

# **POLICY ON OPTING UP/DOWN**

**NIBC**

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CONTENTS	PAGE
<b>1. INTRODUCTION</b>	<b>3</b>
1.1. Introduction	3
1.2. When does this policy apply?	3
<b>2. OPT-UP / OPT-DOWN</b>	<b>4</b>
2.1. General	4
2.2. Opting up	5
2.2.1. Opting up by a non-Professional client	5
2.2.2. Opting up by a Professional client	6
2.3. Opting-down	6
2.3.1. Opting down by ECP	6
2.3.2. Opting down by Professional client	6
2.4. NIBC's Relationship Manager	6
Appendix 1 List of Investment Services and Activities, Ancillary Services and Financial Instruments	

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# 1. INTRODUCTION

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## 1.1. Introduction

With the implementation of the Markets in Financial Instruments Directive ('MiFID<sup>1</sup>') in the Dutch Financial Supervision Act ('DFSA') as of November 2007, further harmonisation of the various national rules and increasing of investor protection has been accomplished. As such MiFID contributes to the completion of one European market for investment services. The provisions of the DFSA are applicable to rendering investment services and activities or ancillary services in financial instruments<sup>2</sup>.

Within the DFSA provisions are implemented to ensure fair and honest trading and to provide the client with a suitable level of client protection as soon as NIBC Bank N.V. ('NIBC') renders investment services in financial instruments (being investment advice, asset management and execution only services) or activities on client's behalf.

Prior to rendering investment services, NIBC needs to classify the client in accordance with the client categories as distinguished in the DFSA. There are three categories each with their specific level of client protection related to certain investment services. To determine the level of client protection applicable when rendering the abovementioned investment services, NIBC needs to have a client classification procedure in place wherein the classification process is described (section 4.18 e DFSA).

## 1.2. When does this policy apply?

The Policy Opting up/down ('Policy') applies after the initial classification process has been finalised and in case NIBC is about to render investment services or activities in relation to a financial instrument. This Policy is not applicable when NIBC offers the client so called ancillary services.

This Policy comes into effect on 1 November 2011. It replaces the Policy Description on Client Categorisation issued on 20 April 2011.

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<sup>1</sup> The MiFID came into force throughout Europe on November 1st 2007.

<sup>2</sup> The definition of investment services and activities and financial instruments as described in section 1.1 of the DFSA is attached ('Appendix 1').

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## 2. OPT-UP / OPT-DOWN

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### 2.1. General

Prior to rendering an investment service or activity, NIBC needs to classify the client. The classification will be done in accordance with the preset client categories. As mentioned under 1.1 the client classification is needed to determine which level of client protection NIBC has to take into account when rendering investment services or activities in financial instruments. Within the DFSA (section 4.18 a) three types of clients are defined, namely:

- Eligible Counterparties ('ECP')
  - o An ECP<sup>3</sup> is any one of the following
    - management company of a collective investment scheme;
    - management company of a pension fund or of a comparable legal person or company;
    - collective investment scheme;
    - investment firm;
    - national or regional government body, or governmental body administering the public debt;
    - central bank;
    - financial institution;
    - international or supranational organisation governed by public law or comparable international organisation;
    - credit institution;
    - market maker;
    - pension fund or comparable legal person or company;
    - person or company trading for its own account in commodities and derivatives on commodities;
    - local firm;
    - insurer.
- Professional clients
  - o A large undertaking that meets two of the following three size criteria:
    - Balance sheet total of EUR 20 million or more
    - Net turnover of EUR 40 million or more
    - Equity of EUR 2 million or more
  - o An enterprise whose main activity is investing in financial instruments, securitisations or other financial instruments.
- Non-professional clients
  - o All clients that do not fall within the category ECP or Professional Client.

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<sup>3</sup> Professional clients when conducting specific types of investment services, being execution of orders or directly related/linked ancillary services.

The level of client protection increases from ECP to non-Professional Clients meaning that an ECP receives the least protection whereas a non-Professional Client receives the highest protection. If the client has been classified as ECP the client will be treated as Professional Client in case the investment service concerns investment advice or asset management.

Within NIBC the Relationship Manager ('RM') is responsible for the client classification. The RM will base the client classification on the objective criteria of section 1.1 of the DFSA. In principle, the client will only be classified once, and will only change in case client's circumstances changes in a manner that it will have an impact on the classification. This classification will be leading for all investment services or activities in relation to financial instruments rendered to the client, unless an opt-up/opt-down request has been made.

After classification by the RM, the client classification will be confirmed to the client in writing. In the client confirmation letter reference is made to this Policy for the possibilities to change the client classification. The client classification letter will contain an explanation of the consequences and possible options the client may have.

## **2.2. Opting up**

It is NIBC's policy to allow Professional Clients or non-Professional Clients to opt up to the next higher client category.

