



UBS AG London Branch  
5 Broadgate  
London EC2M 2QS  
United Kingdom

UBS Europe SE  
Bockenheimer Landstraße 2-4  
60306 Frankfurt am Main  
Germany

[www.ubs.com/ibterms](http://www.ubs.com/ibterms)

# Consequences of categorisation as a professional client or an eligible counterparty



Version: December 2020

For information about our investment bank entities, visit [www.ubs.com/ibterms](http://www.ubs.com/ibterms)

# Introduction

The investment banking division of UBS only provides services directly to clients that qualify automatically as eligible counterparties or professional clients, or otherwise those that have the necessary expertise, experience and knowledge to be categorised as elective professional clients.

We provide this document to you as a clear written warning of the protections and investor compensation rights you may lose by being categorised as an eligible counterparty as opposed to a professional client or as an elective professional client as opposed to retail client. It is not comprehensive and it summarises certain provisions. While accurate at the time of publication, applicable regulations are subject to change. We will seek to keep this document up to date and will publish the most recent version at [www.ubs.com/ibterms](http://www.ubs.com/ibterms), but we are not required to notify you of any such changes.

Section 1 of this document sets out the differences in regulatory protections that apply to a professional client as compared with a retail client in relation to MiFID or equivalent third country business in respect of services provided from the UK or Germany as applicable. Section 2 sets out the differences in regulatory protections that apply to an eligible counterparty as compared to a professional client, again in relation to MiFID or equivalent third country business.

Terms used in this document have the same meanings as in our terms of business (which are published at [www.ubs.com/ibterms](http://www.ubs.com/ibterms)), unless the contrary intention appears. References in this document to professional clients shall include both *per se* and elective professional clients. References in this document to eligible counterparties shall include elective eligible counterparties. References to (i) MiFID business includes equivalent UK and third country business unless the contrary intention appears and (ii) references to EEA regulations includes equivalent UK regulations.

It is important that you read and understand this document before you consent to being treated as an elective professional client or eligible counterparty as the case may be. Should you have any questions, please do not hesitate to contact us.

## Consequences of categorisation as a professional client

### 1 Information

- (a) **Communication with clients:** A firm must ensure that its communications with all clients are fair, clear and not misleading. However, the way in which a firm may communicate with professional clients (about itself, its services and products, and its remuneration) may be different from the way in which the firm communicates with retail clients. A firm's obligations in respect of the level of detail, medium and timing of the provision of information are different depending on whether the client is a retail or professional client.
- (b) **Information about costs and associated charges<sup>1</sup>:** A firm must provide clients with information on costs and associated charges. The information provided may not be as comprehensive for professional clients as it must be for retail clients.
- (c) **Description of the nature and risks of packaged investments<sup>2</sup>:** a firm that offers an investment service with another service or product or as part of a package or as a condition of the same agreement or package with a retail client must:
- (i) inform retail clients if the risks resulting from the agreement or package are likely to be different from the risks associated with the components when taken separately; and
  - (ii) provide retail clients with an adequate description of the different components of the agreement or package and the way in which its interaction modifies the risks.

The above requirements do not apply in respect of professional clients.

- (d) **Information about a financial instrument in respect of which a prospectus is available<sup>3</sup>:** Where a firm provides retail clients with information about a financial instrument that is the subject of a current offer to the public and a prospectus has been published in connection with that offer, it must:
- (i) inform such retail clients where that prospectus is made available to the public; and
  - (ii) do so in good time before the provision of investment services or ancillary services.
- (iii) The above requirements do not apply in respect of professional clients.
- (e) **Information about currency fluctuations<sup>4</sup>:** Where a firm provides a retail client with information which contains an indication of the past performance of a financial instrument, a financial index or an investment service, and the indication relies on figures denominated in a currency other than that of the Member State in which that retail client is resident, the firm must state the relevant currency and provide enhanced warnings that returns may increase or decrease as a result of currency fluctuations. This requirement does not apply in respect of professional clients.

### 2 Order execution policy

- (a) **Order Execution Policy Summary<sup>5</sup>:** A firm must provide a retail client with a summary of its order execution policy (fo-

<sup>1</sup> Art. 24 (4) Directive 2014/65/EU, Art. 50 Delegated Regulation 2017/565/EU, and as applicable §63 (7) of German Security Act or COBS 6.1ZA.2.7R to COBS 6.1ZA.2.11G.

