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Convergence of investor categorisation regimes

"Sensible principles of good regulation, including efficiency, economy, and proportionality, suggest that rules reflect the differing needs for protection, both in types and amount, of various investors whose knowledge, sophistication, and understanding varies."[1] Rules based on the principle of investor protection should differentiate between dealings with wholesale and retail investors,[2] as their needs for protection are very different.

Differing investor categorisation regimes impose burdens on international business

However, there are many different ways of defining which categories of investors benefit from which protections in different countries and, in some cases, even within the same country as between different regimes. These different approaches significantly increase the complexity and costs for securities and derivatives firms. Firms have to maintain systems to obtain relevant data from investors, keep records and apply the corresponding categorisations. Where business units in different countries deal with the same investor, different categorisations may apply. Even if there were agreement on whether an investor can be treated as a "qualified investor"[3] in two countries, the consequences of that categorisation may differ as between the countries in question.

This is particularly burdensome for globally integrated firms which offer investors a broad range of products and services and want to apply global standards across their business. Firms may respond by "levelling up" compliance or restricting their business more than is needed so as to come up with a common approach that can be applied across borders or different business units. However, in many cases, there will be no option but to follow local rules, as the firm may be required to apply particular categorisations and investors may be reluctant to provide information to deal with unfamiliar requests.

Business with qualified investors should benefit from exemptions in three main areas

There are three main areas where national rules commonly differentiate in their treatment of qualified investors:

- ***Offering restrictions.*** In many jurisdictions, prospectus registration requirements, mutual fund marketing restrictions and other rules on product marketing or solicitation distinguish between offers to, and solicitations of, qualified investors. They often allow, in effect, placements of securities or distribution of other investment products to take place without compliance with what would otherwise be burdensome prospectus

[1] Interim Report of the Committee on Capital Markets Regulation (November 2006). See Appendix 1, which also includes other relevant material on the context to this issue.

[2] This paper uses the term "investor" to cover all persons with whom a firm may deal, including clients and counterparties.

[3] This paper uses the term "qualified investor" to cover any categorisation which seeks to distinguish a category of investor that requires less protection than would normally be available under a particular rule-set, whether that categorisation uses that label or another label such as market or eligible counterparty, professional investor, institutional investor, qualified institutional buyer, intermediate client, high net worth investor, accredited investor, etc.

registration, fund approval, disclosure or other requirements where the investors to whom the securities or products are offered or sold are deemed to have sufficient expertise to be able to judge the risks for themselves. For example, in the EU, the recent harmonisation of prospectus rules exempts offers to "qualified investors" from the requirements for a prospectus and the European Commission is now consulting on a broader approach to private placements which would also cover offerings of units in collective investment undertakings. In the United States, there is a range of exemptions available in respect of offers or sales of securities to qualified institutional buyers and accredited investors.

- ***Conduct of business rules.*** Some jurisdictions allow regulated firms relief from compliance with the full burden of conduct of business rules when dealing with clients that are qualified investors. The regulatory regime thus allows the regulated firm greater freedom to agree with the client the nature and extent of the regulated firm's obligations to the client. For example, the EU Markets in Financial Instruments Directive (MiFID) distinguishes between retail clients, professional clients and eligible counterparties. Under MiFID, regulated firms need not provide eligible counterparties with certain protections (such as best execution) and firms can deal with professional clients with considerably fewer formalities than those that apply in relation to dealing with retail clients. In contrast, US conduct of business rules for securities firms do not significantly differentiate as between dealings with different classes of investor.

- ***Licensing requirements.*** In some jurisdictions, the application of licensing requirements to a firm will depend on the types of persons with which it deals. For example, the US exemption from CFTC jurisdiction afforded to persons who deal with "eligible contract participants" operates as a form of exemption from licensing requirements. Similarly, in a number of countries, some types of licensing requirements only apply if the firm offers particular products or services to retail investors (e.g consumer credit licensing rules). In other cases, the rules may provide an exemption to foreign firms engaging in cross-border business with locally resident qualified investors, in circumstances where a domestic firm would require a licence to engage in that business. For example, in countries such as Belgium, Ireland and the UK, a foreign firm can engage in cross-border business with classes of qualified investor without triggering local licensing requirements. Other countries provide exemptions from licensing requirements to foreign firms that engage in cross-border business with classes of qualified investor subject to additional conditions, such as (in Australia) where the foreign firm is licensed in a recognised jurisdiction or (under the regime for securities business in the US) where a locally licensed entity acts as an intermediary between the foreign firm and the local investor.

Aim should be to achieve greater international consistency of approach

To date there has been no attempt to promote consistency among the rules in different jurisdictions, although the prospectus directive and MiFID are bringing about greater consistency between EU member states. IOSCO should be able to play an important role in promoting international convergence in this area.