### **2.2.1. Opting up by a non-Professional client**

Requests from non-Professional Clients to opt up to Professional client may be accepted by the RM, whereby the client is considered an expert or to have sufficient knowledge if that client meets two out of the following three criteria (as set out in section 4.18c under 2 DFSA):

- The client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters.
- The size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments exceeds EUR 500 000.
- The client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.

Further, such non-Professional Clients, when requesting opting up to Professional Client, must state in writing to the RM of NIBC that (as set out in section 49b of the Decree behavioural supervision financial enterprises) that:

- It wishes to be treated as Professional Client; and
- It accepts the lesser level of protection given to Professional clients.

A template for such opt up request letter can be downloaded from NIBC's website. The RM will warn the client (clearly written) of the protections and investor compensation rights they may lose.

Any such opt-up by a non-Professional Client to the level of Professional Client is in principle for a specific product or service. For any other product or service, the client remains non-Professional and any opt-up assessment should be carried out anew with a view to that other product or service.

## **2.2.2. Opting up by a Professional client**

- (a) NIBC may opt up a Professional Client to ECP in cases where the Professional Client has previously agreed to such opt up in writing.
- (b) A Professional Client, being an entity that opted up from the Non-Professional status based on the criteria mentioned below, may request NIBC in writing to opt up to ECP for Regime II and III.

If the client is a legal entity classified as Professional Client, NIBC itself may classify the client as ECP for certain investment services if the client agrees with this classification in writing and meets two out of the following three criteria:

- 1°. a balance sheet total of € 20,000,000 or more;
- 2°. net turnover of € 40,000,000 or more;
- 3°. equity capital of € 2,000,000 or more

## **2.3. Opting-down**

### **2.3.1. Opting down by ECP**

ECP's are allowed to request for a opt down to the level of Professional Client. Requests for such opting down must be made in writing. A template for such request letter can be downloaded from NIBC's website.

### **2.3.2. Opting down by Professional client**

NIBC does not allow for ECP's to opt down to the level of Non-Professionals.

## **2.4. NIBC's Relationship Manager**

The RM, before deciding to accept any request for opting up or opting down, is required to take all reasonable steps to ensure that the client requesting to be treated as a Professional Client or ECP meets the relevant requirements stated above.

The client is responsible for keeping NIBC's RM informed about any change, which could affect the current categorisation (e.g. major changes affecting client's financial situation; investment objectives; knowledge and experience in the investment field relevant to the specific type of product or service). The RM of NIBC shall update the client profile in accordance with the information received. Should however NIBC (the RM) become aware that the client no longer fulfils the initial conditions, which made the client eligible for a Professional Client or ECP treatment, NIBC (the RM) will take appropriate action. The client will be informed of this in writing by the RM.

## **Appendix 1      List of Investment Services and Activities, Ancillary Services and Financial Instruments**

### **Section A**

#### **Investment services and activities**

- (1) Reception and transmission of orders in relation to one or more financial instruments.
- (2) Execution of orders on behalf of clients.
- (3) Placing of financial instruments without a firm commitment basis.
- (4) Portfolio management.
- (5) Investment advice.
- (6) Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis.
- (7) Dealing on own account.
- (8) Operation of Multilateral Trading Facilities.

### **Section B**

#### **Ancillary services**

- a. custody and management of financial instruments for the account of clients, including safekeeping and related services such as cash or securities custody;
- b. granting credits or loans to an investor so as to enable the latter to conduct a transaction in one or more financial instruments, where the firm granting the credit or loan is a party to the transaction;
- c. advice to enterprises on capital structure, industrial strategy and related matters, and advice and services relating to mergers and the purchase of enterprises;
- d. foreign exchange services where these are connected to the provision of investment services;
- e. investment research and financial analysis or other forms of general recommendations relating to transactions in financial instruments;
- f. services related to underwriting;
- g. investment services or activities as well as ancillary services relating to the underlying security of the financial instruments, as referred to under (e), (f), (g) or (i) of the definition of financial instrument, to the extent that these are connected to the provision of investment or ancillary services.

### **Section C**

#### **Financial Instruments**

- a. transferable securities;
- b. money market instruments;
- c. units in a collective investment scheme, not being securities;
- d. options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivative instruments, indices or financial measures which may be settled physically or in cash;
- e. options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties, otherwise than by reason of a default or other termination event;
- f. options, futures, swaps and any other derivative contracts relating to commodities that can only be physically settled provided they are traded on a regulated market or a multilateral trading facility;
- g. options, futures, swaps or forward rate agreements other than those referred to under (f) and any other derivative contracts relating to commodities which can be physically settled and are not intended for commercial purposes, and which have the characteristics of other derivative financial instruments;
- h. derivative instruments for the transfer of credit risk;

- i. financial contracts for differences;
- j. options, futures, swaps, forward rate agreements and any other derivative contracts relating to climate variables, freight rates, emission rights, inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties, otherwise than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices or measures other than those referred to above which have the characteristics of other derivative financial instruments.