

MIFiD CLIENT CATEGORISATION

Introduction

The “categorisation” of clients corresponds to the status of professional client, retail client and eligible counterparty. This legal terminology corresponds to that used by the European directive and French texts and overrides any classifications or segmentations (operational, commercial, etc.) specific to each institution.

The objective of client categorisation is to establish different levels of client protection according to the client’s knowledge of financial instruments and services and the client’s capacity to bear the associated risks.

The highest level of protection is afforded to retail clients. Such clients benefit in particular from services whose suitability must be assessed beforehand on the basis of their profile and more comprehensive information.

On the other hand, the lowest level of protection is reserved for eligible counterparties that, for example, are the only ones not to benefit from the duty of best execution.

Scope of the obligations

The categorisation consists in classifying clients as a retail client, professional client or eligible counterparty.

I Retail client: any client that cannot be classified in the other two categories.

- 1) Retail client by nature: classified as such by the Investment Service Provider (ISP).
- 2) Retail client by option: the client informs the ISP by registered letter with acknowledgement of receipt that it wishes to be treated as a retail client.

II Professional client:

1) Professional client by nature:

- Entities that need to be approved or regulated to operate on financial markets:

Credit institutions;

Investment firms;

Other approved or regulated financial institutions (e.g. pure clearers, financial companies, etc.);

Insurance and reinsurance companies, mutual insurers, unions of mutual insurers, provident institutions and insurance group companies;

UCI and their management companies;

Pension funds and their management companies: pension reserve fund, institutions of occupational retirement provision and the companies managing them;

Own-account traders in commodities or commodity derivatives;

Traders in futures and other financial instruments (see article L531-2, n of the Monetary and Financial Code);

Caisse des Dépôts et Consignations.

- The French State, Caisse de la Dette Publique (*French public debt fund*), Caisse d’Amortissement de la Dette Sociale (*French social debt redemption fund*), Bank of France, Institut d’Emission des Départements d’Outre-Mer (*French overseas departments note-issuing institute*).



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- Other institutional investors that invest in financial instruments (e.g. investment firms, venture capital companies, companies promoting innovation).

- Foreign entities equivalent to those listed above (e.g. a foreign bank approved in the US) and entities having the status of a professional client in another EEA country.

- International public financial bodies to which France or any other OECD Member State belongs (e.g. IMF, EIB, ECB).

2) A professional client by size:

French or foreign enterprises meeting at least two of the following three criteria:

- o Total assets of at least 20 million euros
- o Net sales of at least 40 million euros
- o Shareholder equity of at least 2 million euros

3) A professional client by option:

3-1 Retail client:

- Condition governing the application of this option: the client must meet at least two of the following three criteria and satisfy an adequate assessment:

- o Ownership of a portfolio of financial instruments valued at over 500,000 euros;
- o Execution of transactions for an amount of more of 600 euros per transaction in financial instruments, with at least 10 such transactions per quarter on average over the last four quarters;
- o Employment for at least one year in the financial sector, in a professional position requiring a knowledge of investments in financial instruments;
- o An assessment by the ISP of the client's expertise, experience and knowledge in order to have a reasonable assurance that the client is in a position to take investment decisions and understand the risks involved.

Application of the option (only at the client's initiative):

o The client informs the ISP in writing that he or she wishes to be treated as a professional client, at all times, or for a specific investment service or transaction, or for a type of transaction or product; the client must declare by registered letter with acknowledgement of receipt, in a separate document from the contract, that he or she is aware of the consequences of waiving the aforementioned protection;

o The ISP obtains the necessary information in order to check that the client meets the abovementioned conditions (the criteria and the assessment);

- If the client satisfies the criteria and the abovementioned adequate assessment, the ISP specifies clearly in writing the protection and rights to compensation that the client risks losing;
- If the client does not satisfy the abovementioned criteria and/or the assessment is not adequate, the ISP informs the client that it is not possible for him or her to waive his or her status as a retail investor.

4) Professional client at the ISP's choice: this concerns only eligible counterparties.