- ***Application of exemptions.*** One aim should be to achieve greater international agreement as to where national rules should provide exemptions to firms that are dealing with qualified investors. There should be broad recognition that it is appropriate to modulate the application of offering restrictions, conduct of business rules and licensing rules where firms are dealing with qualified investors. Introducing appropriate exemptions from these rules will encourage the growth of capital markets.

  Effective private placement exemptions are especially important to facilitate cross-border offerings and to enable institutional and other investors to diversify their investments. Similarly, it should be possible to agree that the burden of conduct of business rules should be reduced where regulated firms deal with qualified investors who are able to protect their own interests. Recognition of exemptions from licensing requirements where foreign firms are dealing with local qualified investors acknowledges that local institutional and other qualified investors wish to be able to access a broader range of investment opportunities and that imposing a requirement to conduct business through a local branch or subsidiary creates additional costs without serving investor needs.

- ***Minimum features of definition of qualified investor.*** The other aim should be to reach international agreement on the minimum features of a definition of the class of qualified investors that would serve as the basis for national exemption regimes. In this regard, there should be scope for progress as, despite significant differences of detail, national definitions of qualified investor categories have much in common.

  Nevertheless, there may be issues in achieving convergence in a number of areas. There may be difficulties in achieving convergence between countries as to their approach to size-based thresholds when defining a qualified investor. For example, attitudes to investor protection and differences between levels of national wealth may influence the views of regulators as to which investors require the full protection of local rules. In addition, the willingness to treat certain categories of investor (such as pension funds) as qualified investors may depend on other factors, such as the degree of other regulatory oversight or the importance of particular classes of entity in the national economy. Nevertheless, there would be benefits in greater convergence of conceptual categories, even if the thresholds or scope of particular categories still differed, as it would reduce complexity for firms.

Beyond that it is not necessary to aim for complete convergence of the design of national exemptions at the first stage. The detailed design of exemptions will depend on the structure of other national rules. For example, the extent to which the private placement exemption includes resale restrictions may depend on other features of the local prospectus regime. Similarly, the scope of exemptions from conduct of business rules will depend on the extent and burden of the national rules to which the exemptions apply. Nevertheless, it should be recognised that exemptions should aim to reduce the burden of requirements relating to (i) the information to be given to clients about the firm or its products or services, (ii) the form and content of client agreements, (iii) the suitability or appropriateness of advice or products, (iv) best execution and (v) confirmations and statements.

The table attached as Appendix 2 sets out some of the issues that have been identified in this area, detailing examples of different approaches taken and providing a suggested approach that can be used as the basis for the convergence of standards. It could also provide the basis for

encouraging transparency on the part of regulators as to the details of their regimes which would enable users of the regulatory system to track progress towards greater convergence.

In particular, that table highlights the differences of approach taken in different jurisdictions to the tests used to determine when a corporation or high net worth individual can be treated as a qualified investor. By way of further illustration of these issues, the tables attached as Appendices 3 and 4 respectively give summary examples of tests used to define when a legal entity (not a financial institution) or an individual is eligible to be treated as a qualified investor for the purposes of exemptions from offering restrictions, conduct of business rules and licensing requirements in a number of jurisdictions.

Note: The tables accompanying this paper are intended to illustrate differing approaches in different countries to issues associated with investor categorisation. They are not intended to be a comprehensive description of the legal and regulatory requirements in the countries covered or to provide legal advice. Information given in relation to EU member states assumes implementation of the MiFID and does not replicate information provided concerning the EU regime under MiFID and the Prospectus Directive (PD).

APPENDIX 1

CONTEXTS

Interim Report of the Committee on Capital Markets Regulation (November 2006):[4]

> "[O]ther financial regulators have often found it useful to develop different sets of rules for corporate transactions with wholesale (institutional) customers and retail customers. In the United States, this distinction is rarely made. The SEC does designate categories of "qualified institutional buyers" and "accredited investors" who, because they are viewed to be more sophisticated in investment matters, are permitted to purchase privately placed securities. But that type of distinction in rule-writing is the exception. By contrast, SRO rules, which govern broad ranges of securities firms' behavior, make even fewer distinctions between the responsibilities of firms dealing with wholesale (institutional) and retail clients. For example, "suitability" requirements (that impose on the broker the obligation to determine that an investment has the proper risk and other characteristics for a client) are applied to brokers dealing with both retail and institutional clients.
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> Sensible principles of good regulation, including efficiency, economy, and proportionality, suggest that rules reflect the differing needs for protection, both in types and amount, of various investors whose knowledge, sophistication, and understanding varies. Therefore, these same principles would dictate different, at least in part, rulebooks for dealings with wholesale and retail investors. No doubt, the proper application of a cost-benefit analysis would lead to the same conclusion."

