

Information on customer classification and the procedural requirements

1. Customer classification

Credit institutions and investment firms are required to inform their customers about the customers' classification into retail (non professional) customers, professional customers or eligible counterparties. Customers are classified as provided in the local legislation, which contains detailed provisions of factors, which have an impact on the classification. Customer classification affects the extent of investor protection and application of the code of conduct.

A detailed list of the classification criteria is enclosed as an **appendix**.

Professional customers are required to inform their service provider about any changes that may have an impact on customer classification.

2. Reclassification as customer

The customer is entitled to ask the service provider to change its customer classification. Application for such change is to be made in writing. Such reclassification may have an effect on both investor protection and application of the code of conduct.

A customer classified as a professional customer may on application be treated as a retail customer or as an eligible counterparty. Correspondingly, a customer classified as a retail customer may on application be treated as a professional customer. An eligible counterparty in turn may on application be treated as a professional or as a retail customer. The service provider considers the applications individually in order to decide whether to accept or reject the application.

A professional customer is obliged to ask for treatment as a retail customer, if the customer considers that he or she does not have adequate

experience and knowledge to estimate or manage the risks involved in a particular transaction.

The impact on investor protection differs from country to country.

3. How the classification impacts on the application of code of conduct

Retail customers

Prior to conclusion of any written contract, retail customers are to be given the terms and conditions of the contract and adequate information on both the service provider and the service provided.

Any material changes in the information provided must also be reported. The information is to be provided in a durable media to enable the customer to print out or record it. The information may also be given on the service provider's website if the customer has agreed to such an arrangement.

Assessment of appropriateness

When providing the service of transmission of orders to a retail customer the service provider is required to ask the customer for information on the customer's investment experience and knowledge of the financial instrument concerned or of the investment service concerned in order to be able to assess whether the financial instrument or service is appropriate for the customer. The service provider is entitled to rely on the information provided by the customer.

If the service provider considers that any financial instrument or service is not appropriate for the customer, the service provider informs the customer accordingly. The service provider is also required to inform the customer if it is unable to assess the appropriateness of the financial instrument or service because the customer has failed to give the

information necessary for making the assessment. No assessment need to be made for the purpose of executing or transmitting an order initiated by the customer for a non-complex instrument of the kind referred to in the local law.

Assessment of suitability

Prior to providing investment service, providers of investment advisory and asset management services are required to obtain adequate information on the customer's financial position, experience and knowledge of the investment service or financial instrument concerned and on the customer's investment objectives in order to be able to recommend financial instruments or services suitable for the customer. The service provider is entitled to rely on the information provided by the customer.

On the basis of the above information obtained by it, the service provider estimates whether the advice to be given or service to be provided meets the customer's investment objectives, whether the customer is financially able to carry the risk and whether the customer has the necessary investment experience and knowledge to understand the risks involved in the recommended measures.

If it fails to get adequate information, the service provider may not recommend the investment service or financial instrument to the customer. The service provider may then at its discretion estimate the significance of the customer's failure to give the information required for the assessment of suitability.

Professional customers

Professional customers are to be given a general description of the nature of the financial instruments that are the subject of the service and of the risks typically involved in them, if necessary in view of the customer's investment experience.

Assessment of appropriateness

Prior to providing investment service, providers of investment advisory and asset management services are required to obtain adequate information on the customer's financial position and investment objectives in order to be able to recommend financial instruments or services suitable for the customer. The service provider is entitled to rely on the information provided by the customer.

On the basis of the above information obtained by it, the service provider estimates whether the advice to be given or service to be provided meets the customer's investment objectives.

If it fails to get adequate information, the service provider may not recommend the investment service or financial instrument to the customer. The service provider may then at its discretion estimate the significance of the customer's failure to give the information required for the assessment of appropriateness.

Eligible counterparties

An eligible counterparty may request the service provider in writing that the rules of procedure designed for the protection of investors be applied to all or individual transactions entered into with the eligible counterparty concerned. The service provider considers case by case whether to agree to the request. In no other cases does either the rules of procedure or investor protection apply to eligible counterparties.

Customer classification criteria

Appendix to the 'Information on customer classification and the procedural requirements' document

A. Retail customers

Customers other than professional customers or eligible counterparties.

B. Professional customers

The following should all be regarded as professionals in all investment services and activities and financial instruments for the purposes of the Directive.

