

## CLIENT QUALIFICATION

### Introduction

The client categories correspond to the status of professional client, retail client and eligible counterparty. This *legal* terminology corresponds to that used by the European Directive and the French texts and overrides any classifications or segmentations (operational, commercial, etc.) specific to each establishment.

The objective of the client categorisation is to institute differing levels of client protection according to the clients' knowledge of financial instruments and services and their capacity to bear the associated risks.

The highest level of protection is afforded to retail clients. Such clients benefit notably from services whose adequacy and appropriateness must be assessed beforehand based on their profiles and more comprehensive information.

By contrast, 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.

This categorisation applies to all clients regardless of their nationality.

### Scope of the obligations

The categorisation involves ascribing the client the status of retail client, professional client or eligible counterparty.

**I Retail client:** any client that cannot be categorised in either of the following two categories or any client categorised as such by the investment service provider (ISP).

#### **II Professional client**

1) A client that is professional by nature:

- Entities that are required to be approved or regulated to operate in the financial markets:
  - \* Credit institutions;
  - \* Investment companies;
  - \* Other approved or regulated financial establishments (e.g. pure clearers, financial companies, etc.);
  - \* Insurance and reinsurance firms, mutual companies, unions of mutual companies, provident institutions and group insurance firms;
  - \* Collective investment undertakings and their management companies;
  - \* Pension funds and their management companies: Fonds de Réserve pour les Retraites (the French Pensions Reserve Fund), professional retirement institutions and the companies responsible for their administration;
  - \* Own-account traders in commodities or commodity derivatives;
  - \* Traders on forward or other financial instrument markets (cf. Article L531-2, n);
  - \* 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), Banque de France, Institut d'Emission des Départements d'Outre-Mer (French overseas departments note-issuing bank) and Institut d'Emission d'Outre-Mer (French overseas note-issuing bank);
  - Other institutional investors that invest in financial instruments (e.g. investment companies, venture capital companies, companies promoting innovation);
  - Foreign entities equivalent to those listed above (e.g. a foreign bank approved in the US) and entities holding the status of a professional client in an EU Member State;
  - International public financial bodies to which France or any other OECD Member State belongs (e.g. IMF, EIB or ECB).
- 2) A client that is professional by size:  
French or foreign enterprises meeting at least two of the following three criteria:
- o Total balance sheet of at least €20m;
  - o Net sales of at least €40m;
  - o Shareholders' equity of at least €2m.
- 3) A client that is professional by option:
- 3-1 Retail client:
- Condition for applying the option: the client must meet at least two of the following three criteria and an adequate assessment:
    - o Ownership of a portfolio of financial instruments valued at over €500,000;
    - o Performance of transactions of more than €600 per transaction on financial instruments, with at least 10 such transactions per quarter on average over the last four quarters;
    - o Occupation for at least one year of a professional position in the financial sector requiring a knowledge of investments in financial instruments;
    - o An adequate assessment by the ISP of the client's competence, experience and knowledge in order to obtain reasonable assurance that the client is in a position to take investment decisions and understand the risk incurred.
  - Application of the option (at the client's initiative only):
    - o The client notifies the ISP in writing of his desire to be treated as a professional client, at any time, or for a given investment service or transaction, or for a specific type of transaction or product;
    - o The ISP retrieves the necessary information in order to check that the client meets the conditions listed above (the criteria and the assessment);
      - If the client meets the criteria and the above assessment is adequate, the ISP clearly stipulates in writing the protection and rights to compensation that the client may forego (positive letter).
      - If the client does not meet the above criteria and/or the assessment is not adequate, the ISP informs the client that renunciation of his status as a non-professional client is not possible (negative letter).
    - o In the event that a positive letter is sent, the client declares in writing, in a separate document from the contract, that he is aware of the consequences of his renunciation of the aforementioned protection.
    - o Although not stipulated as a requirement in the texts, we believe that application of the option should be specified in the contract signed with the client.

- 4) A client that is professional by the ISP's choice: this concerns only eligible counterparties.

