

Chapter 3

Client categorisation

3.6 Eligible counterparties

- 3.6.1** **R** (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** **R** Each of the following is a *per se eligible counterparty* (including an entity that is not from an *EEA State* 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 *UCITS Directive* or its management company;
 - (5) a pension fund or its management company;
 - (6) another financial institution authorised or regulated under *EU* legislation or the national law of an *EEA State*;
 - (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** **G** 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 3.6.4BEU**.
- 3.6.4A** **EU** Provided that it adheres to the procedure set out at **COBS 3.6.4BEU**, 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** **EU** 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 Article 30(3) of Directive 2014/65/EU, 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** [deleted]

3.6.5 **G** The categories of *elective eligible counterparties* include an equivalent undertaking that is not from an *EEA State* provided the above conditions and requirements are satisfied.

3.6.6 **R** 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*]

Client and firm located in different jurisdictions

3.6.7 **R** In the case of *MiFID* or *equivalent third country business*, in the event of a transaction where the prospective counterparties are located in different *EEA States*, the *firm* shall defer to the status of the other undertaking as determined by the law or measures of the *EEA State* in which that undertaking is established.

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