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Finance for Europe

AFME Consultation response

FCA CP 2430 A new product information network for CCIs

Date: 20 March 2025

Executive Summary

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on the FCA CP24/30 A new product information framework for Consumer Composite Investments. 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 stable, competitive, 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 supports the FCA's efforts to improve rules for the way product information is presented under the Consumer Composite Investments (CCI) regime, including by establishing a more flexible and simple approach, where appropriate. However, AFME raises concerns associated with the scope of the CCI regimes, regulatory divergence, risk scoring, and cost disclosures.

We recommend certain measures to mitigate the regulatory, legal, and compliance related risks associated with the proposals, the growing divergence between the UK and EU regulatory frameworks, as well as urging greater alignment with existing UK frameworks to maintain market efficiency. We urge the FCA to reconsider whether certain OTC products should be within scope of the CCI regime and ask for clarification that debt securities are not misclassified as CCIs, since we do not believe that the proposed language provides sufficient clarity as the exemption language concerning make whole clauses appears to be more prescriptive than necessary. Refining the definition of CCIs would provide further clarity, specifically: (1) the inconsistency between the term "consumer" and the actual target audience, which consists of "retail" investors, and (2) clearer carve-outs to align the CCI regime with UK Consumer Duty rules, ensuring that only appropriate products are captured.

The response acknowledges the potential benefits for flexibility associated with product disclosures particularly in relation to the product summary, but stresses the need for clear perimeters of the role between manufacturers and distributors. AFME opposes permitting distributors to create their own product summaries or change those prepared by the manufacturers, as mis-selling risks and inconsistencies may arise. Instead, manufacturers should retain sole responsibility for standardised disclosures given that they often possess unique knowledge about their own products. In terms of costs disclosure, we believe that the current framework lacks a sufficient level of clarity, which has enabled manufacturers to take a variety of approaches with respect to cost information, causing confusion for distributors – further guidance and a sufficient level of clarity / granularity would aid distributors and benefit investor cost comparison between products. We also

recommend alternative approaches for structured products where there is no historical cost information available or past performance.

On risk, AFME supports retaining a horizontal presentation for the risk indicator, however does not believe that the volatility buckets used for the new 1-10 scale are well calibrated and do not sufficiently differentiate extremely risky / volatile payoffs against other more balance payoffs like downside barrier protection note on indices. Both market risk and complexity should not be included in a risk score and we strongly oppose the requirement to assign a minimal risk score of 9 to products with worst-of or gearing features. Furthermore, AFME notes that the proposal for risk calculation is based on the UCITs which is not appropriate for practical for structured products.

AFME supports an 18-month transition period but recommends extending it to 24 months to accommodate simultaneous regulatory changes, also recommending a single transition timeline for all products.

Q1: Do you have any comments on our approach to applying the Consumer Duty to CCI product information?

We also note that certain aspects of the Consumer Duty framework, including a move away from standardised mandated reporting templates, would result in a meaningful divergence from the approach adopted in the EU (including the approach to EU PRIIPs proposed in the upcoming EU Retail Investment Strategy and related reform) particularly for firms who operate across both the UK and the EU. jurisdictions. Therefore, more consideration will be required on the operational impact of this growing divergence between EU and UK and this will need to be reflected across business lines and products that straddle the UK and EU. There will certainly be a cost impact on firms which we think is underestimated by the current costs benefit analysis.

Consumer Duty alignment: As a general matter, Members would recommend that the **scope of the CCI regime should be aligned with limbs (2) and (3) of the carve-outs from the definition of "retail market business" as used in the Consumer Duty rules, as this would ensure that, for example, activities carried on in relation to non-retail financial instruments and primary market business are appropriately excluded** (see Annex A for the relevant exclusions).

"Retail" not "Consumer": We highlight the inconsistency between the title of "*Consumer* Composite Investment" and the legislative scoping being limited to "retail investors" in this context, particularly given the complexity and breadth of the FCA's separate definition of "consumer". Members would suggest that HMT consider substituting the word "retail" for the word "Consumer" in the term "Consumer Composite Investment," as this would be more aligned to the type of investors in scope for the designated activities.