<sup>2</sup> Art. 24 (11) Directive 2014/65/EU, Art. 48 Delegated Regulation 2017/565/EU, and as applicable §63 (9) of German Security Act or COBS 6.1ZA.2.12R

<sup>3</sup> Art. 24 (4) Directive 2014/65/EU, Art. 48 (3) Delegated Regulation 2017/565/EU, and as applicable §63 (7) of German Security Act or COBS 14.3A.5EU

<sup>4</sup> Art. 24 (3) Directive 2014/65/EU, Art. 44 (4) Delegated Regulation 2017/565/EU, and as applicable §63 (6) of German Security Act or COBS 4.5A.10EU

<sup>5</sup> Art. 27 (6) Directive 2014/65/EU, Art. 66 (9) Delegated

cused on the total cost the client incurs). This summary must provide a link to the most recent execution quality data for each execution venue listed in the policy. Firms are not obliged to provide a summary that complies with these specific requirements to professional clients. Information on a firm's MiFID order handling & execution policy is, however, required to be provided to professional clients and our MiFID order handling & execution policy is available at [www.ubs.com/ibterms](http://www.ubs.com/ibterms).

### 3 Best execution<sup>6</sup>

- (a) In relation to its MiFID business, a firm must take all sufficient steps to obtain the best possible results for its clients when executing orders. The application of and the relative importance of the relevant execution factors will vary depending on whether the client is a retail or professional client.
- (b) **Retail clients**<sup>7</sup>: where orders are executed on behalf of a retail client, total consideration must be the overriding factor in determining best execution.
  - (i) A firm must determine the best possible result in terms of the total consideration, representing the price of the financial instrument and the costs related to execution, which must include all expenses incurred by the retail client which are directly related to the execution of the order, including execution venue fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.
  - (ii) A firm should take into consideration all factors that will allow it to deliver the best possible result in terms of the total consideration, representing the price of the financial instrument and the costs related to execution.
  - (iii) Speed, likelihood of execution and settlement, the size and nature of the order, market impact and any other implicit transaction costs may be given precedence over the immediate price and cost consideration only insofar as they are instrumental in delivering the best possible result in terms of the total consideration to the retail client.
- (c) **Professional clients**<sup>8</sup>: Where orders are executed on behalf of a professional client a range of factors may be considered in determining best execution.
  - (i) A firm's execution policy should determine the relative importance of each of the execution factors or establish a process by which the firm will determine the relative importance of the execution factors.
  - (ii) The relative importance that the firm gives to those execution factors must be designed to obtain the best possible result for the execution of its professional clients' orders. The characteristics of the client (including the categorisation of the client as retail or professional)

will have a bearing on the firm's determination of the various factors' relative importance.

- (iii) Ordinarily, the regulation would expect that price will merit a relative importance in obtaining the best possible result for professional clients. However, in some circumstances for some professional clients, orders, financial instruments or markets, the policy may appropriately determine that other execution factors are more important than price in obtaining the best possible result.

- (d) You can obtain more information on our MiFID order handling & execution policy at [www.ubs.com/ibterms](http://www.ubs.com/ibterms).

### 4 Difficulty in carrying out orders<sup>9</sup>

- (a) In relation to order execution, firms must inform retail clients about any material difficulty relevant to the proper carrying out of orders promptly on becoming aware of the difficulty. This is not required in respect of professional clients.

### 5 Custody

- (a) **Registration and recording of legal title**<sup>10</sup>: In order to effect the registration or recording of legal title to a safe custody investment in a firm's own name as permitted in certain circumstances by the FCA's CASS rules or MiFID II regime as applicable, a firm is only required to notify a professional client that the firm may do this whereas the consent of a retail client is required.
- (b) **Use of safe custody assets**<sup>11</sup>: MiFID II expects firms that use retail clients' assets only to do so for the purposes of entering into securities financing transactions. Firms may use the assets of professional clients on terms agreed between such clients and the firm in accordance with the FCA's CASS rules or MiFID II regime as applicable.
- (c) Where a firm enters into arrangements for securities financing transactions in respect of safe custody assets held by it on behalf of any retail client or otherwise uses such safe custody assets for its own account or the account of another client of the firm the regulation requires that:
  - (i) the firm ensures that relevant collateral is provided by the borrower in favour of the retail client;
  - (ii) the current realisable value of the safe custody asset and of the relevant collateral is monitored daily; and
  - (iii) the firm provides relevant collateral to make up the difference where the current realisable value of the collateral falls below that of the safe custody asset, unless otherwise agreed in writing by the retail client.
- (d) **Title transfer collateral arrangements**<sup>12</sup>: Firms may not enter into title transfer collateral arrangements in respect of assets belonging to retail clients. This ban does not apply to assets belonging to a professional client.

