

Conduct of Business Sourcebook

COBS TP 1

Transitional Provisions relating to Client Categorisation

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
1.1	COBS 3	G	<p>Overview of transitional provisions for client categorisation</p> <p>(1) COBS TP 1.2 contains default transitional categorisation provisions in relation to the existing <i>clients</i> of a <i>firm</i> on 1 November 2007. In many cases, they allow a <i>client</i> to be automatically provided with the nearest equivalent categorisation under COBS 3 to their previous categorisation.</p> <p>(2) COBS TP 1.3 explains how the transitional provisions for <i>client</i> categorisation relate to the requirement for a <i>firm</i> to act if it becomes aware that an <i>elective professional client</i> no longer satisfies the initial conditions for its categorisation.</p> <p>(3) The default provisions do not prevent a <i>firm</i> categorising such a <i>client</i> differently in accordance with COBS 3. COBS TP 1.4 provides guidance on how some of the procedural requirements in COBS 3 apply in some such cases.</p> <p>(4) COBS TP 1.5 contains transitional notification obligations, which apply if the default provisions do not allow that <i>client</i> to be provided with the nearest equivalent categorisation or a <i>firm</i> chooses not to take advantage of those provisions in relation to a <i>client</i>.</p> <p>(5) COBS TP 1.6 contains a transitional notification obligation that applies to a <i>firm</i> that, in relation to <i>MiFID</i> or <i>equivalent third country business</i>, takes advantage of the default transitional categorisation provisions to classify a <i>client</i> as a <i>per se professional client</i>.</p> <p>(6) COBS TP 1.9 contains transitional categorisation provisions in relation to <i>clients</i> of a <i>firm</i> that are taken on between 1 November 2007 and 30 June 2008 in relation to business that is not <i>MiFID</i> or <i>equivalent third country business</i>.</p>	From 1 November 2007 indefinitely	1 November 2007

(1)	(2)	(3)	(4)	(5)	(6)
1.2	COBS 3	R	<p>Categorisation of existing clients</p> <p>(1) An existing <i>client</i> that was correctly categorised as a <i>private customer</i> immediately before 1 November 2007 is a <i>retail client</i> unless and to the extent it is given a different categorisation by the <i>firm</i> under COBS 3.</p> <p>(2) An existing <i>client</i> that was correctly categorised as an <i>intermediate customer</i> immediately before 1 November 2007:</p> <p>(a) is an <i>elective professional client</i> if it was an expert <i>private customer</i> that had been re-classified as an <i>intermediate customer</i> on the basis of its experience and understanding; or</p> <p>(b) is otherwise a <i>per se professional client</i>;</p> <p>unless and to the extent it is given a different categorisation by the <i>firm</i> under COBS 3.</p> <p>(3) An existing <i>client</i> that was correctly categorised as a <i>market counterparty</i> immediately before 1 November 2007 is:</p> <p>(a) for <i>eligible counterparty business</i> that is not <i>MiFID</i> or <i>equivalent third country business</i>, an <i>eligible counterparty</i>; and</p> <p>(b) otherwise, a <i>per se professional client</i>;</p> <p>unless and to the extent it is given a different categorisation by the <i>firm</i> under COBS 3.</p> <p>[Note: Article 71(6) of, and third paragraph of section II.2 of Annex II to, Directive 2004/39/EC of the European Parliament and of the Council]</p>	From 1 November 2007 to 2 January 2018	1 November 2007
1.3	COBS 3	G	<p>Under COBS 3.5.9 R, if a <i>firm</i> becomes aware that a <i>client</i> no longer fulfils the initial conditions that made it eligible for categorisation as an <i>elective professional client</i>, the <i>investment firm</i> must take the appropriate action. In the case of a <i>client</i> that has been classified as an <i>elective professional client</i> under COBS TP 1.2R(2)(a), the initial conditions are those that applied to the <i>client's</i> initial categorisation as an <i>intermediate customer</i>.</p>	From 1 November 2007 to 2 January 2018	1 November 2007
1.4	COBS 3	G	<p>Former inter-professional business</p> <p>The requirement to provide notices under COBS 3.3.1 R only applies in relation to new <i>clients</i>. The requirement to obtain confirmation under COBS 3.6.4 R (2) only applies in relation to prospective counterparties. These obligations are therefore not relevant to the extent</p>	From 1 November 2007 to 2 January 2018	1 November 2007

(1)	(2)	(3)	(4)	(5)	(6)
1.5	COBS 3	R	<p>that an existing <i>client</i> with whom a <i>firm</i> conducted <i>inter-professional business</i> before 1 November 2007 is categorised as an <i>eligible counterparty</i> under COBS 3 in relation to <i>eligible counterparty business</i>.</p> <p>Transitional notification obligations</p> <p>(1) If a <i>firm</i> does not categorise a <i>client</i> that was a <i>private customer</i> immediately before 1 November 2007 as a <i>retail client</i>, it must notify that <i>client</i> of its categorisation as a <i>professional client</i> or <i>eligible counterparty</i>, as appropriate, on or before that date, or if later, before conducting any further business to which COBS applies for that <i>client</i>.</p> <p>(2) If a <i>firm</i> does not categorise a <i>client</i> that was an <i>intermediate customer</i> immediately before 1 November 2007 as a <i>professional client</i>, it must notify that <i>client</i> of its categorisation as a <i>retail client</i> or <i>eligible counterparty</i>, as appropriate, on or before that date, or if later, before conducting any further business to which COBS applies for that <i>client</i>.</p> <p>(3) If a <i>firm</i> does not categorise a <i>client</i> that was a <i>market counterparty</i> immediately before 1 November 2007 as an <i>eligible counterparty</i>, it must notify that <i>client</i> of its categorisation as a <i>retail client</i> or <i>professional client</i> on or before that date, or if later, before conducting any further business to which COBS applies for that <i>client</i>.</p> <p>[Note: article 28(1) of the <i>MiFID implementing Directive</i>]</p>	From 1 November 2007 to 2 January 2018	1 November 2007
1.6	COBS 3	R	<p>If a <i>firm</i>, in relation to <i>MiFID</i> or <i>equivalent third country business</i>, categorises a <i>client</i> who would not otherwise have been a <i>professional client</i> as a <i>professional client</i> under COBS TP 1.2(2)(b) or (3)(b), it must inform that <i>client</i> about the relevant conditions for the categorisation of <i>clients</i>. This notification must be made on or before 1 November 2007, or if later, before conducting any further business to which COBS applies for that <i>client</i>.</p> <p>[Note: article 71(6) of Directive 2004/39/EC of the European Parliament and of the Council]</p>	From 1 November 2007 to 2 January 2018	1 November 2007

(1)	(2)	(3)	(4)	(5)	(6)
1.7		G	A notice to a <i>professional client</i> under COBS TP 1.6 should inform that <i>client</i> : (a) that they have been categorised as a <i>professional client</i> ; and (b) of the main differences between the treatment of a <i>retail client</i> and a <i>professional client</i> .	From 1 November 2007 to 2 January 2018	1 November 2007
1.8		R	The record-keeping requirements under COBS 3.8.2 R apply in relation to any <i>client</i> categorisations or re-categorisations made under the transitional provisions for COBS 3. Categorisation of new clients before 30 June (business that is not MiFID or equivalent third country business)	From 1 November 2007 indefinitely	1 November 2007
1.9	COBS 3	R	Expired		