### III Eligible counterparties

#### 1) Counterparties that are eligible by nature:

- Entities that are required to be approved or regulated to operate in financial markets:
  - \* Credit institutions;
  - \* Investment companies;
  - \* Other approved or regulated financial establishments (e.g. pure clearers, financial companies, etc.);
  - \* Insurance and reinsurance firms, mutual companies, unions of mutual companies, provident institutions and group insurance firms;
  - \* Collective investment undertakings and their management companies;
  - \* Pension funds and their management companies: Fonds de Réserve pour les Retraites (the French Pensions Reserve Fund), professional retirement institutions and the companies responsible for their administration;
  - \* Own-account traders in commodities or commodity derivatives;
  - \* Traders on forward or other financial instrument markets (cf. Article L531-2, n);
  - \* 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), Banque de France, Institut d'Emission des Départements d'Outre-Mer (French overseas departments note-issuing bank) and Institut d'Emission d'Outre-Mer (French overseas note-issuing bank);
- Other institutional investors that invest in financial instruments (e.g. investment companies, venture capital companies, companies promoting innovation);
- Foreign entities equivalent to those listed above (e.g. a foreign bank approved in the US);
- International public financial bodies to which France or any other OECD Member State belongs (e.g. IMF, EIB or ECB).

#### 2) Counterparties that are eligible by size:

- French or foreign enterprises meeting at least two of the following three criteria:
  - a. Total balance sheet of at least €20m;
  - b. Net sales of at least €40m;
  - c. Shareholders equity of at least €2m.
- European Economic Area enterprises that meet at least two of the aforementioned three criteria and hold the status of an eligible counterparty in their home country.

#### 3) Counterparties that are eligible by option:

A professional client, which must be a legal entity, may request to be considered as an eligible counterparty → at the client's request only and not that of the ISP.

## **Case of clients under Investment Management Agreement**

In the case of Investment Management Agreement, the management company can be one of only two categories of clients:

- retail clients
- professional clients

## **EXTRACT FROM THE AMF'S (*Autorité des Marchés Financiers* – French Financial Markets Authority) GENERAL REGULATIONS: PROVISIONS AMENDED BY THE MiFID DIRECTIVE**

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

#### ***Article 314-4***

I. – The investment services provider draws up and implements appropriate written policies and procedures for categorising its clients as retail clients, professional clients or eligible counterparties.

II. – The investment services provider informs its clients as to their categorisation as either retail client, professional client or eligible counterparty.

It also notifies them if their category changes.

It informs its clients, using a permanent medium, of their right to request a different category and the consequences of such a change for the level of protection afforded to them.

III. - It is the responsibility of the professional client or the eligible counterparty to inform the investment services provider of any change likely to alter its categorisation.

IV. - If an investment services provider becomes aware that a professional client or eligible counterparty no longer fulfils the conditions that qualified it for such status, it must take appropriate action.

V. - It is the responsibility of clients of a professional nature, or eligible counterparties, to ask to be placed in a category that offers them a higher level of 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***

During the account opening procedure the investment services provider obtains all the information needed to establish the new client's identity and legal status, in accordance with the conditions stipulated in an AMF instruction.

### **Sub-section 1 Optional retail client status**

#### ***Article 314-5***

Professional clients may ask an investment services provider to treat them as retail clients in all their dealings or for specific financial instruments, investment services or transactions.

If the service provider agrees to this request, an agreement shall be drawn up on paper or on another permanent medium, specifying the financial instruments, investment services and transactions involved.

## **Sub-section 2 Optional professional client status**

### **Article 314-6**

A retail client may waive a part of the protection afforded to it by the rules of conduct mentioned in this chapter.

In this case the investment services provider may treat the retail client as a professional client provided that he or she complies with the criteria and procedures mentioned below. However, it must not be presumed that retail clients have a knowledge and level of experience of the market comparable to that of the clients mentioned in sub-section 1 of this section.

