

Consultation Response

FCA Consultation Paper 25/36 – Client Categorisation and Conflicts of Interest

16 February 2026

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on FCA Consultation Paper 25/36 – Client Categorisation and Conflicts of Interest. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate for stable, competitive, and sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA), a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

AFME is registered on the EU Transparency Register, registration number 65110063986-76. We summarise below our high-level response to the consultation, which is followed by answers to the individual questions raised.

Executive Summary

AFME welcomes the opportunity to respond to the FCA's Consultation Paper 25/36 on client categorisation and conflicts of interest. We support the FCA's objective to modernise the client categorisation framework, enhance proportionality and reduce unnecessary rigidity while maintaining appropriate consumer protections.

Members particularly highlight the need for greater clarity at the boundary between retail and wholesale activity. A clearer distinction could support more consistent application of the Consumer Duty and provide firms greater certainty about the scope of their obligations. This is an area the industry has already raised with the FCA, and further clarification would be helpful.

We welcome the FCA's direction but believe refinements are needed in several areas – especially threshold calibration, evidential expectations, re-assessment triggers, and drafting clarity – to ensure the framework is proportionate, internationally competitive and capable of achieving the FCA's policy objectives.

On conflicts of interest, AFME supports the FCA's rationalisation of the SYSC 10 rules and agrees the proposed changes make the framework clearer and easier to navigate, and we have no further comments on this section.

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Questions

Quantitative assessment

Question 1: Do you agree with deletion of the mandatory quantitative criteria from the qualitative assessment, (other than for local authorities)? [Yes, No, No view] If yes or no, please explain your answer.

We welcome and support the FCA's proposal to remove the mandatory quantitative criteria from the qualitative assessment framework.

Members view this change as a positive and necessary step in evolving the client categorisation regime. The current quantitative thresholds have become rigid and in practice, prescriptive sometimes leading to client classifications that do not accurately reflect an individual's knowledge, experience, or ability to engage with complex financial products.

We consider that the deletion of the mandatory criteria will:

- Promote a more accurate and client-centred categorisation process that better reflects individual circumstances and investment needs
- Removes an outdated threshold that does not reflect relevant experience or understanding of risk.
- Encourage firms to undertake thorough and outcome-based assessments in line with their obligations under the FCA's Handbook and Consumer Duty.

Question 2: Do you agree with the proposal to introduce a new alternative for clients above a certain wealth threshold to opt out of retail protections, subject to informed consent and wider FCA client protection rules?

[Yes, No, No view] If yes or no, please explain your answer.

AFME also welcomes the FCA's proposal to introduce a new alternative route for clients above a defined wealth threshold to opt out of retail client protections. Members consider this a positive development that enhances client choice while supporting the FCA's secondary objective of promoting the international competitiveness of the UK financial services sector. By providing eligible clients with greater flexibility, the UK framework would be more closely aligned with approaches adopted in other leading financial centres, potentially enhancing the attractiveness of the UK as a hub for investment services.

Question 3: Do you agree that the threshold for this assessment, set at £10 million, is an appropriate level to balance client protection with reducing regulatory burden on firms?

[Yes, No, No view] If yes or no, please explain your answer

Members do not agree that the proposed £10 million wealth threshold for access to the new opt-out route is appropriate. We consider the threshold disproportionately high limiting the practical effectiveness of the proposal and excluding a significant population of financially sophisticated clients who are capable of understanding and managing investment risks.

While we recognise the FCA's intention to ensure that only sufficiently experienced clients can opt out of retail protections, the proposed threshold would exclude many high-net-worth individuals who have the knowledge, experience, and capacity to understand investment risks. As a result, the proposal may not meaningfully address the rigidity of the current regime, where clients just below the threshold would reasonably be expected to qualify.

Majority of our members therefore recommend that the FCA consider lowering the threshold to £2 million. A lower threshold would capture a broader population of sophisticated clients, increase the practical utility of the opt-out route, and allow smaller firms to participate effectively.

To support our position, we have included the following examples/scenarios:

