

Chapter 1

Product Intervention and Product Governance Sourcebook (PROD)

1.3

Application of PROD 3

General: Who? What?

- 1.3.1
- R
- 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
- R
- 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
- R
- (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
- R
- 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 <i>firm</i> with respect to activities carried on from an establishment maintained by it, or its <i>appointed representative</i> , in the <i>United Kingdom</i> .
1.3.5	R	<p>(1) ■ PROD 3 also applies to a <i>firm</i> with respect to activities from an establishment <i>overseas</i> with a <i>client</i> in the <i>United Kingdom</i>.</p> <p>(2) But ■ PROD 3 does not apply to those activities if the office from which the activity is carried on were a separate <i>person</i> and the activity:</p> <p>(a) would fall within the <i>overseas persons</i> exclusions in article 72 of the <i>Regulated Activities Order</i>; or</p> <p>(b) would not be regarded as being carried on in the <i>United Kingdom</i>.</p>
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 <i>guidance</i> on the <i>persons</i> and businesses to which the <i>UK</i> provisions which implemented <i>MiFID</i> 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 <i>firm</i> to which ■ PROD 3 applies need not apply the <i>guidance</i> in <i>RPPD</i> for matters covered by <i>PROD</i> if the <i>firm</i> has complied with ■ PROD 3.
		Manufacturing pathway investments and default options
1.3.16	G	A <i>firm</i> that is within the scope of ■ PROD 3 (Product governance: MiFID) when it <i>manufactures pathway investments</i> or <i>default options</i> 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)**).