

Product Intervention and Product Governance Sourcebook (PROD)

Chapter 1

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1.3 Application of PROD 3

General: Who? What?

1.3.1

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■ PROD 3 applies to

- (1) a *MiFID investment firm*;
- (2) a *CRD credit institution*;
- (3) a *MiFID optional exemption firm*; and
- (4) *branches of third country investment firms*; with respect to:
- (5) *manufacturing financial instruments and structured deposits*; and
- (6) *distributing financial instruments, structured deposits and investment services*.

[Note: articles 1(3), 1(4), 16(3), 24(2) and 41(2) of *MiFID*]

1.3.-1A

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A *TP firm* and a Gibraltar-based firm must also comply with the provisions in ■ PROD 1.3 and ■ PROD 3 in relation to a *pathway investment*, with respect to activities carried on from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom*.

Other firms manufacturing or distributing financial instruments or structured deposits

1.3.2

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- (1) Subject to (2) other *firms* which *manufacture or distribute financial instruments or structured deposits* should take account of ■ PROD 3 as if it were *guidance on the Principles* and other relevant *rules* and as if "should" appeared in ■ PROD 3 rules instead of "must".
- (2) Paragraph (1) does not apply to a *firm* to the extent that it is required to comply with *Principle 12 (Consumer Duty)* and ■ PRIN 2A in relation to a *product*.

Eligible counterparty business

1.3.3

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■ PROD 3.3.1R does not apply to *eligible counterparty business*.

[Note: article 30(1) of *MiFID*]

Where?

- 1.3.4 **R** ■ PROD 3 applies to a *firm* with respect to activities carried on from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom*.

- 1.3.5 **R**
 - (1) ■ PROD 3 also applies to a *firm* with respect to activities from an establishment *overseas* with a *client* in the *United Kingdom*.

 - (2) But ■ PROD 3 does not apply to those activities if the office from which the activity is carried on were a separate *person* and the activity:
 - (a) would fall within the *overseas persons* exclusions in article 72 of the *Regulated Activities Order*; or
 - (b) would not be regarded as being carried on in the *United Kingdom*.

- 1.3.6 **R** [deleted]

- 1.3.7 **G** [deleted]

- 1.3.8 **G** [deleted]

- 1.3.9 **G** [deleted]

- 1.3.10 **G** [deleted]

MiFID

- 1.3.11 **G** ■ PERG 13 contains general *guidance* on the *persons* and businesses to which the *UK* provisions which implemented *MiFID* apply.

- 1.3.12 **G** [deleted]

- 1.3.13 **G** [deleted]

- 1.3.14 **G** [deleted]

Interaction of PROD 3 and the RPPD Guide

- 1.3.15 **G** A *firm* to which ■ PROD 3 applies need not apply the *guidance* in *RPPD* for matters covered by *PROD* if the *firm* has complied with ■ PROD 3.

Manufacturing pathway investments and default options

- 1.3.16 **G** A *firm* that is within the scope of ■ PROD 3 (Product governance: MiFID) when it *manufactures pathway investments* or *default options* other than in

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connection with its operating of a *retail client's personal pension scheme* or *stakeholder pension scheme*, is also subject to ■ PROD 6 (Product governance: additional provisions for pathway investments and default options) as *guidance* with respect to that *manufacturing* activity (see ■ PROD 1.6.1R(3)).