III Eligible counterparties

1) Eligible counterparties by nature:

- Entities that need to be approved or regulated to operate on financial markets:
Credit institutions;

Investment firms;
Other approved or regulated financial institutions (e.g. pure clearers, financial companies, etc.);
Insurance and reinsurance companies, mutual insurers, unions of mutual insurers, provident institutions and insurance group companies;
UCI and their management companies;

Pension funds and their management companies: pension reserve fund, institutions of occupational retirement provision and the companies managing them;
Own-account traders in commodities or commodity derivatives;
Traders in futures and other financial instruments (see article L531-2, n of the Monetary and Financial Code);
Caisse des Dépôts et Consignations.

- The French State, Caisse de la Dette Publique (*French public debt fund*), Caisse d'Amortissement de la Dette Sociale (*French social debt redemption fund*), Bank of France, Institut d'Emission des Départements d'Outre-Mer (*French overseas departments note-issuing institute*).
- Other institutional investors that invest in financial instruments (e.g. investment firms, venture capital companies, companies promoting innovation).
- Foreign entities equivalent to those listed above (e.g. a foreign bank approved in the US) and entities having the status of a professional client in another EEA country.

- International public financial bodies to which France or any other OECD Member State belongs (e.g. IMF, EIB, ECB).

2) Eligible counterparties by size:

- French and foreign enterprises that meet at least two of the following three criteria:
 - Total assets of at least 20 million euros
 - Net sales of at least 40 million euros
 - Shareholder equity of at least 2 million euros

- EEA enterprises that meet at least two of the abovementioned criteria and have eligible counterparty status in their home country.

3) Eligible counterparties by option:

A professional client, which must be a legal entity, may apply to be considered as an eligible counterparty ☐ Solely at the client's request and not at the ISP's discretion.

EXTRACT FROM THE AMF'S GENERAL REGULATIONS: PROVISIONS AMENDED BY MiFID

Book III (Service Providers), chapter IV (rules of conduct), Section 2 Categorisation of clients and eligible counterparties

Article 314-4

- I. – The investment service provider shall draw up and implement appropriate written policies and procedures for classifying its clients as retail clients, professional clients and eligible counterparties.
- II. – The investment service provider shall inform its clients in which category they have been classified: retail client, professional client or eligible counterparty.

It shall also inform them of any change in their category.

It shall inform its client, using a durable medium of their right to request a change of category and the consequences of any such change on the level of protection afforded to them.

III. – It is the responsibility of professional clients and eligible counterparties to inform the investment service provider of any change likely to alter their categorisation.

IV. – If an investment service provider becomes aware that a professional client or an eligible counterparty no longer satisfies the conditions governing such status, it must take appropriate action.

V. – It is the responsibility of professional clients by nature and eligible counterparties to ask to be transferred to a category that offers them greater protection if they consider that they are incapable of correctly assessing or managing the risks to which they may be exposed.

Article 314-4-1

When establishing a new client relationship, the investment service provider shall obtain all the information needed to establish the new client's identity and legal capacity in accordance with the conditions stipulated in an AMF instruction.

Sub-section 1 – Retail clients by option

Article 314-5

Professional clients may ask an investment service provider to treat them as retail clients, either in

general or for specific financial instruments, investments services or transactions.

If the service provider agrees to this request, an agreement shall be drawn up on paper or using

any other durable medium, specifying the financial instruments, investments services and transactions involved.

Sub-section 2 – Professional clients by option

Article 314-6

Retail clients may waive part of the protection afforded to them by the rules of conduct referred to in this chapter.

In such a case the investment service provider may treat the retail client as a professional client provided that he or she complies with the criteria and procedure specified below.

However, retail clients must not be presumed to have a market knowledge and level of experience comparable to those of the clients mentioned in sub-section 1 of this section.

This reduction in the protection afforded by the rules of conduct shall only be deemed valid if an adequate assessment by the investment service provider of the client's expertise, experience and knowledge gives a reasonable assurance, in light of the proposed type of transaction or service, that the client is in a position to take these investment decisions and understands the risks involved.

