

Chapter 3

Client categorisation

3.7 Providing clients with a higher level of protection

- 3.7.1** **R** A firm must allow a *professional client* or an *eligible counterparty* to request re-categorisation as a *client* that benefits from a higher degree of protection.
- [Note: second paragraph of article 30(2) of, and the second paragraph of section I of annex II to, *MiFID*]
- 3.7.2** **G** It is the responsibility of a *professional client* or *eligible counterparty* to ask for a higher level of protection when it deems it is unable to properly assess or manage the risks involved.
- [Note: third paragraph of section I and fourth paragraph of section II.2 of annex II to *MiFID*]
- 3.7.3** **R** [deleted]
- 3.7.3A** **UK** Article 45(3) of the *MiFID Org Regulation* sets out provisions in respect of giving *clients* a higher level of protection.
- 45(3) Investment firms may, either on their own initiative or at the request of the client concerned treat a client in the following manner:
- (a) as a professional or retail client where that client might otherwise be classified as an eligible counterparty pursuant to [■ COBS 3.6.2R];
 - (b) a retail client where that client that is considered a professional client pursuant to Part 2 of Schedule 1 to Regulation (EU) No 600/2014.
- 3.7.3B** **UK** Article 71(2) to (4) of the *MiFID Org Regulation* sets out provisions applying to *eligible counterparties* requesting a higher level of protection.
- 71(2) Where, pursuant to [■ COBS 3.7.1R], an eligible counterparty requests treatment as a client whose business with an investment firm is subject to rules in the Conduct of Business; Market Conduct; Senior Management Arrangements, Systems and Controls and the Product Intervention and Product Governance sourcebooks which were relied on immediately before IP completion day to implement Articles 24, 25, 27 and 28 of Directive 2014/65/EU (“the relevant rules”), the request should be made in writing, and shall indicate

whether the treatment as retail client or professional client refers to one or more investment services or transactions, or one or more types of transaction or product.

(3) Where an eligible counterparty requests treatment as a client whose business with an investment firm is subject to the relevant rules, but does not expressly request treatment as a retail client, the firm shall treat that eligible counterparty as a professional client.

(4) Where the eligible counterparty expressly requests treatment as a retail client, the investment firm shall treat the eligible counterparty as a retail client, applying the provisions in respect of requests of non-professional treatment specified in paragraph 4 of Schedule 1 to Regulation (EU) No 600/2014.

3.7.4 **R** [deleted]

3.7.5 **R**

(1) If, in relation to *MiFID* or equivalent third country business a *per se* professional client requests treatment as a retail client, the client will be classified as a *retail client* if it enters into a written agreement with the *firm* to the effect that it will not be treated as a *professional client* or *eligible counterparty* for the purposes of the applicable conduct of business regime.

(2) This agreement must specify the scope of the re-categorisation, such as whether it applies to one or more particular services or transactions, to one or more types of product or transaction or to one or more *rules*.

[Note: fourth paragraph of section I of annex II to *MiFID*]

3.7.6 **G**

(1) In accordance with *Principle 7* (communications with *clients*) if a *firm* at its own initiative re-categorises a *client* in accordance with this section, it should notify that *client* of its new category under this section.

(2) If the *firm* already has an agreement with the *client*, it should also consider any contractual requirements concerning the amendment of that agreement.

3.7.7 **G** The ways in which a *client* may be provided with additional protections under this section include re-categorisation:

(1) on a general basis; or

(2) on a trade by trade basis; or

(3) in respect of one or more specified *rules*; or

(4) in respect of one or more particular services or transactions; or

(5) in respect of one or more types of product or transaction.

[**Note:** second paragraph of article 30(2) of *MiFID*]

3.7.8

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Re-categorising a *client* as a *retail client* under this section does not necessarily mean it will become an *eligible complainant* under *DISP*.