



22/11/2019 | Compliance Department

# Client Categorization Policy

Version n° 5

Approved at the meeting of the Board of Directors of *Banque de Patrimoines Privés* on December 5, 2019

## Table of Contents

1. PURPOSE.....	2
2. PARTIES INVOLVED .....	3
3. Client categorization .....	3
3.1. Categorization .....	3
3.1.1. Retail clients.....	4
3.1.2. Professional clients .....	4
3.1.3. Eligible counterparties.....	5
3.2. Notification requirements .....	6
3.3. Change of category .....	6
3.3.1. Upgrading .....	6
3.3.2. Downgrading.....	7
3.3.3. Notification requirements .....	7
3.4. Monitoring obligations.....	8
4. LEGAL REFERENCES* .....	8
5. HISTORY .....	8
Exhibit I - Client Categorization Opting Up or Down request form .....	9

## 1. PURPOSE

---

*Banque de Patrimoines Privés, SA* (hereafter, the “Bank”), when providing investment services and ancillary services to its clients, shall proceed to a categorization of the said clients pursuant to MiFID II requirements, as such term is defined below.

Client categorization should reflect the level of knowledge, experience and ability of the client to understand the risks related to his/her investments in financial instruments.

The requirements as regards client categorization are laid down in the Directive 2014/65/EU of the European Parliament and of the Council of May 15, 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (herein referred to as “MiFID II”) and by the relevant delegated acts (e.g. Commission Delegated Regulation (EU) 2017/565 of April 25, 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organizational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (hereinafter referred to as “DR-MiFID II”).

MiFID II has been transposed in the Luxembourg legal environment by the law of May 30, 2018 on markets in financial instruments, and complemented by a Grand-ducal regulation of May 30, 2018 on the protection of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or nonmonetary benefits.

This policy aims to define a framework and control environment with a view to strengthen the protection of the interests of the Bank's clients by categorizing clients according to their characteristics (retail, professional or eligible counterparties). MiFID provides that the conduct of business rules shall be applied according to the type of client.

In this policy, reference to clients shall mean natural or legal person to whom the Bank provides investment services or ancillary services.

## 2. PARTIES INVOLVED

---

- Authorized Management;
- Wealth Management and all related sub-departments (“WM”);
- Depository bank;
- Professional Client Services and all related sub-departments (“PCS”);
- Compliance; and
- Operations department.

WM and Depository bank are herein referred to as the “Sales function”.

- **Sales function**

The Sales function is responsible for:

- determining the category (retail, professional, eligible counterparty) of clients;
- ensuring monitoring and documenting justification of possible changes to the categorization of clients; and
- collecting the opt-up / opt-down form, as attached hereto as exhibit I, completed and signed by a client should the latter want to be classified in a different category and running plausibility checks as to the request made by the client.

- **PCS**

On the basis of the information received by the Sales function, PCS is in charge of entering the client categorization into Avaloq.

PCS shall make sure that the information can be tracked, by placing the received documents in the new client account file.

- **Compliance**

The Compliance function of the Bank (the Chief Compliance Officer and his/her designated backups) is responsible for second-level checks of the checks performed by the first line of defense as regards the categorization of clients.

## 3. Client categorization

---

**Responsibility:** Sales function

### 3.1. Categorization

The Bank categorizes each client as:

- retail client (also called "non-professional");
- professional client; and
- eligible counterparty.

The category assigned to a client according to MiFID principles determines which code of conduct the Bank is due to apply according to the client's level of protection.

The Bank has decided to categorize its clients in terms of the overall relationship with the client, not only based on one transaction or one service provided in isolation. It is the responsibility of the Sales department to assign a category to the client by assessing the information provided by clients about their own activities.

### 3.1.1. Retail clients

Retail clients form part of a residual category under MiFID II including by default all persons that do not meet the criteria defining the categories of professional clients and eligible counterparties. However, this category may also include professional clients and eligible counterparties, who in general or in connection with specific services, transactions or financial instruments have not applied or have applied for and obtained a downgrade to the category of retail clients.

Retail clients benefit from a higher level of protection than professional clients, who are supposed to have, for the types of investment services in respect of which they have been categorized as being professional clients, the necessary experience, knowledge and expertise to make their own investment decisions and properly assess the risks they incur in relation thereto. Retail clients are afforded an additional level of protection compared to professional clients, in particular owing to the fact that the Bank must provide detailed information on the financial services and instruments offered and owing to the obligation imposed on the Bank to assess the clients' knowledge, experience and expertise before providing investment services.