- Members observed situations where long-established corporates with significant experience in structured products have been reclassified as retail following corporate restructurings. In one case, a global exporter incorporated in 1992 with a 20-year history of entering structured FX products was required to follow the full retail process due solely to a balance sheet change. The additional disclosure and execution steps delayed completion of a time-sensitive transaction, leaving the client exposed to market risk during the interim period. Although the transaction ultimately proceeded at acceptable levels, the delay created unnecessary frustration and risk exposure. The categorisation did not reflect the client's knowledge, experience, or ability to understand product risks.
- Similarly, a fuel distribution company operating since 2012, and experienced in managing price risk through physical supply arrangements, sought short-dated diesel hedging to address a temporary market gap. As a retail client, the disclosure requirements and execution framework limited the ability to provide rapid, iterative pricing in volatile conditions. The result was a slower and more operationally burdensome process for both client and bank, constraining the client's ability to manage risk efficiently. In fast-moving commodity markets, timing is often critical; procedural delays can increase rather than mitigate risk.
- The practical implications of the opt-up process further illustrate the proportionality concern. Even where a client clearly meets qualitative sophistication criteria, re-classification can take approximately five business days. In interest rate markets, this delay can be financially material. For example, a client seeking to enter a leveraged collar may be unable to access that structure while retail categorised and instead enter a less efficient vanilla alternative. Alternatively, if the client pursues reclassification, movements in underlying swap rates during the process can lead to materially worse pricing outcomes. Each 1 basis point change in a five-year floor can equate to approximately £4,563 on an NPV basis; cumulative movements of 20–50 basis points during a reclassification window can therefore have significant economic impact. These outcomes are not driven by product complexity per se, but by procedural timing constraints.

From a Consumer Duty perspective, firms are required to act to deliver good outcomes and avoid foreseeable harm. Where a client demonstrably understands the risks of a product and has a history of managing similar exposures, restricting timely access to appropriate hedging tools may not support good outcomes. A regime that is overly restrictive for experienced corporates risks creating frictional costs and market exposure that outweigh incremental disclosure benefits.

We therefore consider that a £10 million wealth threshold is set too high to reflect the realities of the UK mid-market and places the UK at a competitive disadvantage relative to other leading financial centres, which could undermine the FCA's secondary objective of supporting international competitiveness. For example, thresholds in other jurisdictions are much lower:

- US: \$1 million (approx. £732 k)
- Hong Kong: HK\$40 million (approx. £3.7 million)
- Singapore: S\$2 million (approx. £1.2 million)
- Switzerland (Berne Agreement): £2 million for UK-related activity
- Australia: \$2.5 million (approx. £1.3 million)

Setting the UK threshold significantly higher than other jurisdictions reduces the incentive for sophisticated clients to access the UK market under this opt-out route and risks creating a gap between UK regulation and international practices. Members recommend that the FCA consider recalibrating the threshold to align more closely with other jurisdictions, while maintaining appropriate safeguards for client protection.

In conclusion we encourage the FCA to consider a more pragmatic wealth threshold of £2 million.

Question 4: Do the proposed Relevant Factors allow firms flexibility in demonstrating how they have determined a client has acquired the capability to be treated as a professional client? Are there any other factors that firms should be required to consider?

[Yes, No, No view] If yes or no, please explain your answer.

Broadly, we welcome the FCA's move towards a more principles-based approach as set out on the relevant factors. Members note that operationally many of the 'tests' outlined in the consultation are already reflected in existing approaches for opting up retail clients.

We particularly note that in paragraph 3.53, which states that *'the firm must consider any adverse information reasonably available to it that would indicate the client should not be treated as a professional client.'* Members welcome the FCA clarifying that this requirement is intended to ensure firms do not disregard material and relevant information already known to them about a client. This would avoid any implication that firms are subject to an open-ended obligation to search for or infer adverse information beyond that which is reasonably available in the course of the client relationship. This would also reinforce the expectation that firms consider the totality of relevant information.

We also note that no timeframe is specified for considering adverse information. It is unclear how firms should treat historical adverse activity that has now been resolved, and whether such information should continue to influence a client's categorisation.

Question 5: Do our proposed rules and Handbook guidance give firms sufficient clarity on how to conduct an adequate assessment of a client's capability to be treated as a professional client?

[Yes, No, No view] If yes or no, please explain your answer.

Members broadly agree that the proposed rules and Handbook guide move in the right direction for assessing a client's capability to be treated as a professional client. However, further clarity would be helpful in a number of areas to support consistent interpretation, operational certainty and proportionate application in practice.

3.5.8, 3.5.9 R (1)

Expectation that professional clients keep firms updated on changes in their circumstances.

Members considered that only material changes such as significant financial deterioration or a fundamental change in business model would be relevant, and these would already be identified through existing credit and risk processes. Beyond this, it is unclear what additional updates firms could reasonably expect from clients.

Members agreed that clearer FCA guidance is needed on the scope of the obligation and what is expected in practice. While the rationale is understood, there is uncertainty about what constitutes good practice beyond existing controls.

Concerns were raised about the requirement to act where firms "become aware or have a reasonable basis for suspecting" that conditions are no longer met. This wording is vague, risks regulatory hindsight, and may imply an obligation to actively search for issues rather than respond to information that arises.

Members noted that financial deterioration would already trigger internal controls, limiting the practical impact of re-categorisation. Overall, the provision appears duplicative, overly broad and risks undermining a proportionate approach. Clearer expectations on scope and proportionality are needed.

In practice, members felt that only materially relevant change would be a significant financial deterioration, which would already be identified through existing credit and risk processes. Beyond a fundamental change in a client's business model or financial position, it is unclear what additional updates firms would reasonably expect clients to provide.