EU-US Coalition on Financial Regulation, The Transatlantic Dialogue in Financial Services: The Case for Regulatory Simplification and Trading Efficiency (September 2005):[5]

> "47. Market participants are unable to agree on how many definitions there are of customer, client and counterparty. Given the broad spread of this type of definition in EU Member States, this is understandable, but it soon becomes a practical problem on a significant scale once a market participant starts to operate across a number of states and finds itself having to reclassify customers according to different criteria and recalibrate applicable rules accordingly. There is greater clarity around the number of definitions that are provided for in SEC and CFTC regimes although, even here, opinions differ, driven probably by the different patterns of business undertaken by institutions. The position is also relatively straightforward in the UK as a result of the definitions of "market counterparty", "intermediate customer" and "private customer" applying across the investment spectrum. However, client classification in continental Europe is often more of an art than a science. Despite there being an overarching acceptance of the distinction between the wholesale and retail markets in these jurisdictions, a detailed analysis is required to be undertaken on a case-by-case basis to determine the perimeters of the wholesale and retail markets (and indeed whether any distinction is in fact drawn) for each and every piece of applicable legislation - unlike in the UK global client classification has not been adopted. Such differences emphasise how client classification definitions have evolved in a highly customised fashion, with each definition having its own national justification. In the new global trading environment, this multiplicity of definitions with its bespoke rationale looks increasingly less justifiable. In the view of the Participating Associations, this is an area where the regulatory authorities should give serious consideration to creating a much more coherent policy. However,

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[4] page 65, http://www.capmktsreg.org/pdfs/11.30Committee_Interim_ReportREV2.pdf

[5] paragraphs 47-49, The Industry Case for Priority Regulatory Action: Volume I, available at http://www.cliffordchance.com/news/latest_news/details.aspx?LangID=UK&contentitemid=9017

despite the current complexities and lack of uniformity in this area, the implementation of MiFID in the EU is expected to make a significant contribution to EU convergence in respect of client classification.

48. These definitions are an essential tool in determining the borderline between institutional investors/wholesale business and retail investors/retail business. Achieving some consistency across products and across jurisdictions would be one of the most meaningful steps that could be taken in the medium term to create a more coherent transatlantic marketplace. There is no doubt that the whole new account opening process and the compliance function could be substantially simplified, offering considerable savings for businesses operating on each side of the Atlantic (and therefore for underlying investors) if the regulatory authorities could agree a set of coherent, uniform definitions by which customers could be classified.

49. One area of definitions where the variety is astonishing is in connection with net worth requirements. In certain jurisdictions, if an investor has a particular net worth then it will be treated as a form of institutional investor in the regime that is defining the net worth requirement. In the context of SEC Rule 15a-6, customers are required to have assets in excess of $100 million before they can be approached under an exemption relating to that rule. By way of contrast, the CFTC's rules concerning eligible swap participants set a net worth requirement of only $10 million. On the other side of the Atlantic, yet another set of criteria are used to determine participants in the wholesale market. For example, in the UK a body corporate or partnership with net assets of at least £5 million (or its equivalent in any other currency at the relevant time) will be classified as an "intermediate" rather than "retail" customer. These figures bear no relation to the intrinsic nature of the product."

Global Securities Industry "Recommendations for Liberalisation of Trade in Capital Markets-Related Services" (October 2005):[6]

"11. [WTO] Members should facilitate cross-border access by exempting foreign suppliers under certain circumstances from authorization requirements...As described in the IOSCO Report, many Members currently do so, taking into account one or more of the following factors:

• whether the investor is sophisticated (as defined in local law), thereby recognizing that the securities laws need not protect sophisticated investors in certain circumstances;

• whether the foreign supplier is well regulated in its home jurisdiction (i.e., unilateral or mutual recognition of other regulators);

• whether the foreign supplier solicits customers in, or actively markets its services in, the local jurisdiction; and

• whether the securities transaction is "intermediated by" (i.e., conducted through) a locally authorized supplier.

As recognized in the IOSCO Report, the regulation of cross-border suppliers is based on "considerations relating to the goals of investor protection, efficient capital markets, and the appropriate balance between these two." Even when such suppliers are exempted from authorization requirements, the provision of the services typically would remain subject to conduct of business and market conduct rules ...."