We also note the FCA is currently considering amendments to certain Consumer Duty provisions, and that the Consumer Duty implementation will be reviewed in the near future, and urge the FCA to consider how that may affect the CCI proposals and firms' ability to have certainty about these provisions and how to respond to them. It is important that requirements under the CCI proposals are not duplicative or inconsistent with any amendments being made under the Consumer Duty framework. An example is any work that is being done with respect to the Consumer Duty Board Reports: good practice and areas for improvement.

Q2: Do you consider the proposed CCI regime can help distributors to assess value for overseas funds? Please explain why or why not.

The Overseas Funds Regime ("**OFR**") allows certain non-UK investment funds to be promoted in the UK, including to retail clients and funds with "recognized scheme" status under the OFR can be promoted like UK-authorized collective investment schemes.

We expect that the CCI regime will improve information flows between UK distributors and overseas manufacturers. A potential secondary benefit is that the metrics that will be disclosed through the CCI may assist distributors in assessing value for overseas funds.

Q3: Do you have any comments on the other considerations in Chapter 2, including ESG and Equality and Diversity considerations?

AFME believes that is both important and relevant for end-investors to be provided with information on the ESG characteristics of CCI products. Members suggest that the FCA proposals should build on and be consistent with guidance provided in FG24/3: Finalised Non-Handbook Guidance on the Anti-Greenwashing Rule and work being done on regulating ESG ratings providers[1]. The information must be very clear, simple and not overly complex, which would ensure that retail investors would be better able to understand it. Despite the recognised importance of flexibility in this area, the risk of greenwashing must be mitigated; it is therefore necessary to define some basic principles for such disclosures.

For structured products, this disclosure cannot relate to the Sustainability Disclosure Regime ("**SDR**") since those products are not within the scope of SDR. Instead, we propose to define straightforward principles such as:

- structured products that have ESG elements may disclose those, under the basic information section ("what the product is and its aims"), and
- such ESG elements should be identified as either:
  - An issuance with specific use of proceeds (social, green, or sustainable wrapper) and/or
  - the ESG characteristics of the underlying exposure (e.g. an ESG index such as Climate benchmarks).

Q4: Do you have any comments on the scope of products included in the CCI regime?

We believe that this definition is high level and broad in nature and as a result may not provide the clarity that the FCA intended, potentially resulting in significant legal uncertainty as to its scope.

We are concerned about the requirements for Over-the-Counter ("**OTC**") derivative products for corporate customers with a MIFID retail classification. A significant number of OTC derivatives (for example, FX forwards) are entered into by a wide variety of commercial entities mainly for hedging purposes: municipalities, local authorities and many commercial companies. We do not think it is appropriate for these hedging products with these corporate entities to require a product summary under the CCI regime. We would urge the FCA to reconsider whether certain OTC products should be within scope of the CCI regime at all. FX

[1] https://www.fca.org.uk/news/statements/fca-welcomes-move-bring-esg-ratings-providers-regulation

forwards and Rates products are not investments where the returns are dependent on the performance or changes in the value of indirect investments (DISC 1A.2.1R(1)(h)). FX forwards, for example, do not have an investment return wholly or predominantly linked to the actual or anticipated performance or changes in value of an investment (DISC 1A.2.1R(2)(b)). It is simply an agreement between parties to exchange pre-determined cash flows. It is an agreement which may remove the risk of exchange rate fluctuations over a pre-defined term. The FX rate itself is not an "indirect investment" being "one or more investments or assets, including in particular commercial assets held or operated for investment purposes, which are not purchased or held by the investor directly or at all" (DISC 1A.2.1R(2)(c)).

In the case of FX forwards products in deliverable currencies and other related derivative instruments with similar characteristics, the amounts to be paid by the two parties (the bank or investment firm as one counterparty and the retail investor as the other counterparty) are already fixed at the point at which the agreement is concluded. The investment return is not dependent on the performance or change in value of indirect investments. All parameters are fixed at the point at which the agreement is concluded, with only the fulfilment of the obligations entered into deferred to a later point in time. The only element that may "change in value" is the market value of the FX Forward contract itself (much like the secondary market price of a fixed rate security will change due to market conditions even though the amount repayable to investors who hold the security is fixed), not "return" which is the requirement for an FX Forward to satisfy the CCI definition.