3.5.9 R (2)

Members noted the practical implications of re-categorising clients from elective professional to retail, particularly where retail clients cannot hold certain products (e.g. derivatives). If re-categorisation occurs, it is unclear how firms should manage existing positions that cannot be terminated without

significant cost. Many derivatives carry onerous early-termination penalties and forced unwinds could result in substantial losses or insolvency, which would not be in the client's best interest.

While the FCA's transitional provisions recognise this tension by allowing firms to continue treating clients as professional where necessary to manage existing business, this guidance is narrowly framed around the 12-month reassessment period and does not clearly address re-categorisation arising on an ongoing basis.

Members highlighted a conflict between the expectation to re-categorise promptly and the obligation to act in the client's best interest. In practice, allowing positions to run to maturity or until penalties fall away may be more appropriate than immediate close-out, but FCA expectations in these scenarios are unclear.

Concerns were also raised about proportionality and client autonomy. Firm initiated re-categorisation may require unilateral action, contractual changes and significant operational and legal costs, for scenarios expected to arise infrequently.

We note that aspects of the proposed approach would benefit from Clearer FCA guidance on managing existing positions post re-categorisation, balancing best-interest obligations with product eligibility rules, and whether expectations differ between transitional and ongoing reassessment scenarios.

3.5.12 G

Members noted tension in the drafting on knowledge and experience requirements for elective professional clients. Some provisions suggest that a client may still be opted up where they lack knowledge and experience in a specific product, provided this is offset by other qualitative factors, while other parts imply that insufficient product-specific knowledge would preclude elective professional treatment for that product.

This inconsistency risks operational confusion. Members understood the policy intent to be that firms should not opt a client up for one product and then treat them as professional across all products, while still being able to rely on a sufficiently broad initial assessment when extending elective professional status to additional products.

However, the current drafting in 3.5.15 R (1) does not clearly reflect this distinction and may unintentionally incentivise firms to opt clients up "across the board" at the outset to avoid repeated reassessments.

Members agreed this misalignment should be addressed through clearer drafting to avoid conflicting interpretations and ensure the framework supports proportionate, targeted categorisation.

Members agreed that this misalignment should be highlighted to the FCA with a request for a clearer drafting that avoids conflicting interpretations and removes any incentive to adopt broader categorisation practices simply for operational convenience.

3.7.1 R (2)

The proposed rule requires a firm upon receiving notification from a client that they wish to withdraw consent to be treated as an elective professional or otherwise wish to be treated as a retail client, to re-categorise the client accordingly within five days and notify the client of their new categorisation.

Members have concerns regarding the practical implications and regulatory intent of the proposed five-day timeframe. It is not clear whether the five-day period is intended solely as an operational timeframe for updating internal systems and client classification, or whether it is intended to require firms to unwind or adjust existing transactions, positions or arrangements within that period. This distinction is significant, especially where a client transitions from elective professional to retail status and may have ongoing trades entered into the basis of their previous categorisation.

More broadly, the proposal does not appear to address how such re-categorisation should interact with existing or ongoing transaction. The absence of clarity creates uncertainty for firms and raises questions

about how the requirement is expected to operate in practice. We encourage the FCA to clarify the scope and intent of this provision, including whether any guidance is expected on the treatment of existing trades or arrangements following a change in client categorisation.

Members also highlight a drafting issue with the wording “non-MiFID or equivalent third country business,” which is unclear and inconsistent with existing terminology. For consistency with COBS 3.6.4R, this should instead refer to “business other than MiFID or equivalent third country business.” AFME recommends that this be corrected to ensure clarity and alignment with the existing COBS framework.

Question 6: Do you agree that financial resilience as a Relevant Factor should be outcome based, without any minimum financial threshold?

[Yes, No, No view] If yes or no, please explain your answer.

AFME recognises the FCA’s intention in identifying financial resilience as an important consideration in assessing whether a client should be treated as professional. We also agree with the FCA’s acknowledgement (paragraph 3.50) that wealth alone is not determinative of financial resilience.

However, members have concerns about the way financial resilience is framed in the consultation and the practical application. The consultation suggests that firms should take into account factors such as financial capacity, understanding of risk, ability to bear losses and risk tolerance. In our view, this approach risks conflating with a number of distinct concepts that are already addressed elsewhere in the client categorisation framework. The overlap makes it difficult to identify what financial resilience is intended to add as a standalone and distinct factor.

There is also lack of clarity as to how firms are expected to measure financial resilience in practice in the absence of any objective threshold or proxy. In other jurisdictions, the ability to bear losses is often assessed by reference to assets or other quantitative measures. Without any similar guidance or parameters firms may struggle to apply this.