### 3.1.2. Professional clients

According to MiFID II, a professional client is defined as a client who i) possesses the experience, knowledge and expertise to make his/her own investment decisions; and ii) is able to properly assess the risks that s/he incurs by investing in financial instruments.

Classifying a client as professional may have consequence of limited or partial application of certain protective provisions under MiFID II, including those contained in articles 24, 25 and 27 thereof and related articles of DR-MiFID II.

It is possible to make a distinction between:

- clients which fall "*per se*" within the category of professional clients ("Professional Client(s) *per se*"); and
- retail clients who apply for and obtain dispensation to be treated as retail clients ("Elective Professional Client(s)").

Professional Clients *per se* refer in practice to parties (Luxembourg/EU/non-EU) authorized or regulated to operate on financial markets. It includes, in compliance with criteria defined in Section A of Annex III of the law of April 5, 1993, as amended, on the financial sector (the "Banking Act"), the following entities:

- credit institutions;
- investment firms;
- other authorized or regulated financial institutions;

- insurance undertakings and reinsurance undertakings;
- collective investment schemes and their management companies;
- pension funds and management companies of such funds;
- commodity and commodity derivatives dealers;
- local firms as defined in Article 3(1)(p) of Directive 2006/49/EC; and
- other institutional investors.

Professional Clients *per se* also include according to the Banking Act:

- large undertakings meeting two of the following size requirements on a company basis:
  - o total balance sheet: €20,000,000;
  - o net turnover: €40,000,000;
  - o equity: €2,000,000;
- national and regional governments, public bodies that manage public debt, Central Banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB and other similar international organizations; and
- other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitization of assets or other financing transactions.

The protection provided to professional clients takes into account the knowledge and experience that such clients have in general with respect to the investment services they request or are being offered. Consequently, these clients are able to decide on their own which information they need to take their decisions on an informed basis.

### 3.1.3. Eligible counterparties

The category of eligible counterparties is a subset of professional clients, who have wide-ranging knowledge and experience in financial transactions, meaning that statutory safeguards apply only to a very limited extent.

According to the Banking Act, the following professional clients may be classified as eligible counterparties:

- investment firms;
- credit institutions;
- insurance companies;
- UCITS and their management companies;
- pension funds and their management companies;
- other financial institutions authorized or regulated under Union law or under the national law of a Member State;
- national governments and their corresponding offices including public bodies that deal with public debt at national level, central banks; and supranational organizations.

These clients have the lowest level of protection since the Bank is allowed to assume that those acting on their behalf have sufficient experience, knowledge and expertise to make investment decisions and to adequately assess the risks involved therein.

## 3.2. Notification requirements

The Bank is bound to notify the clients in durable medium of the categorization assigned to them and to inform them (i) of their possible right to request a different categorization, and, in the latter case, (ii) of the consequences which such different categorization would have in terms of protection and rights under MiFID II.

## 3.3. Change of category

### 3.3.1. Upgrading

MiFID II lays down strict conditions for moving from the category of retail clients to that of professional clients and of professional clients to eligible counterparties. This upgrade must undergo a specific process, which involves the following steps:

- written request for upgrade from a client (natural or legal person) using the Client Categorization Opting Up or Down request form, as attached hereto as annex I, through which the client informs the Bank of his/her wish to be treated as an Elective Professional Client or eligible counterparty and declares in writing that s/he is aware of the consequences deriving from the loss of such protection and rights;
- the Bank assesses the client's ability to knowingly make his/her own decisions on investments in financial instruments and to understand the risks related thereto.

Such assessment involves the client's expertise, experience and knowledge in financial instruments.

As regards the upgrade from retail clients to professional clients, at least two of the following requisites must be met for a request for upgrade to be approved, it being to be noted that the Bank may consider to apply additional criteria on a case-by-case basis:

- the client must have carried out transactions of significant size on the market concerned at an average frequency of 10 trades per quarter in the preceding four quarters;
- the value of the client's portfolio of financial instruments, including cash deposits and financial instruments, must exceed €500,000; and
- the client must work or have worked in the financial sector for at least one year in a professional position that requires knowledge of the transactions or services envisaged.

For legal persons, the above assessment may be carried out with reference to the person authorized to make the trades on behalf of the legal person.

The Bank must decide, based on the reasonable measures adopted for such purposes, whether the client applying to be treated as an Elective Professional Client possesses the necessary requisites for that purpose.

The Bank accepts/declines the request for upgrade and informs the client accordingly.