In addition, certain FX forwards, for example, which are either spot or relate to payment obligations in specified circumstances, would not be financial instruments for the purposes of MiFID2, which we believe is an additional justification for their removal from the scope of the CCI regime.

We understand that under current practice the KIDs for OTC derivative products are rarely referred to by our customers, suggesting that customers may consider that the KIDs do not contain additional information pertinent to their decision-making process (e.g. compared to that contained in any term sheets or other materials that may be available to them).

Finally, we believe that there would be benefit to clarifying the definition of "indirect investments" to confirm that such investments may be real/physical or synthetic. Indirect investments are one or more investments or assets (whether real or synthetic) including in particular commercial assets held or operated for investment purposes, which are not purchased or held by the investor directly or at all. The current definition does not sufficiently reflect this.

Q5: Do you have any comments on our proposed scope clarifications? Are there any other areas where it would be helpful to clarify the application of the CCI regime?

With respect to debt securities, while we support the FCA's efforts to provide clarity on whether a make whole clause, in itself, means that a security is a CCI, we do not believe that the proposed language provides sufficient clarity. [Firstly, we would like to confirm that a debt security that does not fall within 1A.2.1R(1)(c)) would not fall under 1A.2.1R(1)(h) as an indirect investments ("any other investment where the returns are dependent on the performance or changes in the value of indirect investments"). We are also not sure of the purpose or benefit of the exclusion for where an "issuer's default risk is wholly or predominantly determined by the economic performance of the commercial or industrial activities of the issuer". The view that "lending, investment, and any other financial sector activities are not commercial or industrial activities" may also be problematic and it might potentially lead to a conclusion that all financial institution issuers are in scope.

We finally note that the option for a coupon step has also been removed. This removal would discourage the issuance of a sustainability linked bond with the potential for a coupon step, which we do not believe to be the FCA's intention.

We also note that the exemption for fixed and floating rate products (e.g., issuer call feature) seems to have been narrowed and suggest that risk-free rates (RFRs) be included in the definition of floating coupons. In addition, IBORs were historically seen as out-of-scope (See DISC 1A.2.4R) and should remain so in light of residual IBOR instruments.

We believe that the scoping provisions could generally be clarified by using the "manufacturer" and "distributor" definitions more consistently. The reference to "activities" in DISC 1A.1.3R is broad and unclear, we would suggest replacing this with the defined terms of "distribute" and "manufacture". We have also suggested removing the phrase "may be". Given the breath of the definition of "distribute", this is unnecessary.

We would also note that "advice" is not a defined term in the FCA Handbook, in DISC 1A.1.4.R it is italicised but it is not a defined term.

Proposed amendments to DISC:

"DISC 1A.1.3R This sourcebook applies to an *authorised person* and to an *unauthorised person* in relation to the *manufacture* or *distribution* ~~activities carried on in relation to~~ of a *consumer composite investment* that is ~~or may be~~ *distributed* to a *retail investor* in the *United Kingdom*."

We also note that "distributor" and "distribution" is defined very broadly and widely for the purposes of the DISC rules. Members suggest that the FCA bears this in mind when reviewing Consumer Duty implementation and application.

Q6: Do you agree with our proposal to allow optionality for multi-option products (MOPs)? Do you have any comments on how MOPs should be treated under the CCI regime, in particular how costs, risk and past performance should be presented to account for the range of products within them and the costs of the wrapper?

We propose to keep this flexibility (i.e., the current PRIIPs regime has options for MOPs providers to provide consumers with a generic document which covers the entire product, or individual documents for each of the underlying investment options) for IBIPs. Distributors would be able to provide a general summary for the wrapper along with product summary information for each of the underlying products. Alternatively, firms can show consumers the overall risk profile, costs and charges, and performance of the product after the consumer has chosen their options. Firms will also have the option of providing a general summary of the wrapper, together with links to where the product information for the underlying investment options can be found.

AFME looks forward to engaging with the FCA on transitional provisions rules.

Q7: Do you agree with our definition for when a CCI is not a retail product and therefore out of scope? If not, please explain why.