While we understand that the FCA may be seeking to mitigate the risks of client detriment through the inclusion of financial resilience, as currently drafted the factor appears vague and difficult to operationalise. We therefore encourage the FCA to provide further clarification on the intended purpose and application financial resilience as a relevant factor, including how it should be distinguished from other assessment criteria.

Question 7: Do you agree with our proposal to continue to allow opting out in relation to specific products and services, or generally in relation to all products and services?

[Yes, No, No view] If yes or no, please explain your answer

We broadly support the FCA’s proposal to retain both approaches, as this flexibility is important for firms and clients and reflects the reality that client knowledge, experience and expertise are not always uniform across all products and services.

In our view, allowing opting up on a specific product or services basis enables firms to make more accurate and proportionate client categorisation decisions that are tailored to individual circumstances. The ability to apply a broader categorisation where appropriate provides firms with operational efficiency and clarity, without removing safeguards.

Question 8: Do you agree with our proposal to maintain the current qualitative and quantitative assessment for local authorities?

[Yes, No, No view] If yes or no, please explain your answer

We understand the rationale for preserving the existing framework. Firms are familiar with the current qualitative and quantitative assessments, and these are well understood and operationalised in practice.

However, we would encourage the FCA to reflect on whether the current approach is addressing a level of risk or detriment that continues to exist in the same way as when the framework was originally designed. In practice, our members observe that local authorities request to be opted up to professional

status and firms already have established processes to assess their capabilities and suitability for professional categorisation.

Question 9: Do you agree with the proposed requirement that firms must obtain the client's informed consent to opting out of retail protections and being treated as a professional client?

[Yes, No, No view] If yes or no, please explain your answer.

We agree in principle with the FCA's proposed approach to obtaining informed consent from clients who choose to opt out of retail protections to be treated as professional clients.

We recognise that informed consent is a central safeguard within the client categorisation framework and understand why the FCA has placed particular emphasis on this requirement as part of its revised approach. Requiring firms to obtain informed consent helps ensure that clients understand the implications of opting out of retail protections, including the protections they will no longer benefit from, and that they are making a conscious and considered decision aligned with their investment objectives.

AFME also supports the FCA's clarification that informed consent must be obtained prior to categorisation and that it does not require a wet signature. The focus on substance over form is welcome and reflects current market practice and operational realities.

That said, our agreement is subject to the following clarifications:

- Greater clarity would be helpful on how firms are expected to demonstrate that consent is "informed" in practice, given that this is described as a matter of fact and circumstance.
- Further guidance on proportionality would assist firms in designing consent processes that are effective without being unduly burdensome.
- Alignment between the rules, guidance, and examples would help ensure consistency of interpretation and application.

We consider the proposed approach to informed consent to be broadly appropriate, provided the areas of uncertainty identified above are addressed.

Question 10: Do our proposed minimum disclosure requirements to inform the client's consent, including reliance on the firm's existing Consumer Duty obligations, pose any particular challenges?

[Yes, No, No view] If yes or no, please explain your answer.

We agree with the FCA's proposed minimum disclosure requirements to inform client consent, including the reliance on firms' existing obligations under the Consumer Duty.

We consider that the requirement to provide sufficient information about the retail protections a client would be opting out of, to allow sufficient time for consideration, and to present clear and prominent warnings is consistent with firms' existing obligations to act to support consumer understanding. In that regard, the proposals build on established requirements rather than introducing a fundamentally new disclosure standard.

However, we note that further clarification would assist firms in applying these requirements in a proportionate manner, particularly in relation to:

- How firms are expected to evidence that consent is "informed" in accordance with the proposed rules and guidance.
- How the level of disclosure and testing should be calibrated for clients seeking professional client status.
- How reliance on Consumer Duty obligations should operate in practice without duplicating or extending existing requirements beyond their intended scope.

Members also note that proposed 3.5.18 R (2) introduces an expectation that the information provided is "designed to promote engagement and understanding" by the client. While the policy intent is understood, members consider that the wording risks creating uncertainty as to what additional steps firms are expected to take beyond existing Consumer Duty obligations, particularly given the overlap with the Duty's customer understanding outcome.

Question 11: Do you agree with our proposals to allow firms to initiate discussions with clients about opting out of retail permissions, where they have a reasonable basis for believing the client will meet the professional client threshold, and to the proposed conditions for such communications?

[Yes, No, No view] If yes or no, please explain your answer.

We agree with the FCA's proposal to permit firms to initiate discussions with clients about opting out of retail protections where the firm has a reasonable basis for believing that the client may meet the criteria to be treated as a professional client.

We also support the FCA's stated position that communications of this nature must not incentivise, induce, or pressure clients to opt out of retail protections, and that such communications should be fair, clear and not misleading, balanced, and likely to be understood by the average member of the group to whom they are directed, in line with existing COBS requirements.

