

THE ASSESSMENT OF ELIGIBLE CLIENT NUMBERS FOR FUND A FIRMS

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The levy rate for participant firms in Fund A has, since the establishment of the ICCL, been based on broad bands to minimise the need for detailed logging and verification of eligible client numbers.

The following guidelines and answers to frequently asked questions are intended to clarify certain issues in respect of which clarification has been requested by participating firms. These guidelines may be varied or added to in the future as the ICCL considers necessary.

Guidelines:

The following fundamental principles should be used when assessing if a client should be counted as “an eligible client”:

- the assessment should be done annually
- the period of assessment will be the participant firm’s financial year which ended immediately prior to the commencement of the ICCL funding year. (e.g. where a participant firm’s financial year ends on 31 March 2016, this financial data should be used for the ICCL Funding Year commencing 1 August 2016.)
- the participant firm should count all clients who at any stage throughout the firm’s financial year met the definition of eligible investor under section 2 of the Investor Compensation Act, 1998 (the Act). This will include “execution only” clients.

In effect, the ICCL’s definition of “eligible client” means a person, not being an “excluded investor”, who has entrusted money or investment instruments to an investment firm in connection with the provision of investment business services by the investment firm.

The answers to the frequently asked questions outlined below should be of further assistance to firms in determining if clients of the firm should be counted as “eligible clients” for the purposes of calculating the appropriate annual levy to the ICCL. The ICCL will continue to be available to give guidance to participants where there is any question of doubt or uncertainty.

1. Should execution-only clients be included?

Yes, an execution-only client, not being an excluded investor, who has transacted business with the participant firm during the period of assessment should be included, regardless of whether there is any residual balance remaining on the client's account.

2. Should a client who invests or redeems a once-off lump sum with a Product Producer via the participant firm be included?

This client should be included in "eligible client" numbers in the year(s) in which the lump sum is invested or redeemed.

3. Should Employment and Investment Incentive Scheme (EIS) and/or Business Expansion Scheme (BES) clients be included?

You should include eligible clients who have entered or exited the EIS and/or BES scheme during the year in question.

4. Should a client who deals with more than one entity within a group be included?

Yes. You should include eligible clients for whom a receipt and transmission service was provided by one group entity even if the order was passed to another group entity for execution.

5. Why should clients covered for Deposit Protection Scheme purposes also be included in eligible client numbers for the Investor Compensation Scheme?

The number of different and separate interactions which entities within a group have with an eligible investor increases the overall risk profile of the group. Therefore, firms must include all relevant interactions with clients for the purposes of calculating eligible clients for the Investor Compensation Scheme.

6. How should clients investing in Tracker bonds be dealt with?

Tracker bonds are investment instruments for the purposes of the Investment Intermediaries Act, 1995 and investment services in regard to these instruments may be provided by firms authorised under that Act. Firms authorised under the European Communities (Markets in Financial Instruments) Regulations 2007 may also be authorised to provide investment services in regard to these instruments. Clients of an authorised investment firm who deal in these instruments could be eligible to claim compensation in respect of tracker bonds should that firm fail. On this basis, these clients must be included when determining the number of eligible clients of each firm.

Tracker Deposit Investors should be included in eligible client numbers, including at the initial investment and maturity stages.

7. Should Professional clients be included in eligible client numbers?

Professional and institutional clients are specifically excluded under section 2 of the Act. A professional client has the meaning given by the European Communities (Markets in Financial Instruments) Regulations 2007 (the MIFID). Schedule 2 of

MIFID states that “A professional client is a client who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs.”

In determining eligible client numbers for the purposes of calculating the appropriate ICCL contribution, firms should exclude professional clients as set out in Schedule 2 of MIFID.

8. Should Bed and Breakfast clients be included?

Bed and Breakfast clients must be included in eligible clients unless the firm does not at any time hold/control money or investment instruments.

9. Should accountants be included in eligible client numbers?

Yes. An accountant should be included unless:

- 9.1. the accountant is acting as a provider of investment business services, or
- 9.2. the accountant is a professional investor as referred to in question 7 above.

