

## Chapter 3

# Client categorisation

## 3.6 Eligible counterparties

### 3.6.1

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- (1) An *eligible counterparty* is a *client* that is either a *per se eligible counterparty* or an *elective eligible counterparty*.
- (2) A *client* can only be an *eligible counterparty* in relation to *eligible counterparty business* (■ PRIN 1 Annex 1 R is an exception to this).

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

### Per se eligible counterparties

### 3.6.2

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Each of the following is a *per se eligible counterparty* (including an entity that is not from the *UK* that is equivalent to any of the following) unless and to the extent it is given a different categorisation under this chapter:

- (1) an *investment firm*;
- (2) a *credit institution*;
- (3) an insurance company;
- (4) a *collective investment scheme* authorised under the *UK* provisions which implemented the *UCITS Directive* or its management company;
- (5) a pension fund or its management company;
- (6) another financial institution authorised or regulated under the law of the *United Kingdom*;
- (7) [deleted]
- (8) a national government or its corresponding office, including a public body that deals with public debt at national level;
- (9) a central bank; and
- (10) a supranational organisation.

[Note: first paragraph of article 30(2) and first paragraph of article 30(4) of *MiFID*]

### 3.6.3

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For the purpose of ■ COBS 3.6.2 R (6), a financial institution includes regulated institutions in the securities, banking and insurance sectors.

**Elective eligible counterparties****3.6.4****R**

A firm may treat a *client* as an *elective eligible counterparty* in relation to business other than *MiFID* or *equivalent third country business* if:

- (1) the *client* is an undertaking and:
  - (a) is a *per se professional client* (except for a *client* that is only a *per se professional client* because it is an institutional investor under ■ COBS 3.5.2 R (5)) and:
    - (i) is a *body corporate* (including a *limited liability partnership*) which has (or any of whose *holding companies* or *subsidiaries* has) called up share capital of at least £10 million (or its equivalent in any other currency at the relevant time); or
    - (ii) meets the criteria in the *rule* on meeting two quantitative tests (■ COBS 3.5.2 R (3)(b)); and
  - (b) requests such categorisation; and
- (2) the *firm* adheres to the procedure set out at ■ COBS 3.6.4BUK.

**3.6.4A****EU**

Provided that it adheres to the procedure set out at ■ COBS 3.6.4BUK, a *firm* may treat a *client* as an *elective eligible counterparty* in relation to *MiFID* or *equivalent third country business* if the *client*:

- (1) is an undertaking;
- (2) is a *per se professional client*, except for a *client* that is only a *per se professional client* because it is an institutional investor under ■ COBS 3.5.2R(5); and
- (3) requests such categorisation.

[Note: first paragraph of article 30(3) of *MiFID*]

**3.6.4B****UK**

Article 71(5) of the *MiFID Org Regulation* sets out the procedure to be followed where a *client* requests to be treated as an *eligible counterparty*.

71(5)Where a client requests to be treated as an eligible counterparty, in accordance with [■ COBS 3.6.4AR], the following procedure shall be followed:

- (a)the investment firm shall provide the client with a clear written warning of the consequences for the client of such a request, including the protections they may lose;
- (b)the client shall confirm in writing the request to be treated as an eligible counterparty either generally or in respect of one or more investment services or a transaction or type of transaction or product and that they are aware of the consequences of the protection they may have lost as a result of the request.

**3.6.4C****R**

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- 3.6.5

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The categories of *elective eligible counterparties* include an equivalent undertaking that is not from an the *United Kingdom* provided the above conditions and requirements are satisfied.
- 3.6.6

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A *firm* may obtain a prospective counterparty's confirmation that it agrees to be treated as an *eligible counterparty* either in the form of a general agreement or in respect of each individual transaction.

[Note: second paragraph of article 30(3) of *MiFID*]
- 3.6.7

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Client and firm located in different jurisdictions

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