That said, we are concerned that the proposed conditions, as drafted, may be overly prescriptive and do not fully reflect how client categorisation discussions arise in practice. In our members' experience, discussions about professional client status typically occur as part of onboarding or through the course of an ongoing business relationship. These discussions are necessary for firms to obtain the information required to assess whether a client meets the elective professional client criteria.

We note the FCA's clarification that, in accordance with COBS 3.4.1R, a client must be treated as a retail client unless and until all relevant conditions for professional client categorisation have been satisfied. Firms already operate on this basis and continue to afford retail protections throughout the assessment process.

While we understand the FCA's policy objective, we encourage it to ensure that the final rules and guidance do not inadvertently constrain legitimate preliminary discussions that are necessary for firms to assess client eligibility. Firms are already required to evidence and document their categorisation decisions and cannot treat a client as a professional unless the relevant criteria are met.

AFME therefore supports the proposals in principle but would welcome refinement to ensure that they are applied in a proportionate manner and aligned with established market practice.

Question 12: Will our proposals for change, taken together, allow firms to have appropriate engagement with clients about opting out, without communicating financial promotions about specific professional only products before a firm has met the conditions for categorising a client as elective professional? -only products before a firm has met the conditions for categorising a client as elective professional?

[Yes, No, No view] If yes or no, please explain your answer.

Firms routinely have preliminary, exploratory discussions with clients or potential clients who themselves raise an interest in particular products or asset classes. These conversations are essential to assessing a client's experience, sophistication and suitability. Through this dialogue, a firm may conclude that the product in question is not appropriate and that the client should not be treated as an elective professional.

The proposals risk discouraging or constraining such engagement by implying that even high-level discussion could amount to a financial promotion for a professional-only product before the conditions for elective professional categorisation have been met. This presents a static and linear view of the client journey that does not align with reality.

A more flexible approach would better reflect market reality and support firms in identifying unsuitable products at an early stage, ultimately enhancing consumer protection.

Question 13: Do you agree with our proposal not to require periodic reassessment of all elective professional clients, but to make clear firms must reassess any client they should reasonably suspect no longer meets the conditions for the categorisation?

[Yes, No, No view] If yes or no, please explain your answer.

We understand and support the FCA's proposal not to introduce a requirement for periodic reassessment of all elective professional clients, while clarifying that firms must reassess a client's categorisation where they become aware, or should reasonably suspect, that the client no longer meets the conditions for professional client status.

In principle, a trigger-based approach is preferable to a periodic reassessment, as it allows firms to focus their resources where there is a genuine risk that a client's circumstances may have changed. Firms already have governance arrangements, systems, and controls in place under SYSC and the Consumer Duty that enable them to identify and respond to relevant risk indicators.

We encourage the FCA to ensure that this approach is applied in a proportionate and pragmatic manner. In particular:

- Greater clarity would be helpful on what constitutes a "reasonable suspicion" in this context, as firms cannot readily become aware of changes in a client's circumstances without some form of interaction or trigger.
- Firms typically identify relevant changes through ongoing business relationships, client-initiated disclosures, credit or risk events, or other engagement points (for example, at the point of opting up, during significant transactions, or where material information comes to light).
- Without sufficient clarity, there is a risk that firms may continue to conduct periodic reviews in practice to mitigate regulatory or audit risk, which would undermine the intended flexibility of the proposal.

We consider that a proportionate "trust but verify" approach is appropriate. Firms should be expected to act where there are clear indicators or triggers, rather than being required to impose formalised or intrusive monitoring obligations on professional clients. Reinforcing at the point of opt-up that clients should inform firms of material changes to their circumstances may be a more practical and effective safeguard than mandating ongoing reassessment mechanisms.

3.5.9A

Members raised concerns about the requirement to reassess an elective professional client's categorisation after two years of inactivity. This would create ongoing operational and resourcing burdens, which the Cost Benefit Analysis (CBA) appears to underestimate, particularly where reassessments add little value if there has been no change in the client's circumstances.

Members noted that some clients have long trading cycles extending beyond two years, making mandatory reassessment largely administrative and offering limited additional protection. There are also practical challenges in monitoring inactivity and triggering reassessments across large client populations.

Firms already monitor trading patterns and apply credit and risk checks when clients seek to undertake new or unusual activity. In practice, changes in behaviour would already prompt ad hoc reviews, calling into question whether a blanket two-year requirement is a proportionate way to achieve the policy objective.

Members suggest that, as an alternative, firms should be permitted to incorporate reassessments into their existing periodic due diligence review cycles (for example, KYC/AML reviews), which may occur every three or five years depending on the client's risk profile. Aligning any reassessment requirement with established review cycles would be operationally more practical and would enable firms to refresh client information efficiently, while still meeting the FCA's objective of ensuring that clients remain appropriately categorised.