We have some comments and suggested amendments to this definition. The FCA has removed the "denomination" references in its draft £50,000 exclusion in DISC 1A.1.6(3), which is not consistent with the Consumer Duty exclusion, and it is unclear how it then applies to derivatives (on which the FCA gave AFME some informal guidance). We suggest that the reference to a minimum "denomination" is reinserted. This is consistent with the explanation in para 3.21 of the CP: "*We propose to define the minimum investment denomination for a product not within scope (currently £100,000 under PRIIPs) as £50,000 because we believe this value more accurately represents the maximum denomination of a product intended for the retail market*." (para 3.21).

We also believe there is a need to clarify that products with a minimum subscription of £50,000, which could be purchased or sold on secondary markets for smaller amounts to maintain and provide liquidity for investors, should remain out of scope of the CCI until the maturity of the product, because secondary market trades are generally done by investors to adjust their initial investments, and not with the intention to distribute widely with a smaller notional.

The CP itself seems to imply this as the original intention ("*manufacturers will have to produce disclosure information for fewer products which were never intended to be sold to retail investors but could be, theoretically, 'made available' on secondary market*"). However, the draft rules read as requiring cumulative requirements for the made available definition and our view is that these should be alternative requirements. With the proposed wording, such secondary "technical" trades would fall into CCI scope whereas the primary transaction would not. This is disproportionate and inconsistent with the current and future UK prospectus regime.

Further, there is ambiguity regarding the CCIs that are purchasable on the secondary market. AFME is concerned that the term "readily realisable security" is vague and should be removed. "Readily realisable" means that the security has to be listed and "regularly traded" – an ambiguous concept. It also relates to securities traded on UK recognised venues / UK RIE only. This is quite narrow (i.e. it excludes overseas exchanges that are not UK recognised) and therefore should be removed, particularly for EU/ US/ liquid APAC trading venues with no UK recognition (there was a similar interpretation issue under the Consumer Duty which relied on industry interpretation/ consensus). In any case, we do not understand why this extra requirement would be necessary. If the securities are being sold to a professional investor or eligible counterparty it should not be necessary for them to be listed. For example, if there is a private placement that is going to one institutional investor it would be even less likely that the securities would end up in retail hands or be listed/traded. Also, if securities are readily available to be traded then it is also unlikely that the securities are available to the retail investors. Previously, the market could rely on the legends and various steps that we took to make sure that sales are not made to retail.

The definition should also apply to all distribution and manufacturing activities as defined for the purposes of DISC (see above at Q5) rather than just 'an offer' or an 'issuer' in part (2), as this is too narrow in scope. Using the broad definition of "distributor" is more appropriate.

Please see our proposed amendments to DISC below.

Proposed amendments to DISC:

"DISC 1A.1.6 R The requirements in DISC do not apply to ~~an offer of~~ the *distribution* or *manufacture* of a *consumer composite investment* ~~which is a *readily realisable security*~~ in respect of which **one** ~~all~~ of the following conditions are met:
(1) the marketing materials for the *consumer composite investment* (including the prospectus, if there is one) feature prominent and clear disclosures to the effect that the *consumer composite investment*:
(a) is being offered only to investors who are or would be categorised as *professional clients* or *eligible counterparties* under the FCA's rules in COBS 3; and
(b) is not intended for *retail investors*; **or**,

(2) the ~~*issuer*~~ ***manufacturer* or *distributor*** of the *consumer composite investment* ~~or, in relation to secondary market offers, the *distributor*,~~ has taken reasonable steps to ensure the offer and any associated promotional communications are directed only to investors eligible for categorisation as *professional clients* or *eligible counterparties*; **or**, ~~and~~

(3) a **minimum denomination or** minimum investment requirement of £50,000 in the *consumer composite investment* applies in respect of each end investor (not including *platform service providers* or other nominee arrangements), or in each case an equivalent amount for a *consumer composite investment* denominated in another currency, where the equivalent amount is calculated not more than 3 business days before the date of issue of the *consumer composite investment*."

Q8: Do you agree with our proposed transitional provisions for moving to the CCI regime? If not, please explain why.