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Regulation 2017/565/EU, and as applicable §82 (9) of German Security Act or COBS 11.2A.25EU(9)

<sup>6</sup> Art. 27 (1) Directive 2014/65/EU, Art. 64 Delegated Regulation 2017/565/EU, and as applicable §82 (1) of German Security Act or COBS 11.2A

<sup>7</sup> Art. 27 (1) Directive 2014/65/EU, Art. 64 Delegated Regulation 2017/565/EU, and as applicable §82 (2), (3) of German Security Act or COBS 11.2A.9R, COBS 11.2A.10G and 11.2A.11G

<sup>8</sup> Art. 27 (1) Directive 2014/65/EU, Art. 64, 66 Delegated Regulation 2017/565/EU, and as applicable COBS 11.2A.8EU and COBS 11.2A.26G

<sup>9</sup> Art. 28 (1), 24 (1) Directive 2014/65/EU, Art. 67 (1) Delegated Regulation 2017/565/EU, and as applicable §69 (1) of German Security Act or COBS 11.3.2AEU

<sup>10</sup> Art. 16 (7) Directive 2014/65/EU, Art. 76 Delegated Regulation 2017/565/EU, and as applicable §83 (5) of German Security Act or CASS 6.2.3(4)R

<sup>11</sup> Art. 16 (8) Directive 2014/65/EU, Art. 5 Delegated Regulation (EU) 2017/593, and as applicable §84 (6), (9) of German Security Act or CASS 6.4.1R, CASS 6.4.1AG and CASS 6.4.2G

<sup>12</sup> Art. 16 (10) Directive 2014/65/EU, Art. 5 (5) Delegated Regulation (EU) 2017/593, and as applicable §84 (7) of German Security Act or CASS 6.1.6R

## 6 Client money

This section 6 applies to UBS AG London Branch business only.

- (a) **Information on holding of client money with UBS:** Unless specifically agreed between us or in other limited circumstances, we will hold your money as banker and not as "client money" within the meaning of the FCA's "CASS" rules. For more information please see our CASS disclosure published at [www.ubs.com/ibterms](http://www.ubs.com/ibterms).
- (b) **Retail clients:** The requirements under the client money rules in the FCA handbook are more prescriptive and provide more protection in respect of retail clients than in respect of professional clients. In particular:
  - (i) **Interest**<sup>13</sup>: a firm must pay a retail client any interest earned on client money held for that client unless it has otherwise notified him in writing; and
  - (ii) **Title transfer collateral arrangements**<sup>14</sup>: a firm must not enter into title transfer collateral arrangements in respect of money belonging to a retail client.
- (c) **Professional clients:** The above requirements ((b)(i) and (ii)) do not apply to professional clients.

## 7 Depreciations in value reporting<sup>15</sup>

- (a) A firm that holds a retail client account that includes positions in leveraged financial instruments or contingent liability transactions must inform the retail client, where the initial value of each instrument depreciates by 10 per cent. and thereafter at multiples of 10 per cent. no later than the end of the business day in which the threshold is exceeded or, in a case where the threshold is exceeded on a non-business day, the close of the next business day. These requirements do not apply in respect of professional client accounts.

## 8 Suitability and appropriateness

- (a) **Suitability**<sup>16</sup>: If a firm makes a personal recommendation or manages investments for a client in the course of MiFID business, it is required to obtain and consider the following information in relation to the client:
  - (i) the client's knowledge and experience in the investment field relevant to the specific type of investment or service;
  - (ii) the financial situation of the client; and
  - (iii) the client's investment objectives.
- (b) However, when making a personal recommendation or managing investments to or on behalf of a professional client, a firm is entitled to assume that, in relation to the products, transactions and services for which the professional client is so classified, the client has the necessary level of experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio. This assumption cannot be made for a retail client and firms must assess this information separately.<sup>17</sup>

<sup>13</sup> CASS 7.11.32R

<sup>14</sup> CASS 7.11.1R

<sup>15</sup> Art. 25 (6) Directive 2014/65/EU, Art. 62 (2) Delegated Regulation 2017/565/EU, and as applicable §64 (8) of German Security Act or COBS 16A.4.3EU

<sup>16</sup> Art. 25 (2) Directive 2014/65/EU, Art. 54 (2) Delegated Regulation 2017/565/EU, and as applicable §64 (3) of German Security Act or COBS 9A.2.1R