As regards the upgrade from professional clients to eligible counterparties, the Bank will first check if the services provided to the client consist only of execution of orders, trading on own account, the reception and transmission of orders or a directly thereto related ancillary service and if the client qualifies as

- investment firms
- credit institutions

- insurance companies
- UCITS and their management companies
- pension funds and their management companies
- other financial institutions authorized or regulated under Community legislation or the national law of a Member State
- undertakings exempted from the application of Directive 2004/39/EC under article 2(1)(k) and (l) of that directive
- national governments and their corresponding offices including public bodies that deal with public debt, central banks and supranational organizations

If the request for upgrade from the client has been made in connection with a particular investment service or transaction or type of transactions or products, the assessment concerned must be made with reference only to the services/transactions/products for which the upgrade request has been made.

The Bank must decide, based on the reasonable measures adopted for such purposes, whether the client applying to be treated as an eligible counterparty fulfils the conditions as defined herein.

The Bank accepts/declines the request for upgrade and informs the client accordingly.

### 3.3.2. Downgrading

A client, who has been classified as an eligible counterparty or professional client, might feel no longer able to properly assess or manage the risks s/he is taking or has taken by investing in financial instruments or otherwise wish to benefit from a higher level of protection (i.e. the level of protection offered to a retail client). As a result, s/he might apply to be treated as a professional client (if qualified initially as eligible counterparty) or retail client.

This downgrade must undergo a specific process, which involves the following steps:

- a written request for downgrade from the client through which the said client informs the Bank that s/he wants to be treated as a professional client (if qualified initially as eligible counterparty) or retail client either generally or in relation to a particular investment service or transaction or type of transactions or products;
- the Bank notifies the client's in writing and in clear terms of the consequences (if any) of the requested downgrade;
- the Bank confirms/declines the request for downgrade and informs the client accordingly.

A client may be downgraded not only at his/her request but also at the Bank's initiative. In that case, the Bank shall only inform the client that i) s/he has been re-classified in another category and ii) of the level of protection s/he will benefit as a result of such downgrade.

### 3.3.3. Notification requirements

The Bank is bound to notify the clients in durable medium of the categorization assigned to them following their request of categorization change and of the consequences which such different categorization would have in terms of protection and rights under MiFID II

### 3.4. Monitoring obligations

The Sales function shall review at least on an annual basis whether respective clients classified as eligible counterparties and professional clients still meet the criteria defined to be treated as such. In cases where the Relationship Manager in charge, based on information provided by the client, identifies that the client does not meet any longer the criteria as defined, it will take adequate measures, such as downgrading the categorization of the concerned client under MiFID II, in consultation with the Compliance function of the Bank. The communication process as defined under section 3.3.3 hereof will be followed. PCS shall register in Avaloq the new categorization allocated to the client.

## 4. LEGAL REFERENCES\*

Directive 2014/65/EU of the European Parliament and of the Council of May 15, 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ("MiFID II")
Commission Delegated Regulation (EU) 2017/565 of April 25, 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organizational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive
CSSF circular 12/552, as amended
Law of 30 May 2018 on markets in financial instrument, and transposing MiFID II into Luxembourg law
Grand-ducal Regulation of 30 May 2018 on the protection of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits

\*non exhaustive

## 5. HISTORY

Version n°	Date	Author	Modification
4	25/08/2017	Bertrand Roche	
5	22/11/2019	Jérôme Goepfert	Adapted to new template - Global review – Insertion of a client categorization opting up or down request form

## Exhibit I - Client Categorization Opting Up or Down request form

---



## CLIENT CLASSIFICATION

### OPTING UP or DOWN REQUEST FORM

Account Holder(s) \_\_\_\_\_

Account base number \_\_\_\_\_

Under the Markets in Financial Instruments Directive (MIFID), you as Account Holder may request *Banque de Patrimoines Privés* (hereinafter “we” or the “Bank”) to treat you in a different category as further contemplated herein.

Please confirm whether you request the classification as contemplated hereby on a general basis or for specific trades only.

- general  
 specific. Please provide details: \_\_\_\_\_

**Opt-up request from professional client to eligible counterparty**

If the Bank provides investment services to you that only consist of execution of orders, trading on own account, the reception and transmission of orders or a directly thereto related ancillary service and if you qualify as a

- investment firms  
 credit institutions  
 insurance companies  
 UCITS and their management companies  
 pension funds and their management companies  
 other financial institutions authorized or regulated under Community legislation or the national law of a Member State  
 undertakings exempted from the application of Directive 2004/39/EC under article 2(1)(k) and (l) of that directive  
 national governments and their corresponding offices including public bodies that deal with public debt, central banks and supranational organizations  
(please tick as appropriate)

you may request the Bank to classify you as eligible counterparty.