Members also highlighted uncertainty over what "reassess" entails. We encourage the FCA to consider whether a confirmation of the continued accuracy of existing information, rather than a full reassessment, would be a more proportionate and practical approach.

Finally, members noted a potential inconsistency between the rule, which refers to review where there is a reasonable basis for concern, and the guidance, which appears to introduce a mandatory reassessment after two years of inactivity. Further FCA clarification is sought on intent, scope and proportionality.

Question 14: Taken together, do our proposals adequately balance protecting consumers from being inappropriately categorised, with reducing obstacles to clients accessing the products and services that meet their needs and risk profile?

[Yes, No, No view] If yes or no, please explain your answer.

We consider that the FCA's proposals represent a positive step towards strengthening safeguards against inappropriate client categorisation, while seeking to modernise and clarify the opt-up framework.

From a consumer protection perspective, the enhanced focus on relevant factors, informed consent, and clearer expectations around engagement and reassessment should reduce the risk of clients being inappropriately categorised as professional. For the markets and clients our members serve, these measures support more robust and defensible categorisation outcomes.

However, in relation to reducing obstacles to clients accessing products and services that meet their needs and risk profile, we consider that the effectiveness of the proposals will depend on how proportionately they are applied in practice. If the rules and guidance are interpreted or implemented in an overly restrictive or prescriptive manner, there is a risk that:

- Firms may become more cautious in engaging with clients about professional status.
- Clients who are capable of being treated as professional may face unnecessary barriers to accessing suitable products and services.
- The policy objective of facilitating appropriate access may not be fully realised.

AFME therefore encourages the FCA to ensure that the final rules and guidance strike a clear and workable balance, maintaining robust consumer protections while allowing firms sufficient flexibility to engage with clients in a practical, risk-based way that reflects real-world business relationships.

Question 15: Do you agree with our proposed approach to rely on existing client safeguarding and governance rules (e.g. 'client's best interests' rule, fair clear and not misleading rules, SYSC rules and the Consumer Duty) rather than introduce additional new safeguards specifically for the elective professional categorisation process? Would the Consumer Duty be sufficient rather than any of our proposed new rules?

[Yes, No, No view] If yes or no, please explain your answer.

We agree with the FCA's proposed approach to rely on existing client safeguarding and governance requirements, including the client's best interests' rule, the requirement that communications be fair, clear and not misleading, SYSC requirements, and the Consumer Duty rather than introducing additional safeguards specific to the elective professional client categorisation process.

We consider that the existing framework already provides a comprehensive and robust set of protections that apply to firms' engagement with clients, including during the opt-up process. In particular, the Consumer Duty introduces an outcomes-focused standard that requires firms to act to deliver good outcomes for clients and to support consumer understanding. This duty applies directly to decisions and communications relating to client categorisation and informed consent.

Introducing additional, specific safeguards for elective professional categorisation risks adding unnecessary complexity and potential overlap with existing rules. There is also a risk that new, standalone requirements may not align neatly with the existing framework.

We also note that once a client has been appropriately categorised as a professional client, the Consumer Duty will no longer apply. In that context, it is not clear that there is evidence of harm or systemic issues within the professional client regime that would justify the introduction of further targeted safeguards, particularly where firms remain subject to other conduct, governance, and best-interest obligations.

Question 16: Do you think that our proposals to remove the list of types of entities in COBS 3.5.2R(1) simplify the per se professional criteria?

[Yes, No, No view] If not, should we retain the list or make any amendments to the list?

While we support the FCA's objective of simplifying the per se professional client regime, we consider that a purely entity type based approach risks unintended consequences. In practice, professional status is often better determined by the purpose for which an entity is established and how it operates.

A purpose-based approach would better reflect commercial reality and align with the FCA's secondary objective of supporting competitiveness and growth.

Question 17: Do you agree this category should include SPVs, and if so, do you agree with our proposed definition of an SPV for this purpose?

[Yes, No, No view] If yes or no, please explain your answer.

Members agree that the per se professional client category should include special purpose vehicles (SPVs) however, we consider that the current proposal could be further enhanced by recognising a wide range of SPVs. The proposal appears to focus primarily on fund related SPVs and does not fully reflect the breadth of SPVs used across the market, including corporate and holding vehicles established for legitimate business, legal and risk management purposes. SPVs are also commonly used in corporate finance transactions, such as mergers and acquisitions, capital markets activities, and structured finance, and should be explicitly recognised within the framework. These vehicles are typically operated by sophisticated counterparties with a clear understanding of the associated risks.

We believe there is scope for the FCA to broaden its approach to SPVs beyond those controlled by authorised firms, such as SPVs controlled by corporates or institutional investors (which include sponsor firms / private equity firms). Expanding eligibility – where appropriate safeguards are met – would support the FCA's secondary objective of enhancing the UK's international competitiveness and economic growth. A proportionate approach would reduce the risk of business being structure or relocated offshore to jurisdictions with more flexible, better aligned frameworks, while maintaining appropriate protections.