(1) Entities which are required to be authorised or regulated to operate in the financial markets. The list below should be understood as including all authorised entities carrying out the characteristic activities of the entities mentioned: entities authorised by a Member State under a Directive, entities authorised or regulated by a Member State without reference to a Directive, and entities authorised or regulated by a non-Member State:

- (a) credit institutions;
- (b) investment firms;
- (c) other authorised or regulated financial institutions (eg stock exchanges, clearing and settlement houses, central securities depositaries);
- (d) insurance companies;
- (e) collective investment schemes and management companies of such schemes;
- (f) pension funds and management companies of such funds;
- (g) commodity and commodity derivatives dealers;
- (h) locals;
- (i) other institutional investors.

(2) Large undertakings meeting two of the following size requirements on a company basis:

- a) Balance sheet total: at least EUR 20,000,000;

- b) Net turnover: at least EUR 40,000,000; and
- c) Own funds: at least EUR 2,000,000.

(3) National and regional governments, public bodies that manage public debt, Central Banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB and other similar international organisations.

(4) Other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions.

Customers who may be treated as professionals on request

(1) The customer applies in writing; and
 (2) The customer meets at least two of the following requirements:

- a) the customer has carried out transactions significant in size in the markets involved at an average frequency of ten times per quarter over the previous four quarters;
- b) the size of the customer's investment portfolio exceeds EUR 500,000; and
- c) the customer works or has worked in the financial sector in a professional position for at least one year; and

(3) The securities dealer estimates that the customer is capable of both making independent investment decisions and understanding the risks involved in them, and the securities dealer accepts the customer's application; and

(4) The securities dealer informs the customer in writing that the customer may lose the protection afforded by either the conduct of business rules or the financial protection by any local compensation schemes; and

(5) The customer informs the securities dealer in writing that he or she is aware of the loss of protection provided by the conduct of business rules and the financial protection by any local compensation schemes.

C. Eligible counterparties

Member States shall recognise as eligible counterparties for the purposes of this Article investment firms, credit institutions, insurance companies, UCITS and their management companies, pension funds and their management companies, other financial institutions authorised or regulated under Community legislation or the national law of a Member State, undertakings exempted from the application of this Directive under Article 2(1)(k) and (l), national governments and their corresponding offices including public bodies that deal with public debt, central banks and supranational organisations.

Member States may also recognise as eligible counterparties other undertakings meeting pre-determined proportionate requirements, including quantitative thresholds. In the event of a transaction where the prospective counterparties are located in different jurisdictions, the investment firm shall defer to the status of the other undertaking as determined by the law or measures of the Member State in which that undertaking is established.

Member States shall ensure that the investment firm, when it enters into transactions in accordance with paragraph 1 with such undertakings, obtains the express confirmation from the prospective counterparty that it agrees to be treated as an eligible counterparty. Member States shall allow the investment firm to obtain this confirmation either in the form of a general agreement or in respect of each individual transaction.

Customers classified as eligible counterparties applying for treatment as professional customers

An eligible counterparty of the kind referred to in section 1 above applies in writing for application of the code of conduct rules to transactions to be concluded with the eligible counterparty either in general or in respect of an individual transaction. And

The securities dealer accepts the customer's application.

Customers classified as eligible counterparties applying for treatment as non-professional customers

An eligible counterparty of the kind referred to in section 1 above applies in writing for application of the code of conduct rules to transactions to be concluded with the customer in general or in respect of an individual transaction; and

The securities dealer accepts the customer's application; and

A written agreement is concluded to the effect that the customer will be treated as a non-professional customer in respect of one or several services or transactions or in respect of one or several types of securities or transactions.

Customers originally classified as retail, on application classified as professional and now applying for treatment as eligible counterparty

The customer applies in writing; and

The customer meets at least two of the following requirements:

- a) the customer has carried out transactions significant in size in the markets involved at an average frequency of ten times per quarter over the previous four quarters;
- b) the size of the customer's investment portfolio exceeds EUR 500,000; and
- c) the customer works or has worked in the financial sector in a professional position for at least one year; and

The securities dealer estimates that the customer is capable of both making independent investment decisions and understanding the risks involved in them, and the securities dealer accepts the customer's application; and

The securities dealer informs the customer in writing that the customer may lose the protection afforded by either the conduct of business rules or the financial protection by any local compensation schemes; and

The customer informs the securities dealer in writing that he or she is aware of the loss of protection provided by the conduct of business rules and the financial protection by any local compensation schemes.