International Organisation of Securities Commissions, the Regulation of Remote Cross-border Financial Intermediaries (February 2004):[7]

[6] paragraph 11, available at http://www.sia.com/international/pdf/wtoModel_.pdf

"Some jurisdictions do not apply all local requirements to foreign intermediaries that engage in cross-border transactions with sophisticated investors from the host jurisdiction. This system recognizes that certain highly sophisticated, well-capitalized investors do not need the complete protection of securities regulations under certain circumstances. The United States SEC, for example, relies upon the sophistication of the investor in allowing certain foreign intermediaries to conduct limited securities activities in the United States under Rule 15a-66 without registering with the SEC as a broker-dealer."

Committee of European Securities Regulators, "European Regime of Investor Protection - The Professional and Counterparty Regimes" (July 2002):[8]

"2. For the members of CESR, implementing an appropriate differentiation between categories of investors for the purposes of the conduct of business regime is a necessary complement to the process of harmonising conduct of business rules. Together, progress on these two issues should contribute to an increase in the flow of financial services within the European Economic Area, by making regulation both more uniform (and therefore easier to comply with) and less prescriptive for professional clients.

3. While other investors will require a level of protection that reflects their lesser expertise, professional investors need fewer externally imposed protections. Professionals may be expected to be able to protect their own interests as well as those of their clients. In any case of course, investment firms will not only be expected to be able to protect the interests of their clients, they will be legally required to protect them, by conduct of business rules or otherwise.

4. For the members of CESR, this implies that certain investors considered to be professionals (as defined below) may be presumed to be experts in all investment services and products, or at least sufficiently knowledgeable and prudent to take the initiative of seeking additional information and advice where this appears necessary for a particular transaction or type of transaction (in such circumstances they may request a higher level of protection as described below).

5. The members of CESR agree that conduct of business rules should include a definition of the professional investor and provide for a streamlined application thereof to such investors in order to avoid over-burdensome regulation.

This does not mean that the provision of investment services between professional investors should not be subject to any conduct of business rules, but that there is no need in such situations for the full range of detailed investor protection rules. Only a few general standards, and possibly a limited number of standards for certain specific types of services and transactions, as well as any additional rules agreed by the parties concerned, should apply to inter-professional relationships."

APPENDIX 2

ISSUES

Issue	Examples of different approaches	Suggested approach
General		
Individual countries	For example, the US has many different	Countries should limit the

[7] pages 5-6, available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD162.pdf

[8] paragraphs 2-5 Annex, available at http://www.cesr-eu.org/popup2.php?id=172

Issue	Examples of different approaches	Suggested approach
have multiple categories of qualified investor for different purposes, with differing tests.	definitions of qualified investor which apply for different purposes under its legislation and rules, including definitions of qualified institutional buyers, accredited investors, qualified investors, institutional customers, qualified eligible persons, eligible contract participants, US institutional investors, major institutional investors and qualified purchasers, each of which provides overlapping and differing tests. Even under the recently adopted EU regime, there are differences between the categories of qualified investors used for the purposes of the exemptions from prospectus requirements and conduct of business rules, and between the component parts of the definitions which apply when defining an eligible counterparty as opposed to a professional client.	number of categories of qualified investor to those where there is a clear policy justification for the difference, supported by cost-benefit analysis. If there are differences between the tests for different purposes, these should be transparent and easy to apply.
Offering restrictions		
Whether offers of securities to qualified investors are exempt from prospectus requirements.	Many countries have private placement exemptions for offers of securities to qualified investors. For example, the Prospectus Directive requires EU Member States to provide an exemption for offers of securities to qualified investors. However, even where there is an exemption for offers to qualified investors, the offer may have to satisfy additional conditions e.g. in Saudi Arabia, the requirement that an offer to qualified investors only benefits from the exemption if the amount payable by the investor is at least SAR 1M (about USD 270,000). In some countries, there is no exemption for offers to qualified investors, although there may be other exemptions. For example, in India, the private placement exemption is only available where offers are confined to a limited number of investors (fewer than 50).	There should be exemptions from prospectus registration requirements for offers of securities made to qualified investors.
Whether offers of units in collective investment undertakings (CIUs) to qualified investors are exempt from product or	Some countries, such as France, do not provide a general private placement exemption for offers of units in CIUs (although France has a limited private placement exemption for certain venture	There should be exemptions from registration requirements for offers of units in CIUs made to qualified investors.