10. Should clients which have been referred by an accountant be included?

Yes. Clients which are referred by accountants to participant firms, do qualify to be treated as eligible investors by the participant firm and should be included in the assessment of eligible client numbers by the participant firm.

11. Should solicitors be included in eligible client numbers?

Yes. A solicitor should be included unless:

- 11.1. the solicitor is acting as a provider of investment business services, or
- 11.2. the solicitor is a professional investor as referred to in question 7 above.

12. Should clients which have been referred by a solicitor be included?

Yes. Clients which are referred by solicitors to participant firms, do qualify to be treated as eligible investors by the participant firm and should be included in the assessment of eligible client numbers by the participant firm.

13. How should investment clubs be treated?

A club is an association or grouping without legal personality within the meaning of Section 37(3) of the Act. Therefore, each investment club should be treated as a single eligible client.

14. Are pension funds excluded investors and therefore should they be excluded from eligible client numbers?

In general, Pension Funds meet the definition of professional and institutional clients as referred to in question 7 above. However, for the purposes of calculating

eligible client numbers, individuals operating a personal retirement account should be included.

15. How should members of Employee Share Ownership Plans (ESOPs) be treated when determining eligible client numbers?

Due to the variety of ESOP arrangements which exist, firms should adopt a 'principles' based approach when deciding how to calculate eligible client numbers in relation to their ESOP arrangements. Firms should count all ESOP members who at any stage throughout the firm's financial year met the definition of eligible investor under section 2 of the Investor Compensation Act, 1998 (the Act), including execution-only clients.

In general, ESOPs comprise three elements:

- an Employee Share Ownership Trust (ESOT - a trust),
- an Approved Profit Sharing Scheme (APSS – a trust), and,
- Beneficiaries.

When shares are transferred from an ESOT to an APSS, participants become beneficially entitled to the shares with immediate effect irrespective of any procedural delays which might occur in effecting the transfer of shares from the APSS to beneficiaries.

Therefore, the following bases should be used in determining the number of eligible clients a firm has in relation to an ESOP - unless the clients would otherwise fall to be 'excluded investors' under section 2(1) of the Investor Compensation Act, 1998:

- The Trustee(s) of the ESOT should be counted as a single eligible client.
- The APSS Trustee(s) should be treated as a single eligible client if the Trust holds shares which are not attributable to particular beneficiaries.
- Each beneficiary, either to whom the APSS has transferred shares or on behalf of whom the Trustee(s) of the APSS holds shares, should be counted as individual eligible clients.

A key issue with regard to whether an ESOP, or, in particular, an ESOT / APSS, constitutes one eligible client or whether some, or all, of their individual members constitute eligible clients depends on whether each such ESOP / ESOT / APSS / individual member meets the definition of eligible investor. Any such determination should be undertaken on a case by case basis for any given ESOP situation.

16. How should the firm treat insurance-only clients?

Insurance-only clients should be included in a participant firm's calculation of eligible client numbers except where the insurance-only client falls under the definition of an 'excluded investor' under Section 2(1) of the Investor Compensation Act, 1998.

17. How should the firm treat clients to whom the firm provides an investment business service and an insurance business service?

An eligible client whom a participant firm identifies as both an investment and insurance client should be counted only once for the purpose of calculating the firm's eligible client numbers.

18. Does the Markets in Financial Instruments Directive (MiFID) have an impact on the calculation of eligible clients?

MiFID offers clarification with regard to a participant firm's classification and treatment of its clients. Essentially, a different standard of service can be provided to the three classifications of client (retail, professional and eligible counterparty). A participant firm's systems must be able to identify and classify each client and each client's transactions in order to ensure that the relevant rules are met.

For the purposes of MiFID, some clients may be classified as professional in respect of specific investment services or transactions or products and be classified as retail in respect of other investment services or transactions or products. Further guidance in professional clients is provided under question 7 earlier.

For the purpose of determining the appropriate contribution to the ICCL, a participant firm should include all eligible clients, even those who are only eligible in respect of a certain investment service, transaction or product. The fact that the client is classified as professional in respect of all other services, transactions or products would not exclude them from the calculation of eligible client numbers.