it must regularly send you reports with an updated declaration of the way in which the advice it gives you fits in with your preferences, objectives and characteristics.

If the firm manages your portfolio in your name and on your behalf, it must send you regular reports on, in particular, the content and value of your portfolio, the total amount of commissions and fees, and the performance of your portfolio over the course of the period in question. It must also send you additional reports if the total value of your portfolio has fallen by 10%.

If you have an account with a firm containing positions on financial instruments with a leverage effect or transactions involving contingent liabilities, it must inform you whenever the value of each instrument falls by 10% compared to its initial value, and for each subsequent multiple of 10%.

It is in your interest to keep all the documents received from the firm.

Ongoing obligations for firms

MiFID II establishes a certain number of requirements that firms must meet at all times during the exercise of their activity. Some of these requirements are of particular importance for retail clients.

Preventing conflicts of interest

Firms must act in your interest. To this end, they must take efficient measures to avoid conflicts of interest adversely affecting your interests. When they provide you with a service, firms must avoid indirectly serving their interests or those of other clients instead of your own.

For example, a conflict of interest exists when a firm is likely to get a financial gain or avoid a loss at your expense or when it is given an incentive to put other clients' interests before your own.

The firm must also inform you of the principal measures it has taken to identify and manage conflicts of interest.

If the measures taken by the firm are insufficient to manage a conflict of interest, the firm is obliged to clearly inform you of the nature and the source of this conflict, as well as of the measures it has taken to limit the negative impact of this conflict on you before providing you with the investment service.

Inducements

When firms provide you with services, they may receive inducements, for example from third parties whose products they sell to you. These inducements may lead them to favour the products of certain third parties, which prejudices your interests.

MiFID II reinforces the rules on this subject:

- When they provide portfolio management or independent investment advice services, firms may not receive inducements from third parties for the service provided to the client;
- When they provide services other than portfolio management or independent investment advice, firms may not receive inducements from third parties or provide them with advantages unless:
 - a) they are intended to enhance the quality of the service concerned to the client; and
 - b) they do not prejudice the investment firm's compliance with acting honestly, fairly and professionally in the interest of the client concerned.

You should be clearly informed about the existence, nature and amount of the benefit or, where the amount cannot be ascertained, the method of calculating that amount. This information must be provided in a manner that is comprehensive, accurate and easy to understand before the investment service concerned is provided. If the exact amount cannot be communicated prior to the provision of the service, it should be communicated afterwards.

Complaints handling

Firms are obliged to establish effective and transparent procedures for handling complaints. If you make a complaint to a firm, it must keep a record and log the measures taken to handle it.

Complaints procedure

If you wish to make a complaint regarding an investment service, you must first address it to your financial institution's complaints service.

If once you have gone down this route, you are unsatisfied, you may then contact Ombudsfin, the Ombudsman for financial conflicts, which will take on the role of an impartial ombuds-

man between you and your financial institution. Finally, if this service does not come up with a solution to your problem, you may commence legal proceedings.

You may also put questions to the FSMA (bearing in mind that the FSMA is not allowed to intervene in a dispute between you and your financial institution).

Three overarching principles to remember

The aim of this brochure is to inform consumers of the various protection mechanisms put in place by MiFID I and MiFID II. These mechanisms aim to guarantee suitable protection for investors.

Remember these three fundamental principles that firms must adhere to when they provide you with investment services:

1. act honestly, fairly and professionally in your interest;
2. provide you with information that is sufficient, complete, clear and not misleading;
3. offer you services specifically tailored to your situation.

This brochure aims to help consumers gain a better understanding of their rights and of the conduct of business rules that regulated undertakings must comply with when they provide investment services. It presents a concise and general summary of the regulated undertakings's obligations to investors, as these are laid down in the MiFID II Directive. This is not a comprehensive presentation of the applicable legal framework.

This brochure may under no circumstances whatsoever be regarded as a legal interpretation on the part of the FSMA. The FSMA does not provide any advice regarding the purchase of products or the use of specific financial services. The FSMA cannot be held responsible for any deleterious consequences that may result from the purchase of products or the use of financial services that are inappropriate.

The FSMA seeks to ensure the quality of the information contained in this brochure, but cannot guarantee that said information is absolutely precise and up to date at all times. The FSMA is not responsible for any inconsistency that may arise due to changes to the legislation.

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