<sup>17</sup> Art. 25 (2) Directive 2014/65/EU, Art. 54 (3) Delegated

- (c) A firm, when making a personal recommendation to a *per se* professional client, may also assume that the client is able financially to bear any related investment risks consistent with his investment objectives. However, as this assumption is limited to *per se* professional clients, a firm cannot make this assumption for either retail or elective professional clients and firms must assess this information separately.<sup>18</sup>
- (d) Where a firm makes personal recommendations to a retail client the firm is required to provide retail clients with a suitability report but it is not required to provide such a report to professional clients.<sup>19</sup>
- (e) **Appropriateness**<sup>20</sup>: When assessing appropriateness for non-advised services (i.e. where we do not make personal recommendations or carry on portfolio management), a firm may be required to determine whether the client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or service offered or demanded.
- (f) Where such an appropriateness assessment requirement applies in respect of a client, the firm may assume that a professional client has the necessary experience and knowledge in order to understand the risks involved in relation to those particular investment services or transactions, or types of transaction or product, for which the client is classified as a professional client. A firm may not make such an assumption for a retail client and must determine that a retail client does have the necessary level of experience and knowledge.

## 9 Remuneration and incentivisation of staff<sup>21</sup>

- (a) In relation to retail clients, firms are specifically required not to make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to staff to recommend a particular financial instrument to a retail client when we could offer a different financial instrument which would better meet that client's needs. For all clients, firms are nonetheless required to ensure that they do not remunerate or assess the performance of staff in a way that would conflict with their duty to act in the best interests of their clients.

## 10 Share trading obligation<sup>22</sup>

- (a) There is a requirement in certain circumstances for shares to be traded on certain venues. This obligation can be disapplied where trades in such shares are carried out for professional clients in certain circumstances (but not for retail clients).

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Regulation 2017/565/EU, and as applicable §67 (2) of German Security Act or COBS 9A.2.5EU

<sup>18</sup> Art. 25 (2) Directive 2014/65/EU, Art. 54 (3) Delegated

Regulation 2017/565/EU, and as applicable §67 (2) of German Security Act or COBS 9A.2.5EU

<sup>19</sup> Art. 25 (6) Directive 2014/65/EU, Art. 54 (12) Delegated

Regulation 2017/565/EU, and as applicable §64 (4) of German Security Act or COBS 9A.3.2R

<sup>20</sup> Art. 25 (3) Directive 2014/65/EU, Art. 56 (1) Delegated

Regulation 2017/565/EU, and as applicable §63 (10) of German Security Act or COBS 10.2.1R and COBS 10A.2.3EU

<sup>21</sup> Art 16, 23, 24 Directive 2014/65/EU, Art. 27 Delegated Regulation 2017/565/EU, and as applicable §63 (3), §80 (1) of German Security Act or SYSC 19F.1.4R

<sup>22</sup> MiFIR, Article 23

## 11 **Exclusion of liability**<sup>23</sup>

- (a) Firms' ability to exclude or restrict any duty or liability owed to clients is narrower under the applicable rules in the case of retail clients than in respect of professional clients.

## 12 **The Financial Services Ombudsman**

- (a) The services of the Financial Ombudsman Service in the UK or Germany as applicable, may not be available to professional clients, unless they are, for example, consumers, small businesses or individuals acting outside of their trade, business, craft or profession.

## 13 **Compensation**

- (a) In the UK we are a member of the UK Financial Services Compensation Scheme. You may be entitled to claim compensation from that scheme if we cannot meet our obligations to you. This will depend on the type of business and the circumstances of the claim. This will depend on the type of business and the circumstances of the claim.
- (b) In Germany we are a member of the deposit protection fund of the Bundesverband deutscher Banken e.V. According to its statute – subject to the exceptions stipulated therein – the deposit protection fund protects deposits, i.e. account balances resulting from funds remaining in an account as part of banking transactions, or from intermediate balances, and which are to be repaid by the bank under currently applicable conditions.
- (c) Under each regime, circumstances of the claim; compensation is only available for certain types of claimants and claims in respect of certain types of business. Eligibility for compensation from the scheme is determined under the rules applicable to the scheme and your rights (if any) to make a claim are unlikely to be directly affected by your categorisation as a professional client. For more information please see the UBS Terms of Business which can be found at [www.ubs.com/ibterms](http://www.ubs.com/ibterms).