Issue	Examples of different approaches	Suggested approach
other registration requirements in relation to the CIU.	capital funds).	
Whether the exemption from registration requirements is conditioned on other formalities.	In Brazil, the issuer must present certain information to the CVM in order to take advantage of the private placement exemption. In Canada, a filing is required to be made after the distribution, including the payment of filing fees.	Offerors taking advantage of an exemption for offers to qualified investors should not have to notify or file documents with the regulator in order to rely on the exemption.
Whether there are other restrictions on marketing without corresponding exemptions for communications to qualified investors (or which apply different tests).	In some countries, there are additional restrictions on marketing of investments which overlay the rules on public offers of securities or funds. For example, the UK maintains "financial promotion rules" which generally restrict the making of marketing communications in relation to investments. The financial promotion rules also contain exemptions for communications to qualified investors but the test of what constitutes a qualified investor for those purposes differs from that under the prospectus rules (and those under conduct of business rules).	Other rules restricting marketing communications should contain exemptions for communications directed at qualified investors, which are aligned with the exemptions from prospectus and conduct of business rules.
Whether there is an exemption from prospectus or product registration requirements where the minimum investment required of the investor exceeds a specified threshold.	A number of countries provide exemptions from offering restrictions based on the size of an investor's minimum investment. For example, the Prospectus Directive requires EU Member States to provide an exemption from prospectus registration requirements for offers of securities that require the investor to make a minimum investment (or the securities have a minimum denomination) of at least EUR 50,000 (about USD 68,000). In Australia, there is an exemption from prospectus registration requirements for securities where the minimum amount payable is AUD 500,000 (about USD 430,000).	There should also be an additional exemption from registration requirements where the minimum investment required exceeds a specified threshold, not exceeding [USD 100,000].
Whether there is an exemption for offerings restricted to a limited number of persons.	A number of countries exempt offerings to investors other than qualified investors based on numerical thresholds, such as the EU (100 investors per member state), India (50 investors), Japan (50 investors) and South Africa (50 investors).	There should also be an additional exemption from registration requirements where the offer is made to a number of offerees below a specified threshold (not less than [50]).
Conduct of business rules		

Issue	Examples of different approaches	Suggested approach
Whether regulated firms are exempt from investor protection rules when dealing with clients that are qualified investors.	In a number of countries, such as the US, India and Mexico, the conduct of business rules applicable to regulated firms do not significantly differentiate between the treatment of qualified investors and other investors. In other countries, such as in EU Member States under the Markets in Financial Instruments Directive (MiFID), Japan and Saudi Arabia, certain business conduct rules do not apply to a regulated firm when it deals with qualified investors.	Conduct of business rules should provide exemptions for regulated firms from investor protection rules when dealing with clients that are qualified investors.
Licensing requirements		
Whether foreign firms conducting cross-border business with qualified investors are exempt from local licensing requirements.	In the UK, foreign firms may conduct cross-border business with a class of local qualified investors without requiring a licence by virtue of the so-called "overseas person" exclusion. In Australia, foreign firms licensed by certain recognised foreign regulators conducting business with a class of local qualified investors can benefit from an exemption from the requirement to obtain a licence. In Ontario, Canada, foreign firms can register as international dealers but must restrict their business to a class of qualified investors. In other countries, such as France, there is no clear rule as to when a licence is required in order for a foreign firm to conduct cross-border business even with local qualified investors.	Foreign firms conducting cross-border business only with qualified investors should be exempted from local licensing requirements (at a minimum if they are authorised in a recognised jurisdiction which has in place adequate information sharing arrangements with the local regulator).
Whether domestic firms conducting business with qualified investors are also exempt from licensing requirements in some circumstances.	In some countries, firms can benefit from an exemption from licensing requirements in relation to particular classes of business if they only deal with a class of qualified investors. For example, Singapore provides such an exemption in relation to leveraged foreign exchange business and the US provides such an exemption in relation to over-the-counter commodity derivatives business.	Consideration should be given to providing exemptions from domestic licensing requirements for persons dealing only with qualified investors where the type of business concerned does not present the same systemic or investor protection issues as mainstream banking or securities business.
Definition of qualified investors		
Whether all regulated financial firms are treated as qualified	Many countries treat the major categories of regulated financial firms as qualified investors (e.g. banks, insurance companies, broker-dealers, clearing houses, etc.).	Regulated financial firms should be treated as qualified investors, both where they are acting for their own account