At a minimum, an 18 month transition period is necessary, as outlined in the CP, since the time and cost involved in moving to a new regime is substantial. It also important to start the transition once the final rules have been published and not before. It may also be sensible to avoid a "go-live" date of 1 January, or similar, since a number of firms have tech freezes around this time.

Considering the complexity of the proposals, the extra flexibility that is given in the design of the product summary disclosures and the concurrent work that is being done on Consumer Duty implementation reviews and MiFID reform that firms will need to have regard to; an additional 6 months should be contemplated to give an overall 24-month transitional period. The industry needs sufficient time to review and discuss the proposed methodologies and presentation once the MiFID component of the consultation is issued.

Q9: Do you agree with the proposed timeline for closed-ended investment companies moving to the CCI regime? If not, please explain what alternative timelines you would suggest and why.

It is AFME's view that there should be one single transitional period for all products within scope of the CCI regime, and that should be the longer transitional period. This would be preferrable from an investor understanding perspective as it would ensure a smooth transition and customer experience.

Q10: Do you agree with our approach, including how responsibility is allocated across the distribution chain? If not, please explain why, and how you think responsibilities should be allocated.

AFME is concerned that the approach may blur the respective duties and responsibilities of manufacturers and distributors and ultimately increase mis-selling risks, and result in duplicative outcomes unnecessarily and confusing customers. It is particularly concerning that the FCA proposes as an option that the distributor may prepare their own summary, particularly considering the CCI regime is expanding the scope of civil liability to capture disclosures made to retail investors. Given that "*Manufacturers often possess unique knowledge about their own products and so we consider that they should be responsible for ensuring that accurate and relevant information about those products is made available*", as noted in the CP, we are of the view that this option should be removed.

We do not believe that distributors should be permitted to prepare their own product summaries. Indeed, we do not believe that distributors should be able to change the content of the product summary as prepared by the manufacturer. Giving distributors the ability to change the content could increase risk of misinterpretation and produce concerns about the respective parties' legal duties and responsibilities. The manufacturer alone should be responsible for the product summary, which we believe should be a stand-alone document that includes all of the information that the manufacturer must provide to the distributor. (i.e., no separate document containing "core information").

Otherwise, it could open the door to inaccurate changes or short cuts from the distributor, without any way, in practice, for the manufacturer to check it beforehand and/or to correct it. To be clear, manufacturers would not want to have the obligation to review and/or correct product summaries drawn up by distributors. Instead, DISC 2A.2.4(2) R in the draft handbook text could be enhanced to include language regarding the liability for an inaccurate product summary created by a distributor. In addition, since under the Consumer Duty it is already common practice for manufacturers to gather feedback from the distributors, the additional nuances on the client base can already be incorporated in the summary document without creating additional documents which might ultimately burden the end clients with duplicative information.

However, if the current proposal for both a summary document and a core information document are maintained, it is important that the core information document is not used to change the content of the manufacturer's product summary disclosure. Distributors could always prepare and provide marketing materials, designed in a way that they feel more suitable to their end-clients but those should be separated from the CCI's product summary that remain a stand-alone regulatory document.

The FCA proposal seems to create a risk that distributors will try to converge "product summaries" to "Marketing Materials", imposing their requirements on manufacturers to adapt (and obviously, each distributor will use their own set of criteria) and produce a version ready to use combining the different inputs. Product summaries will be Marketing Brochures with some additional elements. Manufacturers will tend to agree to distributor demands to retain business. Comparability will be extremely difficult.

Q11: Do you agree with the core information manufacturers would be required to prepare? If not, please explain why and what alternative requirements you would suggest.

Manufacturers should continue to be required to prepare and provide the product summary as a single and stand-alone document. We are concerned that a dual requirement would over-complicate the CCI regime for all, and as such would be contradictory with the objective of "simplification" of the regime.

It also increases the risk of misinterpretation of information between both the sources and increases operational risks with no real added value for the end investors who will likely only receive the product summary. Regardless, having a requirement to produce a single product summary would not prevent manufacturers and distributors from contractually agreeing on exchanging more core information, depending on their needs, products and distribution models.

