

# MiFID II & PRIIPs – General information

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February 2021

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## Introduction

The European directives governing markets in financial instruments, collectively known as MiFID<sup>1</sup> II (*Markets in Financial Instruments Directive*) are due to enter into force on 3<sup>rd</sup> January 2018 across the European Economic Area.

These regulations aim to increase market transparency and improve investor protection, by ensuring that clients have access to certain information about Pictet & Cie (Europe) S.A. (the “**Bank**”) and its services, as well the organisational and contractual arrangements applicable to each client according to their categorisation under MiFID (i.e. private/retail or professional).

A further new set of rules, the PRIIPs regulation (Packaged Retail and Insurance-based Products), requires that a Key Information Document (a “**KID**”) is provided to private/retail clients whenever they invest in a fund, a structured or similar product or a derivative.

Below is a brief outline of the key measures introduced by MiFID II and PRIIPs. Do not hesitate to contact your relationship manager for any additional information that you may require.

## Client categorisation under MiFID

MiFID II prescribes rules for classifying clients into two main categories (private/retail and professional). In addition, based on these categories, MiFID II ensures a corresponding level of regulatory protection that varies depending on the client’s knowledge and experience in investment matters. The retail/private and professional categories are further described below:

- the category as private/retail applies to all clients by default, affording them the highest level of regulatory protection;

<sup>1</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU

- the *per se* professional category applies to large companies meeting certain criteria or entities that are authorised or regulated to operate in financial markets (e.g. banks, undertakings for collective investment and their management companies, insurance companies), governments and other public agencies, and institutional investors;
- a private/retail client may elect to be categorised as an *elective* professional investor, provided that this is requested by the client in writing and that the criteria laid down by MiFID II are satisfied;
- professional clients (both *per se* and *elective*) are deemed to have the necessary knowledge and experience to invest in all asset classes;
- the category of eligible counterparty may be granted to certain *per se* professional clients, provided that they are not mandated to receive investment advisory services and/or discretionary portfolio management services.

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## Change in client categorisation

A private/retail client prepared to waive the highest level of protection afforded by MiFID II in return for fewer regulatory protections may make a written request to the Bank to be categorised as an elective professional client provided that at least two of the following three criteria are met:

- the client has carried out transactions, in significant size, on the relevant market at an average frequency of ten per quarter over the previous four quarters;
- the size of the client's financial instrument portfolio exceeds EUR 500,000.00, or the equivalent in other currencies;
- the client works or has worked in the financial sector for at least one year in a professional position that requires knowledge of the transactions or services envisaged.

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## Tests under MiFID II

The Bank establishes an investor risk profile for each client (which the client then acknowledges and confirms) in order for the Bank to run the following two tests:



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## A. Suitability test

A suitability test is required under MiFID II for clients that have with the Bank either a discretionary portfolio management mandate, or a mandate to receive investment advice.

The Bank must ensure that the client's investments and the transactions carried out on their account are suitable for their risk profile based on:

- the client's investment experience;
- their financial situation and ability to bear potential losses;
- their investment objectives.

In addition, for any advice on financial instruments, MiFID II requires the Bank to provide private/retail clients with a suitability statement, which will be given to the private/retail client prior to the transaction(s) as part of a specific investment proposal being carried out. This document will be prepared by the investment advisor and will describe the proposed transaction(s), the associated risks and the impact they will have on the client's portfolio as well as how they comply with the client's preferences, objectives and risk profile.

In addition, discretionary clients will also receive a statement on the suitability of their portfolio vis-à-vis their risk profile. This statement will be included, once a year, in the financial statements that all clients receive.

In order to meet the new requirements under MiFID II, the Bank has updated its client risk profile questionnaire. Relationship managers will ask their clients to complete the new form in due course. It is in the client's best interest to provide the Bank with clear, complete and correct information, as this will enable the Bank to provide the most suitable advice and services for their specific situation. Each client must also ensure that the Bank is promptly updated regarding any subsequent changes of circumstances that may impact or change their risk profile.

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## B. Appropriateness test

An appropriateness test is required under MiFID II only for private/retail clients who have not given the Bank a management mandate or an advisory mandate (i.e. clients who place self-directed



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orders on their own account, so-called “execution only” mandates). Again, it is in clients’ interest to be as clear, complete and accurate as possible in the information they give the Bank so that the Bank can provide them with the most appropriate services.

The Bank must, therefore, ensure that the client is fully aware of the risks inherent to the service or financial instrument in question when they place an order directly, by verifying the client’s knowledge and experience in relation thereto.