Issue	Examples of different approaches	Suggested approach
investors.	However, some countries apply tests which depend on whether an entity's ordinary business is dealing in securities (e.g. in South Africa for some purposes under the Companies Act). In other countries, additional requirements apply for some purposes e.g. the test of a qualified institutional buyer in the US requires that banks must have a net worth of at least USD 25M, broker-dealers must own or invest in at least USD 10M of securities (or act as riskless principals) and other institutions must own or invest in at least USD 100M of securities (in contrast, any bank, broker-dealer, insurance company or investment company counts as an accredited investor).	and where they are acting on behalf of underlying investors.
Whether pension funds and CIUs are treated as qualified investors.	Under the EU Prospectus Directive and in Singapore (at least for some purposes), pension funds and CIUs are treated as qualified investors without further requirements.	Pension funds and CIUs should be treated as qualified investors.
Whether all types of governmental entities are treated as qualified investors.	The rules in some countries do not specifically indicate that governmental entities are treated as qualified investors, e.g. in South Africa. In contrast, definitions of qualified investor in Singapore specifically list the Singapore government and statutory bodies.	The definition of qualified investor should include national, regional and local governmental entities, public bodies that manage public debt, central banks and international and supranational organisations.
Whether corporations are treated as qualified investors.	There are many differing tests as to when a corporation can be treated as a qualified investor, focusing on capital, net assets, total assets, turnover and (e.g. in the EU and Australia, for some purposes) number of employees and in some cases the size of the company's investment portfolio. Examples of net assets or capital tests used for some purposes are CAD 5M (USD 4.7M) in Ontario, Canada, EUR 2M (USD 2.7M) in the EU, SAR 50M (USD 13M) in Saudi Arabia or USD 1M in the US. In some of these cases, the corporation must satisfy additional tests in order to be eligible as a qualified investor. See appendix 3.	A corporation should be treated as a qualified investor where it has issued listed securities or if it meets one financial test readily observable from its financial statements, e.g. if its net assets, total assets or annual turnover exceeds a minimum threshold not exceeding USD [5m], as well as where its investment portfolio exceeds this threshold.
How minimum size tests	Some tests (such as those in the UK) take	If the corporation is a member

Issue	Examples of different approaches	Suggested approach
are applied where a corporation is a member of a group of companies.	into consideration the fact that a company may form part of a group of companies and so should be eligible to be treated as a qualified investor based on the position of the parent company or group.	of a group of companies, it should be treated as a qualified investor if it or its parent company meets the minimum size tests on an individual or consolidated basis (or if a member of the group is a listed company).
Whether special purpose entities (SPEs) can be treated as qualified investors even if they do not meet size tests (e.g. because they are newly formed).	The EU tests of when a person is a qualified investor for conduct of business rules purposes specifically allow firms to treat SPEs used for securitisation and financing purposes as qualified investors (e.g. in determining their status for conduct of business rules relevant when booking derivatives transactions with such entities).	SPEs should be treated as qualified investors, even if they do not meet the size requirements relevant for corporations.
Whether wealthy individuals (natural persons) can be treated as qualified investors.	Many countries, such as Australia, Canada and the US, allow wealthy individuals to be treated as qualified investors based on measures such as net worth, annual income or the size of their investment portfolio. Examples of size tests for investment portfolios for individuals include A$500,000 (USD420,000) in Australia, CAD 1M (USD 930,000) in Ontario, Canada, EUR 500,000 (USD 680,000) in the EU, JPY 300m (USD2.4M) in Japan and CHF 2M (USD 1.6) in Switzerland. Examples of net worth tests for individuals include MYR 3M (USD 870,000) in Malaysia, SGD 2M (USD 1.3M) in Singapore and USD 1M in the US. In some cases, these tests may be combined with other tests, including a test of the period of experience in the securities market. See appendix 4.	Individuals should be eligible to be treated as qualified investors if they have an investment portfolio in excess of a minimum threshold not exceeding [USD 5m].
Whether third party certification of wealth is required to treat an individual as a qualified investor.	Some countries require a third party such as an accountant to certify net worth or income (e.g. Hong Kong or, in some cases, in Switzerland). In other cases, the investor must provide a representation or self-certification (e.g. Mexico and the UK for some purposes).	Firms ought to be able to assess whether an individual is a qualified investor based on evidence reasonably considered to be adequate.
Whether trusts, charities and other not-for-profit entities can be treated as	In Ontario, Canada, charities can be treated as qualified investors if they have obtained advice from a relevant adviser. In the UK,	If legal entities, these entities should be treated in the same way as corporations. If not legal

Issue	Examples of different approaches	Suggested approach
qualified investors.	for some purposes charities can be treated as qualified investors if they meet the same size tests as a corporation (net assets of GBP 5M, about USD 10M).	entities, they should be treated as qualified investors if they meet similar tests as for corporations or individuals.
Whether individuals or other persons can be treated as qualified investors based solely on their expertise or experience.	Some countries allow individuals or other persons to be treated as qualified investors based on an assessment of their expertise. In some cases, such as in the EU, the person must also meet quantitative tests addressing frequency of trading, size of investment portfolio and/or a period experience in the securities markets.	Regulated firms should be able to treat individuals or other persons as qualified investors based on a qualitative assessment of their expertise or experience, even if the person does not meet quantitative size or wealth tests.
Whether the definition of qualified investor covers equivalent foreign entities.	Not all definitions of qualified investor cover foreign entities equivalent to those domestic entities covered by the definition (e.g. regulated financial firms, governmental entities, pension funds, etc.).	To the extent that relevant rules, such as conduct of business rules, apply to dealings with foreign entities, they should treat equivalent foreign entities as qualified investors on the same basis as domestic entities.