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<sup>23</sup> Art. 24 (1) Directive 2014/65/EU, and as applicable §63 (1) of German Security Act or COBS 2.1.3G

# Consequences of categorisation as an eligible counterparty

## 1 Client agreement

- (a) MiFID II requires that a firm when dealing with a professional or retail client:
- (i) enter into a written basic agreement, on paper or other durable medium, with the client which sets out the essential rights and obligations of the firm and the client;
  - (ii) in good time and before a client is bound by the terms and before the provision of services commences, provide the client with:
    - (A) the terms of any such agreement; and
    - (B) the information about the firm and its services relating to that agreement or to those services required by COBS 6.1ZA in the UK or German law as applicable (Information about a firm and its services), including information on communications, conflicts of interest and authorised status.
- (b) These requirements do not apply when a firm is dealing with an eligible counterparty. Nevertheless all clients of UBS's investment banking division are provided with terms of business and a copy of the current version of those terms of business can be found at [www.ubs.com/ibterms](http://www.ubs.com/ibterms).

## 2 Appropriateness

By categorising you as an eligible counterparty, a firm is not required to assess the appropriateness of investment services or products that may be provided or made available to you as an eligible counterparty.

## 3 Best Execution

Where a firm executes an order for a professional client, the firm is subject to an obligation to take all sufficient steps to obtain the best possible execution result for the professional client's order. In discharging this obligation, the firm must consider a number of execution factors, to allow it to deliver the best possible result for the professional client, in accordance with the firms' order handling & execution policy. These execution factors include price, cost, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order. Where you elect to be treated as an eligible counterparty, we will not be under an obligation to take all sufficient steps to obtain the best possible execution result for you.

## 4 Order Handling

- (a) Where a professional client places an order, a firm is under an obligation to execute orders in accordance with certain procedures and arrangements which provide for the prompt, fair and expeditious execution of the order, relative to other client orders or the firms' trading interests, in accordance with the firms' order handling policy. Where you elect to be treated as an eligible counterparty, our order handling policy and related order handling protections may not apply.

## 5 Target market identification and compatibility

- (a) Where a firm manufactures financial instruments for sale to clients, the firm must ensure that those financial instruments

are designed to meet the needs of an identified target market of end clients, ensure that the distribution strategy for the financial instruments is compatible with the identified target market, and take reasonable steps to ensure that the financial instruments are distributed to the identified target market.

- (b) The firm is also obliged to understand the products offered or sold to professional clients. The firm must assess the compatibility of the products offered or sold to professional clients as compared with their needs and ensure that the products are only offered or sold to professional clients where this is in the clients' interests.
- (c) If you elect to be treated as an eligible counterparty, these protections will no longer apply to you.

## 6 Disclosure on financial instruments, costs and charges, remuneration and commissions

- (a) Firms must provide professional clients with certain disclosures, relating to the nature and risks of financial instruments traded for or with them, and information on all costs and charges (including fees, commissions, charges and expenses) in relation to the provision of investment services, ancillary services and, where applicable, financial instruments traded with or for them, in accordance with laws and regulations. Where you elect to be treated as an eligible counterparty, the information which we may provide to you (in some cases, with your agreement) may not be as comprehensive or detailed as it would be for a professional client.

- (b) When providing services to a professional client, firms are under an obligation to disclose to the client if they pay or receive a fee or commission or provide or are provided with a non-monetary benefit in connection with the services we provide to the client, to or by a third party. In addition, firms may only pay or receive such fee, commission or non-monetary benefit if the payment or benefit is designed to enhance the quality of the service provided to the professional client and does not impair their duty to act honestly, fairly and professionally in accordance with the best interests of the professional client. Where you elect to be treated as an eligible counterparty, we shall not be restricted in this manner, when paying or receiving such fee, commission or non-monetary benefit in connection with the services we provide to you. In addition, we shall not be required to make disclosure as to the payment or receipt of such fee, commission or non-monetary benefit to you.

## 7 Packaged products

- (a) Where a firm offers an investment service together with another service or product as part of a package or as a condition for the same agreement or package, the firm must inform a professional client whether it is possible to buy the different components separately and provide the client with the costs and charges of buying each component separately. If you elect to be treated as an eligible counterparty, we will not be under an obligation to make such disclosures to you.

# Disclaimer

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These materials have not been prepared with regard to the specific investment objectives, financial situation or particular needs of any specific client. They are published solely for information purposes and should not be construed as an invitation or offer to buy or sell any securities or related financial instruments or to participate in any particular trading strategy. No recipient should construe the contents of these materials as legal, tax, accounting, regulatory, or other specialist or technical advice or services or investment advice or a personal recommendation. No representation or warranty, either express or implied, is provided in relation to the accuracy, completeness or reliability of the information contained herein, nor is it intended to be a complete statement or summary of the procedures or processes that UBS may undertake or a guarantee that the services described herein comply with all applicable laws, rules and regulations.

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