If appropriate, the Bank shall notify the client if the chosen transaction is not appropriate vis-à-vis the client’s knowledge and experience. Such notification is also mandatory whenever the Bank has insufficient information about the client’s investment experience to conduct such transaction. If the client still wishes to go ahead with the transaction in question, the Bank will execute it at the client’s risk and, to this effect, a remark will be added to the transaction advice.

The Bank shall also give each client a brochure describing the various financial instruments and their associated risks.

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## Depreciation reporting

Under MiFID II, the Bank is required to warn clients under a discretionary management mandate whenever the value of their portfolio falls by 10% or more relative to the last reported value.

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Private/retail clients with leveraged financial instruments or contingent liability transactions in their account must be informed whenever the value of their portfolio falls 10% or more (and thereafter in multiples of 10%).

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## Status of non-independent advice

The Bank hereby informs clients who receive advice from the Bank (through an investment advisory mandate) that the Bank has opted for the status of “non-independent advisor”. This status means that the Bank offers products from third parties but are not prohibited



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from also offering products from the wider Pictet Group and, in particular, from Pictet Asset Management.

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## Recording phone calls and saving e-mails

The Bank also hereby confirms that it is legally required to record telephone conversations and e-mails exchanges with clients. In line with applicable regulation, clients may request access to such recorded information.

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## Transmission and execution of orders

Another objective of MiFID II is to safeguard the principle of best execution of orders when trading in financial instruments, in relation to both private/retail and professional clients. The Bank has taken the necessary steps in this area for a number of years.

The Bank is not a direct member of a network of execution venues. We send our clients' orders directly to the trading floor of one the Group entities, Banque Pictet & Cie SA, or (on an exceptional basis) to a few carefully selected brokers.

In summary, and as indicated in the Bank's order execution policy, the Bank takes all sufficient measures to obtain the best possible result for clients when executing orders, taking into account the following factors: price, cost, speed, probability of execution and settlement, size, nature of the order and any other considerations relating to its execution.

To determine the relative importance of these factors, the Bank takes into account of the following criteria:

- the characteristics of the client;
- the characteristics of the order in question;
- the characteristics of the financial instruments in the order;
- the characteristics of the execution venues to which that order can be directed; and
- any other element related to the settlement conditions of the order.



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Whenever a specific instruction is given by the client, the Bank shall execute or transmit the order for execution in accordance with the instructions received. If the client's instructions relate to only part of the order, the Bank will continue to apply the procedure described in the execution policy to those components of the order that are not affected by these instructions.

The client is hereby informed that by providing specific instructions for the execution or transmission of a particular order, the client will waive the principle of best execution.

Attached to the best execution policy is a list of the execution venues that our Group uses most frequently to fulfil its obligations to take all reasonable measures to obtain, in most cases, the best possible result for clients.

In the client's interest, the Bank may execute an order outside of a regulated market, a Multilateral Trading Facility (MTF) or an Organised Trading Facility (OTF).

The Bank conducts a regular review of its internal procedures and its order execution policy. The client shall be notified of any major changes.

The client must accept the Bank's execution policy before orders can be processed. In this context, and in accordance with the contractual documents, as soon as a client submits an order to the Bank for execution, the Bank shall be entitled to consider that the client has accepted the Bank's execution policy. This agreement on the part of the client will also cover the possibility for the Bank, in certain cases, to execute transactions outside a regulated market or an MTF, and to trade certain asset classes over the counter (OTC).

The Bank will make its order execution policy available to the client upon request.

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## Transaction reporting

European regulation No. 600/2014 on markets in financial instruments (also known as "MiFIR"), which is an integral part of MiFID II, has established rules to improve the efficiency, soundness and transparency of markets in financial instruments.



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MiFIR (Art. 26) requires that a certain amount of information on transactions is reported to the relevant national authority by the end of the next business day at the latest. The scope of transactions to be reported includes:

- financial instruments that are traded on a trading venue (i.e. listed instruments);
- financial instruments where the underlying is a financial instrument traded on a trading venue (i.e. listed underlying instruments);
- financial instruments where the underlying is an index or basket composed of financial instruments traded on a trading venue (i.e. the index or basket is composed of listed instruments).

The obligation applies even if those transactions were not carried out on a trading venue.

The transaction details to be reported under this reporting obligation include identifying client data or, in cases where the investment decision is made under a power of representation, relevant identifying data for the decision-maker (e.g. the person holding general power of attorney). The Bank must provide a national identification number for all natural persons. For legal entities, the Bank must report the Legal Entity Identifier ("LEI"), which must be obtained by the client from a valid provider (and duly renewed as required).

If the Bank is not provided with this information by 3 January 2018, it will not be able to execute any transactions (e.g. buying and selling) involving financial instruments that come under the scope of MiFIR; this could have financial implications for the client.