This reduction in the protection afforded by the rules of conduct is only deemed to be valid if an appropriate assessment of the client's competence, experience and knowledge by the investment services provider provides reasonable assurance, with regard to the type or transactions or services planned, that the client is in a position to take these investment decisions and understand the risks incurred.

The aptitude criteria applicable to directors and managers of companies approved on the basis of financial directives are a potential means of assessing the client's competence and knowledge. For small businesses that do not fulfil the criteria of I: 2 of Article D. 533-11 of the French 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 four previous quarters;

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

The terms and conditions for the application of this article are specified in an AMF instruction.

### **Article 314-7**

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

1° The client notifies the investment services provider of its wish to be treated as a professional client, either at all times, or for a specific investment service or transaction, or for a certain type of transaction or product;

2° The investment services provider specifies clearly and in writing the protection and the rights to compensation that the client risks losing;

3° The client declares in writing, in a separate contract document, that it is aware of the consequences of its waiver of the aforementioned protection.

Before it accepts this waiver, the investment services provider is required to take all reasonable precautions to ensure that the client who wishes to be treated as a professional client meets the criteria mentioned in Article 314-6.

### **Sub-section 3 Eligible counterparties**

#### **Article 314-8**

Eligible counterparties, as mentioned in Article L. 533-20 of the French monetary and financial code, may ask an investment services provider to treat them as professional clients or retail clients in all their dealings or for specific financial instruments, investment services or specific transactions.

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

#### **Article 314-9**

If an entity mentioned in Article 314-8 asks to be accorded the status of client, without specifically requesting the status of retail client, and the service provider agrees to this request, the service provider shall treat said entity as a professional client.

However, if said entity specifically requests the status of retail client and the service provider agrees to this request, the service provider shall treat said entity as a retail client.

## **BOOK IV – COLLECTIVE INVESTMENT PRODUCTS**

### **SECTION 1 – Collective Investment schemes**

#### **CHAPTER 1 – Common provision for collective investment schemes**

### **Section 3 – Public information. Sub-section 2 – Distribution rules**

#### **Article 411-53**

(Order of 18 March 2008)

I. Notwithstanding the legislative and regulatory provisions applicable to the provision of the investment advisory service, an asset management company marketing the units or shares in collective investment schemes under its management shall comply with the rules of conduct for order execution service on behalf of third parties and an asset management company marketing the units or shares in collective investment schemes managed by other entities shall comply with the rules of conduct applicable to the order receiving and transmitting service on behalf of third parties.

The requirements for implementing this Article are set out in an AMF instruction.

**INSTRUCTION No. 2008-04 OF 15 JULY 1008 RELATING TO THE APPLICATION OF THE RULES OF CONDUCT BY ASSET MANAGEMENT COMPANIES MARKETING THE UNITS OR SHARES IN COLLECTIVE INVESTMENT SCHEMES OR REAL-ESTATE COLLECTIVE INVESTMENT SCHEMES (OPCI's)**

## ***Application of paragraph I of Article 411-53 of the AMF General Regulations***

### ***Article 3 – Principles of application of the rules of conduct***

3.1 – The rules of conduct indicated in this Article is that appearing in Section 5, Chapter III, Part III, Book V of the French Monetary and Financial Code and Chapter IV, Part I, Book III of the AMF General Regulations.

### ***Article 5 – Categorisation of investors***

Prior to the provision of one or more of the services indicated in 1.1 (investment advisory services and reception and transmission of orders), an asset management company shall proceed to the categorisation of the investor in accordance with the provisions of section 2, chapter IV, part 1, Book III of the AMF General Regulations, it being specified that:

- a single categorisation procedure may be implemented per investor in respect of the two services indicated in 1.1 and at the time of the first entry into relationship therewith;
- with regard to the investment advisory service, the categorisation procedure shall enable the investor to be classified in retail and professional client categories; with regard to the receipt and execution of the order service, it enables the investor to be classified into retail, professional client or eligible counterparty categories.
- the categorisation of the investor may change during the business relationship in respect of one or other or both services indicated in 1.1, in accordance with the relevant provisions of section 2, chapter IV, part 1, book III of the AMF General Regulations;