**Opt-up request from retail client to professional client**

You may request to be treated as an elective professional client if, after our assessment of your expertise, experience, and knowledge of you, we are reasonably assured that, in light of the nature of the transactions or services envisaged, you are capable of making your own investment decisions and understanding the risks involved thereto. This is a “qualitative test”.

In making our assessment, we may rely on information we already possess about you and/or request additional information from you and/or call you to discuss your investment experience.

In addition to the above qualitative test, you must satisfy at least 2 of the following 3 criteria (please tick as appropriate):

- you have carried out transactions, in significant size, on the relevant market at an average frequency of 10 per

## CLIENT CLASSIFICATION

### OPTING UP or DOWN REQUEST FORM

quarter over the previous four quarters.

- the size of your financial instrument portfolio, defined as including cash deposits AND financial instruments, exceeds EUR 500,000.
- you work or have worked in the financial sector for at least one year in a professional position, which requires knowledge of the transaction or services envisaged.

#### **Opt-down request from professional client to retail client**

In case you would like to receive a higher level of investor protection, you can submit a request to the Bank to be categorized as retail client.

This will result in you obtaining a higher level of investor protection but it also means that some services or products can no longer be provided or not in the same way as to professional clients.

The increased level of protection of a retail client comprises amongst others of the following aspects:

- the Bank will provide you with more information about the Bank, its services and your investments (for example about costs, inducements, costs and charges);
- when determining the appropriateness of a product or service, we may no longer assume that you as retail client have sufficient knowledge and experience to understand the associated risks;
- if it appears your profile is not appropriate for the product or service, we may not provide it to you;
- we are obliged to give the total costs of the transaction the highest priority in compliance with our best execution obligation;
- inform promptly about every disruption which may hinder adequate execution of their order(s);
- when we provide portfolio discretionary management services to retail clients, we provide extensive periodic reports;
- may have more rights to compensation of losses in accordance with any investor-compensation schemes; and
- receiving detailed risk related information about the products or services they take from us.

#### **DECLARATION AND WARRANTIES**

If you request to be treated as a professional client, you warrant that you satisfy at least two of the three criteria listed above.

Besides, you hereby confirm that you have read and understood the written warning below from the Bank regarding the protections and compensation rights that you may lose by being treated in a different category and you are aware of the consequences of losing such protections.

Finally, you are aware and confirm that it is up to you to keep the Bank informed of any change that could affect your classification under MiFID.

#### **WARNING REGARDING RETAIL VS. PROFESSIONAL CLASSIFICATION**

The main differences in regulatory protections afforded to retail clients vs. professional clients are:

- communications, including financial promotions made by the Bank with professional clients are not subject to all of the requirements imposed by MiFID on communications with retail clients;
- information provisions about the Bank, its services, and remuneration that are required with respect to retail clients are not all required with respect to professional clients; and

## CLIENT CLASSIFICATION

### OPTING UP or DOWN REQUEST FORM

- pre-requirements for the entry into written basic agreements for designated investment business may not apply to professional clients.

If the Bank makes manages investments of a professional client in the course of MiFID or equivalent third party business, it 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 for the purposes of suitability assessment and, where the Bank is required to provide suitability reports to a retail client, the Bank is not required in many cases to provide them to a professional client.

The Bank must provide certain product information to retail clients, but not professional clients, when selling certain complex or structured investment instruments.

The Bank must provide the client with a periodic statement when managing investments for a client. For retail clients, the content of the statement is prescribed but, for professional clients, it is not.

The Bank may take into consideration the classification of the client in following its Best Execution Policy as well as in providing information, including product information, to clients.

#### **WARNING REGARDING PROFESSIONAL VS. ELIGIBLE COUNTERPARTY CLASSIFICATION**

The main differences in regulatory protections afforded to professional clients v. eligible counterparties are that the Bank will not be required as far as eligible counterparties are concerned to:

- inform you about all steps taken into account to obtain the best possible result for you when executing your orders;
- provide you with information with respect to the commission and fees we pay or receive;
- provide you with information about the Bank, our services and applicable compensation schemes;
- provide you with detailed risk related information about the products or services you take from us;
- provide you with detailed reports with regard to the execution of your orders; and
- lay down in a written agreement the essential rights and obligations which apply to the provision of investment services.

Date:

Signature of the Account Holder(s):

---

---

---