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## Financial instruments subject to reporting requirements

### List of financial instruments covered by MiFID II:

1. transferable securities;
2. money market instruments;
3. units of collective investment undertakings;
4. options contracts, futures contracts, swaps contracts, forward rate agreements and any other derivative contracts relating to transferable securities, currencies, interest rates or yields,



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issue quotas or other derivative instruments, financial indices or financial measures that may be settled by physical or cash delivery;

5. option contracts, futures contracts, swaps contracts, forwards contracts and any other commodity derivative contracts that must be settled in cash or may be settled in cash at the request of either party for reasons other than a default or another event that causes termination;
6. option contracts, futures contracts, swaps contracts and any other derivative contracts relating to commodities that can be physically settled by delivery, provided they are traded on a regulated market, MTF (multilateral trading system) or OTF (organised trading facility), with the exception of wholesale energy products that are traded on an OTF and must be settled by physical delivery;
7. option contracts, futures contracts, swaps contracts, forwards contracts and any other commodity derivative contracts that can be settled by physical delivery, and that are not otherwise mentioned in point 6 of this section and are not intended for commercial purposes and that have the characteristics of other derivative financial instruments;
8. financial instruments used to transfer credit risk;
9. financial contracts for difference (CFDs);
10. options contracts, futures contracts, swaps contracts, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates or inflation rates or other official economic statistics that are subject to cash settlement or may be settled in cash at the request of one of the parties for reasons other than a default or another event that causes termination, as well as any other derivative contracts relating to assets, rights, obligations, indexes and measures not otherwise mentioned in this section, which present the characteristics of other derivative financial instruments, taking into account, in particular, that they are traded on a regulated market, an OTF or an MTF;
11. emission allowances composed of all recognised units that comply with the requirements of Directive 2003/87/EC (emission trading system).

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## Asset preservation

At any given moment, the Bank is in a position to distinguish between the assets held by a particular client and those held by other clients or the Bank's own assets.

As a rule, the Bank deposits its clients' assets with correspondents, custodians, depositories or clearing systems and ensures that they are segregated from the Bank's own assets.

Correspondent banks/custodian banks are selected and the related administrative and legal follow-up is carried out in accordance with the guidelines issued by the Pictet Group and in close cooperation with the latter. The Bank acts with the appropriate competence, care and diligence required for the selection, designation and periodic review of the correspondents/custodian banks chosen for the purpose of maintaining and safekeeping its clients' financial instruments.

Assets deposited in a given country must comply with the legal obligations of that country (in particular tax obligations) and may be affected by economic decisions taken by that country (restrictions on taking funds out of the country, bankruptcy of the state or of correspondents/sub-custodians, liquidation and fraud) or events of force majeure (such as, war, natural or other events that are beyond the Bank's control and supervision). In such a case, the Bank may not be held liable and each client would bear a proportionate share of any losses affecting the assets held by the Bank on the client's behalf in the country concerned.

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## Conflicts of interest

The Bank adheres to the strictest ethical standards in banking.

Despite the various organisational measures introduced to anticipate situations of conflict between the interests of the Bank (including of its staff and of any other business partners) and those of its clients, conflicts of interest may arise in the provision of its services.

If the Bank does identify a conflict of interest that it cannot resolve, it will notify the client of the nature and source of this conflict to enable the client to take an informed decision.

The Bank will make available to the client a copy of its policy for handling conflicts of interest upon request. In addition, the Bank will keep a record of the types of investment or ancillary service or



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investment activity for which a conflict of interest that may adversely affect the interests of one or more clients has occurred, or is likely to occur.

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## Handling complaints

In accordance with the regulations in force, the Bank has implemented a procedure for the reasonable and prompt handling of complaints from existing or potential clients, regardless of whether these are categorised as private/retail or professional clients.

Clients will not incur any additional charges if they file a complaint with the Bank. Once the complaint has been filed, it will be handled by the Bank's Legal and Compliance Departments.

The complaint management policy, which describes this procedure in greater detail, is available to existing and potential customers upon request.

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## PRIIPs - Packaged Retail and Insurance-based Products

When the client purchases units of an investment fund or a structured (or similar) product, or even a derivative instrument, the new PRIIPs regulation requires the Bank to provide the client, in principle prior to the transaction, with a 3–4-page "key disclosure document" or "KID". This applies only to private/retail clients outside of discretionary management. The aim is to enable the client to easily compare the different products with one another, as all providers of financial instruments will be required to prepare these documents in the same format. If, however, there is no key disclosure document for the financial instrument in question, it means that it may not be sold to private/retail investors.

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