The aptitude criteria applicable to directors and managers of companies approved on the basis of financial directives may be considered as one of the means of assessing the client's expertise and knowledge. In the case of a small enterprise that does not meet the criteria of I: 2 of article D. 533-11 of the Monetary and Financial Code, the assessment must focus on the person authorised to carry out transactions on its behalf.

For the purpose of this assessment, at least two of the following criteria must be met:

1° The client must hold a portfolio of financial instruments with a value of more than 500,000 euros;

2° On average, at least ten transactions of significant volume in financial instruments must have been carried out in each quarter over the last four quarters;

3° The client must have held, for at least one year, a professional position in the financial sector requiring knowledge of investing in financial instruments.

The implementing conditions of this article are specified in an AMF instruction.

Article 314-7

The clients referred to in article 314-6 may waive the protection afforded by the rules of conduct only in accordance with the following procedure:

1° The client shall inform the investment service provider in writing that he or she wishes to be treated as a professional client, at all times, or for a specific investment service or transaction, or for a certain type of transaction or product.

2° The investment service provider shall specify clearly in writing the protection and rights to compensation that the client risks losing.

3° The client shall declare in writing, in a separate document from the contract, that he or she is aware of the consequences of such a waiver of the aforementioned protection.

Before it accepts this waiver, the investment service provider must take all reasonable care to ensure that the client who wishes to be treated as a professional client meets the criteria specified in article 314-6.

Sub-section 3 – Eligible counterparties

Article 314-8

An eligible counterparty referred to in article L. 533-20 of the Monetary and Financial Code may request an investment service provider to treat it as a professional client or retail client, either in general or for specific financial instruments, investment services or transactions.

If the service provider agrees to this request, it shall treat the eligible counterparty as a professional client or a retail client, as applicable.

Article 314-9

If an entity referred to in article 314-8 asks to be accorded client status, without however expressly

requesting retail client status, and the service provider agrees to this request, the service provider

shall treat the said entity as a professional client.

However, if the said entity specifically requests retail client status and the service provider agrees

to this request, the service provider shall treat the said entity as a retail client.

BOOK IV – COLLECTIVE INVESTMENT PRODUCTS TITLE I – UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES

CHAPTER I – COMMON PROVISIONS FOR UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES

Section 3 – Public information

Sub-section 2 – Distribution rules

Article 411-53

(Order of 18 March 2008)

I. – Without prejudice to the legislative and regulatory provisions applicable to the provision of investment advisory services, an asset management company which markets the units or shares of UCITS which it manages shall comply with the rules of conduct governing the execution of orders on behalf of third parties, and as asset management company which markets the units or shares of UCITS managed by other entities shall comply with the rules of conduct governing the reception and transmission of orders on behalf of third parties.

The implementing conditions of this article are specified in an AMF instruction.

INSTRUCTION N° 2008-04 OF 15 JULY RELATING TO THE APPLICATION OF THE RULES OF CONDUCT BY ASSET MANAGEMENT COMPANIES WHEN MARKETING THE UNITS OR SHARES OF UCITS OR OPCI (REAL ESTATE INVESTMENT VEHICLES)

Adopted in application of paragraph I of article 411-53 of the AMF General Regulations

Article 3 - Principles governing the application of rules of conduct

3.1 – The rules of conduct referred to in this article are those specified in Section 5, Chapter III, Title III, Book V of the Monetary and Financial Code and Chapter IV, Title I, Book III of the AMF General Regulations.

Article 5 - Categorisation of investors

Prior to providing one or more of the services referred to in 1.1, the asset management company shall categorise investors in accordance with the provisions of Section 2, Chapter IV, Title I, Book III of the AMF General Regulations, its being understood that:

- a single categorisation procedure may be implemented per investors in respect of the two services indicated in 1.1 and at the time when the relationship is first established with the client;
- with regard to the service of providing investment advice, the categorisation procedure classifies investors as either retail or professional clients; with regard to the reception and processing of orders service, the procedure classifies investors as a retail client, a professional client or an eligible counterparty;
- the category in which an investor is classified may change during the business relationship in respect of one or other or both services referred to in 1.1, in accordance with the relevant provisions of Section 2, Chapter IV, Title I, Book III of the AMF General Regulations.



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