APPENDIX 3
CLIENT CLASSIFICATION RULES - EXAMPLES OF SIZE TESTS FOR LEGAL ENTITIES

Jurisdiction	*Minimum investment*	*Investment portfolio*	*Accounting measures*	*Employees*	*Offering restriction*	*Conduct of business*	*Licensing*	*Comments*
Australia	USD 420K	-	USD 2.1M net assets or USD 210K gross annual income	100 (if a manufacturer), otherwise 20	√	√	√	Non-cumulative tests.
Brazil	-	USD 150K	-	-	√	-	-	Applies to offers of funds only. .
Canada (Ontario)	-	-	USD 4.7M net assets	-	√	-	√	
China	-	-	USD 1.3M registered capital or USD 2.6M net assets	-	√	-	-	Must also have the ability to conduct independent analysis and must be qualified to invest in bonds. Limited exemption for offers of certain bonds only.
EU 1	-	-	USD 59M net assets; USD 68M net turnover	250	√	-	-	Prospectus Directive test applies only to offers of securities. Two of the three tests must be satisfied.
EU 2	-	USD 2.7M	USD 27M balance sheet; USD 55M net turnover;	-	-	√	-	MiFID test applies for conduct of business rules purposes only. Two of the three tests must be satisfied.
France	-	USD 6.8M	USD 6.8M net turnover or total assets.	50	√	-	-	Non-cumulative tests. Applies to financial solicitation rules.
Germany	-	-	-	-	-	-	-	See EU rules.
Hong Kong	-	USD1M	USD 5.1M total assets	-	√	√	√	Non-cumulative tests.
India	-	-	-	-	-	-	-	
Japan	-	-	USD 4.1M share capital	-	√	√	-	Must be a Japanese entity. Foreign financial institutions must also meet a size requirement of between USD 410K and 16M depending on the type of institution.
Malaysia	USD 72K	-	USD 2.9M net assets	-	√	√	-	Non-cumulative tests. Exemption from licensing requirements also available in limited circumstances.
Mexico	-	USD 600K	USD 200K annual revenue	-	√	-	-	
Russia	-	-	-	-	-	-	-	
Saudi Arabia	USD 270K	-	USD 13M net assets	-	√	√	-	Minimum investment test relevant for offering restrictions. Net asset test relevant to conduct of business rules.

Jurisdiction	*Minimum investment*	*Investment portfolio*	*Accounting measures*	*Employees*	*Offering restriction*	*Conduct of business*	*Licensing*	*Comments*
Singapore	USD 130K	-	USD 6.5M net assets	-	√	√	√	Non-cumulative tests. Single investment test relevant to offering restrictions.
South Africa	USD 14K	-	-	-	√	-	-	
South Korea	-	-	Entities purchasing interests in a single fund for USD 54M	-	√	-	√	Fund placement offering exemption, and offshore advisory business licence exemption.
Spain	-	-	-	-	-	-	-	See EU rules.
Switzerland	-	-	-	-	-	-	-	
UK	-	-	USD 10M share capital or net assets (or USD 1M net assets if the entity has more than 20 members)	-	√	-	√	Financial promotion rules and overseas perons exemption.
USA 1	-	-	USD 5M total assets	-	√	-	-	Accredited investor test.
USA 2	-	-	USD 50M total assets	-	-	√	-	NASD and NFA institutional customer test.
USA 3	-	-	USD 10M total assets or USD 1M net worth	-	-	√	√	CFTC eligible contract participant test (net worth test only relevant if entity entering into transactions for risk management purposes).
USA 4	-	USD 25M (USD 10M for some purposes)	-	-	-	-	√	Qualified investor test under Securities and Exchange Act of 1934.
USA 5	-	USD 100M	USD 100M total assets	-	√	-	√	Qualified institutional buyer test requires USD 100M owned and invested for exemption from offering restrictions. Corresponding major institutional investor test for rule 15a-6 exemption from licensing based on total assets or total assets under management.

This table gives summary examples of tests used to define when a legal entity (not a financial institution) is eligible to be treated as a qualified investor for the purposes of exemptions from offering restrictions, conduct of business rules and licensing requirements in a number of jurisdictions. The examples focus on tests which refer to the minimum size of a single investment, tests which refer to the minimum size of an entity's investment portfolio and tests which refer to the minimum size of an entity by various accounting measures or number of employees. EU Member State examples assume implementation of the Markets in Financial Instruments Directive (MiFID) and do not repeat examples from EU directives. Local currency numbers are converted approximately into thousands (K) or millions (M) of US dollars (USD) by reference to rates prevailing in July 2007. This table is intended to be illustrative only and is not intended to be comprehensive or to provide legal advice.