Question 18: Do you agree with our proposals to remove the distinctions in thresholds for categorising large undertakings and trustees other than pension trustees for MiFID and non MiFID business? -MiFID business?

[Yes, No, No view] If yes or no, please explain your answer.

We support the FCA's proposal to streamline the client categorisation framework by removing distinction between MiFID and non-MiFID thresholds for large undertakings and trustee (excluding pension trustees). In our view, most firms already default to applying higher MiFID thresholds across both MiFID and non-MiFID business. A proportionate calibration that works across both regimes would be more effective and better aligned with how firms operate in practice.

Question 19: Do you currently categorise clients under the criteria we propose to remove (COBS 3.5.3R(3)(a)-(d))?

[Yes, No, No view] If yes, do you see any challenges in applying the MiFID criteria?

In proposed TP 1.11R, the rule currently refers to COBS 5.2.3R(3)(a)–(d); however, the correct cross-reference should be to COBS 3.2.3R(3).

A number of firms do currently rely on the criteria set out in COBS 3.5.3R (a-d). Replacing these criteria with the MiFID threshold alone may present a few challenges including:

- Operational and resource impacts, as firms may need to review and amend client classifications, update internal systems and controls, and retain staff;
- Cost implications, particularly where firms are required to undertake re-categorisation exercise or apply additional assessments for clients who are already well understood and operate in a professional capacity;
- Risk of re-classification, where certain clients may no longer meet the revised criteria despite having the same level of sophistication, experience, and resources as before.

Question 20: Do you agree that pension trustees should currently continue to be treated as per se professional clients for non MiFID business? -MiFID business?

[Yes, No, No view] If not, what do you think the criteria should be for categorising those trustees? Should it be a monetary threshold, and if so what, or something else, such as single vs master trust?

Members have no comments.

Question 21: Do you agree with our proposals to clarify the record keeping requirements for client categorisation?

[Yes, No, No view] If yes or no, please explain your answer.

We agree with the FCA's proposals to clarify the record keeping requirements for client categorisation.

Question 22: Do you agree our proposal to remove the disapplication of COBS 3.8 for firms not carrying out designated investment business, as set out in COBS 3.1.3R, will make the record keeping obligations for these firms clearer?

[Yes, No, No view] If yes or no, please explain your answer

Members have no comments

Question 23: Do you agree with our proposal to clarify COBS 3.2.3R(4)?

[Yes, No, No view] If yes or no, please explain your answer.

Members have no comments

Question 24: How might the differences between our proposed changes to client categorisation and the other regimes affect you?

Please explain your answer.

The FCA's proposal to replace the current EUR large undertaking thresholds with GBP equivalents may create inconsistencies for firms operating under both FCA rules and EU MiFID. UK authorised EEA firms would need to apply GBP thresholds when servicing clients through a UK branch, while EU MiFID EUR thresholds would continue to apply for cross border inbound services. This could lead to the same UK client being classified differently depending on the channel through which services are provided.

Such misalignment could drive firms – particularly those that do not serve retail clients – to avoid UK branch activity and instead service UK clients solely on a cross border basis. This may reduce wholesale activity undertaken from the UK and create unnecessary operational complexity for internationally active firms.

To mitigate this, we recommend incorporating into COBS 3.5.2R(2) the same currency flexibility proposed in COBS 3.5.2R(3)(b), namely by allowing the relevant thresholds to be met “or their equivalents in any other currency at the relevant time”. This would promote consistent client classification where UK clients receive services from the same overseas firm, regardless of the location from which those services are provided.

More broadly, AFME encourages continued FCA and HM Treasury coordination to ensure that the amended FCA Handbook definition of “professional client” is applied consistently across UK legislation that still uses the EU MiFID terminology. We note that four key pieces of UK law continue to rely on the EU MiFID definition, rather than the FCA Handbook Glossary definition:

- 1) The Consumer Composite Investments (Designated Activities) Regulations 2024 (the “CCI Regs”)

The CCI Regs define “retail investor” by reference to the MiFID professional client definition, which underpins requirements for manufacturing and distributing CCIs. This would diverge from the amended FCA Glossary definition, creating parallel categorisation regimes. We recommend updating Regulation 3(1) to reference the FCA Handbook definition.

- 2) Alternative Investment Fund Managers Regulations 2013 (UK AIFM Regs)

The UK AIFM Regs define “professional investor” using the MiFID professional client definition, which frames the UK AIF marketing regime. This would no longer align with the FCA Handbook post amendment. We recommend amending Regulation 2(1) to adopt the FCA Handbook definition.-amendment.

