

- 3.5.1 R *A professional client is a client that is either a per se professional client or an elective professional client.*

[~~Note:~~ article 4(1)(~~H~~) (10) of *MiFID*]

Per se professional clients

- 3.5.2 R Each of the following is a *per se professional client* unless and to the extent it is an *eligible counterparty* or is given a different categorisation under this chapter:

...

- (3) in relation to business that is not *MiFID* or *equivalent third country business* a large undertaking meeting any of the following conditions:

...

- (e) a trustee of an *occupational pension scheme* or *SSAS*, or a trustee or *operator* of a *personal pension scheme* or *stakeholder pension scheme* where the scheme has (or has had at any time during the previous two years):

...

- (ii) assets under management of at least £10 million (or its equivalent in any other currency at the relevant time);

- (f) ~~a local authority or public authority.~~

- (4) a national or regional government, including a public body that manages public debt at national or regional level, a central bank, an international or supranational institution (such as the World Bank, the IMF, the ECP, the EIB) or another similar international organisation;

...

- 3.5.2A R ~~In relation to *MiFID* or *equivalent third country business* a local authority or a public authority is not likely to be a regional government for the purposes of *COBS* 3.5.2R(4). In the *FCA's* opinion, a local authority may be a *per se professional client* for those purposes if it meets the test for large undertakings in *COBS* 3.5.2R(2). [deleted]~~

- 3.5.2B R A firm must categorise a local public authority or municipality which (in either case) does not manage public debt as a *retail client*, unless it is permitted to treat such a person as an *elective professional client* in accordance with *COBS* 3.5.3BR to *COBS* 3.5.3ER.

- 3.5.2C G As a result of *COBS* 3.5.2BR, a local public authority or municipality which (in either case) does not manage public debt should not be treated as a *per*

se professional client.

Elective professional clients

- 3.5.3 R A *firm* may treat a *client* other than a local public authority or municipality as an *elective professional client* if it complies with (1) and (3) and, where applicable, (2):
- ...
- 3.5.3A G (1) As a result of COBS 3.5.3BR and COBS 3.5.3ER a *firm* should always assess a local public authority or municipality against a “quantitative test” to treat it as an *elective professional client*, regardless of whether the *firm* intends to conduct business involving MiFID or equivalent third country business or other regulated activities subject to COBS 3.
- (2) The “quantitative test” that a *firm* should use depends on the application of COBS 3.5.3BR (which applies for UK clients) and COBS 3.5.3ER (which applies for non-UK clients).
- 3.5.3B R (1) A *firm* may treat a UK local public authority or municipality as an *elective professional client* if it complies with COBS 3.5.3R(1) and COBS 3.5.3R(3) and, in addition, paragraph (2) of this rule.
- (2) In the course of the assessment under COBS 3.5.3R(1) the criterion in (a) below is satisfied as well as one of the criteria in (b) below (the “quantitative test”):
- (a) the size of the *client*’s financial instrument portfolio defined as including cash deposits and financial instruments, exceeds £10,000,000; and
- (b) either:
- (i) the *client* has carried out transactions, in significant size, on the relevant market at an average frequency of ten per quarter over the previous four quarters; or
- (ii) the *person* authorised to carry out transactions on behalf of the *client* works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the provision of services envisaged; or
- (iii) the *client* is an ‘administering authority’ of the Local Government Pension Scheme within the meaning of the version of Schedule 3 of The Local Government Pension Scheme Regulations 2013 or, (in relation to Scotland) within the meaning of the version of Schedule 3 of The Local Government Pension Scheme (Scotland) Regulations 2014 in force at 1 January 2018, and is

acting in that capacity.

- 3.5.3C R (1) This rule applies where a firm is subjecting a UK local public authority or municipality to the tests and is following the procedure required as a result of COBS 3.5.3BR in respect of the firm's business carried on in relation to that person's:
- (a) business in the course of or connected to its administration of a pension scheme; and
  - (b) other business as a local public authority or municipality.
- (2) A firm must apply the qualitative and quantitative tests required as a result of COBS 3.5.3BR separately and independently in relation to the client's business under (1)(a) and (1)(b).
- (3) A firm must follow the procedure in COBS 3.5.3R(3) required as a result of COBS 3.5.3BR separately and independently in relation to the client's business under (1)(a) and (1)(b).
- 3.5.3D G As a result of COBS 3.5.2BR and COBS 3.5.3CR, and depending on the outcome of the qualitative and quantitative tests required as a result of COBS 3.5.3BR, a firm may be required to categorise a UK local public authority or municipality differently in relation to the two sorts of business described at COBS 3.5.3CR(1)(a) and (b).
- 3.5.3E R (1) A firm may treat a non-UK local public authority or municipality as an elective professional client if it complies with COBS 3.5.3R(1) and COBS 3.5.3R(3) and, in addition, applies the relevant "quantitative test" under paragraph (2).
- (2) The relevant "quantitative test" under this rule is either:
- (a) where the local public authority or municipality is established in an EEA State and the EEA State has adopted alternative or additional criteria to those listed in the fifth paragraph to section II.1 of annex II to MiFID, those criteria as set out in the law or measures of that EEA State; or
  - (b) in any other case the same "quantitative test" that is applied in relation to MiFID or equivalent third country business under COBS 3.5.3R(2).

...

- 3.5.6 R Before deciding to accept a request for re-categorisation as an *elective professional client* a firm must take all reasonable steps to ensure that the client requesting to be treated as an *elective professional client* satisfies the qualitative test and, where applicable, the relevant quantitative test.

[Note: second paragraph of section II.2 of annex II to MiFID]

...

3.5.8 G *Professional ~~client~~ clients* are responsible for keeping the *firm* informed about any change that could affect their current categorisation.

3.5.9 R ...

[**Note:** fourth paragraph of section II.2 of annex II to *MiFID* and article 28(1) of the *MiFID implementing Directive*]

### 3.6 Eligible counterparties

3.6.1 R ...

[**Note:** article 2430(1) of *MiFID*]

Per se eligible counterparties

3.6.2 R Each of the following is a *per se eligible counterparty* (including an entity that is not from an *EEA State* that is equivalent to any of the following) unless and to the extent it is given a different categorisation under this chapter:

...

(7) ~~an undertaking exempted from the application of *MiFID* under either Article 2(1)(k) (certain own account dealers in commodities or commodity derivatives) or Article 2(1)(l) (locals) of that directive;~~  
[deleted]

(8) a national government or its corresponding office, including a public body that deals with the public debt at national level;

(9) a central bank; and

...

[**Note:** first paragraph of article 2430(2) and first paragraph of article 2430(4) of *MiFID*]

...

Elective eligible counterparties

3.6.4 R *A firm* may treat a *client* as an *elective eligible counterparty* in relation to business other than *MiFID* or equivalent third country business if:

(1) the *client* is an undertaking and:

(a) is a *per se professional client* (except for a *client* that is only a