

Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (Text with EEA relevance)

CHAPTER III

OPERATING CONDITIONS FOR INVESTMENT FIRMS

SECTION 7

Eligible counterparties

Article 71

Eligible counterparties^{F1}...

1 In addition to the categories which are explicitly set out in [^{F2}rule 3.6.2 of the Conduct of Business sourcebook], [^{F3}the FCA] may recognise as eligible counterparty^{F4}... an undertaking falling within a category of clients who are to be considered professional clients in accordance with [^{F5}paragraph 3(a), (b) and (c) of Schedule 1 to Regulation (EU) No 600/2014].

2 Where, pursuant to [^{F6}rule 3.7.1 of the Conduct of Business sourcebook], an eligible counterparty requests treatment as a client whose business with an investment firm is subject to [^{F7}rules in the Conduct of Business; Market Conduct; Senior Management Arrangements, Systems and Controls and the Product Intervention and Product Governance sourcebooks which were relied on by the United Kingdom immediately before IP completion day to implement Articles 24, 25, 27 and 28 of Directive 2014/65/EU (“the relevant rules”)], the request should be made in writing, and shall indicate whether the treatment as retail client or professional client refers to one or more investment services or transactions, or one or more types of transaction or product.

3 Where an eligible counterparty requests treatment as a client whose business with an investment firm is subject to [^{F8}the relevant rules], but does not expressly request treatment as a retail client, the firm shall treat that eligible counterparty as a professional client.

4 Where the eligible counterparty expressly requests treatment as a retail client, the investment firm shall treat the eligible counterparty as a retail client, applying the provisions in respect of requests of non-professional treatment specified in [^{F9}paragraph 4 of Schedule 1 to Regulation (EU) No 600/2014].

5 Where a client requests to be treated as an eligible counterparty, in accordance with [^{F10}rule 3.6.4A of the Conduct of Business sourcebook], the following procedure shall be followed:

- a the investment firm shall provide the client with a clear written warning of the consequences for the client of such a request, including the protections they may lose;
- b the client shall confirm in writing the request to be treated as an eligible counterparty either generally or in respect of one or more investment services or a transaction or type of transaction or product and that they are aware of the consequences of the protection they may lose as a result of the request.

Changes to legislation: There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2017/565. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

- F1** Words in Art. 71 heading omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **49(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F2** Words in Art. 71(1) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **49(b)(i)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F3** Words in Art. 71(1) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **49(b)(ii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F4** Words in Art. 71(1) omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **49(b)(iii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F5** Words in Art. 71(1) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **49(b)(iv)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F6** Words in Art. 71(2) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **49(c)(i)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F7** Words in Art. 71(2) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **49(c)(ii)** (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 12(s)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F8** Words in Art. 71(3) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **49(d)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F9** Words in Art. 71(4) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **49(e)** (as amended by S.I. 2019/1212, regs. 1(3), **14(8)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F10** Words in Art. 71(5) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **49(f)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation:

There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2017/565. Any changes that have already been made to the legislation appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to :

- Regulation power to amend or revoke conferred by [2023 c. 29 s. 1517](#)
- Regulation power to modify conferred by [2023 c. 29 s. 3Sch. 1 Pt. 3](#)
- Regulation power to modify conferred by [2023 c. 29 s. 1317](#)
- Regulation revoked by [2023 c. 29 Sch. 1 Pt. 3](#)

Changes and effects yet to be applied to the whole legislation item and associated provisions

- Art. 3(1B) omitted by [S.I. 2022/1297 reg. 2\(3\)](#)
- Art. 3(1ZA) inserted by [S.I. 2022/1297 reg. 2\(2\)\(b\)](#)