- 3) FSMA 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001 (PCIS Order)

Article 16(2) relies on the UK AIFM Regs’ MiFID based definition. This could lead to inconsistent definitions applying to exemption thresholds versus COBS financial promotion rules. We recommend amending Article 16(2) to reference the FCA Handbook definition.-based definition. This could lead to inconsistent definitions applying to exemption thresholds versus COBS financial promotion rules.

- 4) FSMA 2000 (Financial Promotion) Order 2005 (FPO)

Article 29(3) also depends on the AIFM Regs’ MiFID based definition, potentially creating an uneven playing field between UK and overseas firms and operational complexity for international groups. We recommend amending Article 29(3) to align with the FCA Handbook definition.-based definition, potentially creating an uneven playing field between UK and overseas firms and operational complexity for international groups.

We also highlight the operational impact for globally active firms of managing multiple, overlapping categorisation regimes. Greater consistency would reduce administrative burden and support the UK’s international competitiveness.

Question 25: Do you agree that a one off re-categorisation of existing elective professional clients is the right way to ensure the integrity of the elective professional regime going forward and achieve our goal of resetting how firms differentiate between retail and professional clients?

[Yes, No, No view] If yes or no, please explain your answer.

We understand and support the FCA’s objective of strengthening the integrity of the elective professional client regime and ensuring that firms apply it responsibly as greater flexibility is introduced. However, we do not agree that a mandatory, one-off re-categorisation of all existing elective professional clients is a proportionate or effective way to achieve this objective.

For many firms, particularly those with large or long-established professional client populations, a full retrospective re-categorisation would be a substantial and resource-intensive exercise. It would require firms to revisit historic categorisation decisions and evidence them to a new standard, even where those decisions were compliant at the time and where the revised criteria are, in practice, easier to meet.

The cost benefit analysis acknowledges that a population wide re-categorisation exercise would impose significant implementation costs on firms, which on our view would bring limited incremental benefits.

Additionally, a mandatory re-categorisations risks undermining the policy intent by diverting significant firm resources towards low-value activity rather than forward-looking risk management and client engagement.

We also note that firms already have ongoing obligations to know their clients and to reassess categorisation where there is a material change in circumstances. In practice, professional clients are typically subject to frequent engagement through relationship management and transactional activity, providing natural and effective triggers for review where appropriate.

We therefore encourage the FCA to consider alternative, proportionate approaches, including:

- Grandfathering existing elective professional clients into the new regime where they were appropriately categorised under the rules in force at the time;
- A trigger-based reassessment model, focused on material changes in circumstances, new activities, or significant new risks, rather than a blanket population-wide exercise;
- Targeted supervisory action, including file reviews or sampling, to address poor or “tick-box” practices where they exist.

We consider that these approaches would better support the FCA's objectives, preserve regulatory integrity, and avoid imposing unnecessary costs that could detract from firms' ability to serve clients and grow their business.

Question 26: If you are an authorised firm, do you anticipate our proposed changes could lead to you seeking to vary your part 4A permissions?

[Yes, No, No view] If yes or no, please explain your answer.

Members have no comments

Question 27: Do you agree with our proposed terminology changes? Do any of the proposed choices of terminology create any difficulties?

[Yes, No, No view] If yes or no, please explain your answer.

Yes, we note the proposed changes and have no further comments.

Question 28: Do you agree with the proposed rationalisation of the conflicts of interest rules? Do our proposed changes make our rules on conflicts of interest easier to understand and navigate?

[Yes, No, No view] If yes or no, please explain your answer.

Yes, having reviewed the conflicts of interest provisions SYSC 10, we note the proposed changes and have no further comments.

Question 29: Do you agree with our proposal to amend the COBS 11.7 rules?

[Yes, No, No view] If not, what alternative would you suggest?

Members have no comments

Question 30: What is your view on whether the COBS 11.7A rules should be combined with the COBS 11.7 rules, using the revised language we propose in this CP? Should life policies also be excluded from the COBS 11.7A rules?

[Yes, No, No view] If yes or no, please explain your answer.

Members have no comments

Question 31: Do you have any comments on our CBA?

Throughout our review of the consultation paper, draft rules, and guidance we have identified a number of key areas which will place significant costs burdens on firms. In each instance we seek to articulate the concern and provide a proportionate and robust solution.

We welcome the FCA's proposals to streamline the SYSC 10 rules, however as outlined in Annex 2 firms must re-assess all existing elective professional clients to comply with the new standards. We consider this a disproportionate and resource intensive requirement particularly for firms with large or long-established professional client populations. A blanket reassessment is inconsistent with the FCA's broader move toward a proportionate, risk-based framework.

We encourage the FCA to allow firms to apply the new standards on a trigger-based basis, reassessing only where there are indicators of material change, new activities, or increased risk. This approach would preserve the integrity of the regime while avoiding unnecessary operational burden.

Please also refer to our responses to Questions 5, 13, 19 and 25.

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