APPENDIX 4

CLIENT CLASSIFICATION RULES - EXAMPLES OF WEALTH AND EXPERTISE TESTS FOR INDIVIDUALS

Jurisdiction	*Single investment*	*Investment portfolio*	*Wealth*	*Expertise*	*Offering restriction*	*Conduct of business*	*Licensing*	*Comments*
Australia	USD 420K	USD 420K	USD 2.1M net assets or USD 210K gross annual income	Assessment by regulated firm.	√	√	√	Non-cumulative tests.
Brazil	-	USD 150K	-	-	√	-	-	Offers of funds only.
Canada (Ontario)	-	USD 930K	USD 4.7M net total assets or USD 190K net income	-	√	-	√	Non-cumulative tests.
China	-	-	-	-	-	-	-	
EU	-	USD 680K	-	1 year's experience in securities investment or 10 significant sized transactions per quarter for last 4 quarters.	√	√	-	Two of the three tests (investment size and two experience tests) must be satisfied (plus, for conduct of business rules purposes, an assessment of expertise and experience by the regulated firm).
France	USD 680K	-	-	Certain tests of experience in the financial sector (plus USD 41K minimum subscription)	√	-	-	Applies to offers of certain venture capital funds only.
Germany	-	-	-	-	-	-	-	See EU rules
Hong Kong	-	USD 1M	-	-	√	√	-	
India	-	-	-	-	-	-	-	
Japan 1	-	USD 2.4M	USD 2.4M assets	1 year's experience in the securities market	-	√	-	Cumulative tests.
Japan 2	-	USD 8.2M	-	Held a securities account for 1 year	√	-	√	Cumulative tests.
Malaysia	USD 73K	-	USD 870K net assets	-	√	√	-	Non-cumulative tests. Some offering restriction exemptions are available only when investors meet the net assets test. Exemption from licensing requirements also available in limited circumstances.
Mexico	-	USD 600K	USD 200K annual income	-	√	-	-	
Russia	-	-	-	-	-	-	-	
Saudi Arabia	USD 270K	-	-	-	√	-	-	Certain additional requirements must be met depending on who is making the offer.

Jurisdiction	*Single investment*	*Investment portfolio*	*Wealth*	*Expertise*	*Offering restriction*	*Conduct of business*	*Licensing*	*Comments*
Singapore	USD 130K	-	USD 1.3M net assets or USD 200K annual income	-	√	√	√	Non-cumulative tests. Single investment test relevant to offering restrictions.
South Africa	USD 14K	-	-	-	√	-	-	
South Korea	USD 11M	-	-	-	√	-	√	Fund placement offering exemption, and offshore advisory business licence exemption.
Spain	-	-	-	-	-	-	-	See EU rules.
Switzerland	-	-	USD1.6M net assets	-	√	√	√	Written confirmation of the assets is required if they are not bankable assets held by the entity selling the product.
UK	-	-	USD 500K net assets or USD 200K annual income	Certified by authorised person as sufficiently knowledgeable to understand risks	√	-	√	Financial promotion rules and overseas persons exemption. Non-cumulative tests. Net assets do not include the individual's principal place of residence. Additional exemptions from offering restrictions for placements of certain unlisted investments.
USA 1	-	-	USD 1M net worth or USD 200K income (300K jointly with spouse)	-	√	-	-	Accredited investor test. (Similar exemption also applies under NFA qualified eligible persons tests for conduct of business rules purposes).
USA 2	-	USD 5M	-	-	√	-	-	Qualified purchaser test under Investment Company Act of 1940
USA 3		USD 25M (USD 10M for some purposes)	-	-	-	-	√	Qualified investor test under Securities and Exchange Act of 1934.
USA 4	-	-	USD 50M total assets	-	-	√	-	NASD and NFA institutional customer test.

This table gives summary examples of tests used to define when an individual is eligible to be treated as a qualified investor for the purposes of exemptions from offering restrictions, conduct of business rules and licensing requirements in a number of jurisdictions. The examples focus on tests which refer to the minimum size of an investment, tests which refer to the minimum size of an individual's investment portfolio or wealth (by various measures) or which allow an individual to be treated as a qualified investor based on an assessment of expertise. EU Member State examples assume implementation of the Markets in Financial Instruments Directive (MiFID) and do not repeat examples

from EU directives. Local currency numbers are converted approximately into thousands (K) or millions (M) of US dollars (USD) by reference to rates prevailing in July 2007. This table is intended to be illustrative only and is not intended to be comprehensive or to provide legal advice.