

Chapter 3

Client categorisation



3.2 Clients

General definition

3.2.1

R

- (1) A *person* to whom a *firm* provides, intends to provide or has provided:
 - (a) a service in the course of carrying on a *regulated activity*; or
 - (b) in the case of *MiFID* or equivalent *third country business*, an *ancillary service*,is a "client" of that *firm*.
- (2) A "client" includes a potential client.
- (3) In relation to the *financial promotion rules*, a *person* to whom a *financial promotion* is or is likely to be *communicated* is a "client" of a *firm* that *communicates* or *approves* it.
- (4) A client of an *appointed representative* or, if applicable, a *tied agent* is a "client" of the *firm* for whom that *appointed representative*, or *tied agent*, acts or intends to act in the course of business for which that *firm* has accepted responsibility under the *Act* or *MiFID* (see sections 39 and 39A of the *Act*).

[Note: article 4(1)(9) of *MiFID*]

3.2.2

G

- (1) A *corporate finance contact* or a *venture capital contact* is not a *client* under the first limb of the general definition. This is because a *firm* does not provide a service to such a contact. However, it will be a *client* under the third limb of the general definition for the purposes of the *financial promotion rules* if the *firm* *communicates* or *approves* a *financial promotion* that is or is likely to be *communicated* to such a contact.
- (2) *Communicating* or *approving* a *financial promotion* that is or is likely to be *communicated* to such a contact is not *MiFID* or equivalent *third country business*. In such circumstances, the "non-MiFID" *client* categorisations are relevant and, in categorising *elective professional clients*, the "quantitative test" will not need to be satisfied.

Who is the client?

3.2.3

R

- (1) If a *firm* provides services to a *person* that is acting as an agent, the identity of its client will be determined in accordance with the *rule* on agents as clients (see ■ COBS 2.4.3 R).

- (2) In relation to a *firm* establishing, operating or winding up a *personal pension scheme* or a *stakeholder pension scheme*, a member or beneficiary of that scheme is a *client* of the *firm*.
- (3) If a *firm* that does not fall within (2) provides services to a *person* that is acting as the trustee of a trust, that *person* will be the *firm's client* and the underlying beneficiaries of the trust will not.
- (4) In relation to business that is neither *MiFID* or equivalent *third country business*, if a *firm* provides services to a fund that does not have separate legal personality, that fund will be the *firm's client*.
- (5) If a *firm* provides services relating to a contribution to or interest in a *CTF* (except for a *personal recommendation* relating to a contribution to a *CTF* or in relation to the *communication* or *approval* of a *financial promotion*), the *firm's* only *client* is:
 - (a) the *registered contact*, if there is one;
 - (b) otherwise, the *person* to whom the statement must be sent in accordance with Regulation 10 of the *CTF Regulations*.