If such core product information disclosure requirement remains in the final regime, it is very important that:

- information required would be based as much as possible on quantitative figures or data points. Qualitative elements such as narratives should be limited as much as possible. Indeed, to ensure it is machine readable, the best medium is an Excel spreadsheet, and
- the standard template – as currently is the "EPT" template[2] (as well as an Excel file) is presumed to be compliant with new requirements. (Note that the EPT template works for the European Union, but has UK specific fields).

Q12: Do you agree with our proposal that manufacturers should be required to make their underlying product information available to distributors? If not, please explain why.

As detailed in our answers above, manufacturers should be required to provide the product summary only, as a single and stand-alone document.

Q13: Do you agree with our proposal that manufacturers should be required to make their underlying product information machine-readable? If not, please explain why.

Please see our response to Question 11. We also urge the FCA to bear in mind that this will likely increase costs for firms.

Q14: Do you agree that manufacturers should be responsible for producing a product summary? If not, please explain why.

As detailed in our answers above to Q10.

Q15: Do you agree with the proposed requirements for the product summary? If not, please explain why. Do you agree with our proposal not to prescribe its overall design or layout? If not, please explain why and what design requirements you believe we should prescribe.

While we welcome flexibility to tailor the information to the particular product, transaction or client, we note that it does, potentially, increase risks for manufacturers that get it wrong. Some might still think that having a prescribed format aids in comparability of products, so it is possible that manufacturers will continue to

[2] EPT – European PRIIPs Template, as provided by FinDatEx which includes European asset managers, banks, insurers and distributors. EPT 2.1 reflects the provisions as required by the PRIIPs Regulation (EU) No 1286/2014, and the revised PRIIPs Delegated Regulation (regulatory technical standards, RTS) and the provisions for PRIIPs in the UK.

stick to the “KID” format because they are already comfortable with that framework, while also taking advantage of any flexibility added by these proposals.

For retail investors, if the aim is to compare products, it is important that there is some level of prescription or conformity with respect to the information that is required and provided to investors. In any case, it is important that those prescribed requirements are applied in a manner that does not unnecessarily take away or reduce the effectiveness of the flexibility.

We understand the move away from standardised mandated reporting templates is in line with the approach adopted by the FCA under the UK Consumer Duty regime, but note that it does represent a meaningful divergence from the approach adopted in the EU (including the proposed requirements of the upcoming EU Retail Investment Strategy and reform), particularly for firms who operate across both jurisdictions. The operational impacts of this will require more consideration which will need to be reflected across business lines and products that straddle the EU and UK.

AFME members generally agree with the high-level requirements for the product summary and support the decision to not be overly prescriptive in its overall design and layout. However, we do not agree with some of the specific requirements in relation to costs and risks disclosure as detailed in our answers to those specific questions.

Also, even if we understand the rationale for not prescribing a specific design or layout, we remain concerned that the product summary should stay as standardized as possible to remain consistent and therefore comparable between relevant products. If different clients are provided with different documents, the risk of consumer misunderstanding increases. Many firms also currently take a systematic approach to KID provision, if we move to a fully tailored disclosure approach, it will be difficult to ‘systemise’ this. This could create undue delay and cost in the client journey. Therefore, such flexibility may call for further industry’s harmonization work, with possible additional timing constraints for implementing the new regime.

Q16: Do you agree with the requirements for distributors to provide the product summary or information within it to potential investors, including the timing of delivery? If not, please explain why.

AFME generally agree with the requirements for distributors to provide the product summary. However, as per our response to Q10, we do not believe that distributors should be able to change the content of the product summary as prepared by the manufacturer.

Alternatively, distributors could prepare and provide additional information and clarifications, designed in a way that they feel more suitable to their end-clients but those shall be separated from the CCI’s product summary that should remain a stand-alone regulatory document provided by the manufacturer.

Regarding the timing of delivery, we note that this is a departure from the PRIIPs point of sale requirement. It would be useful to have more clarity around this. We assume the aim of the FCA is for the product summary to be provided early enough that the investor can properly read and consider it, (i.e. it is not provided at the last moment in a rush, just before investing). It seems that the manufacturer and distributor can agree timing of the product summary's provision so long as it is a reasonable amount of time pre-investment. This change would seem to feed into the outcomes-based nature of the regulation. Members would like further guidance on how this would fit into the sales process so that firms can verify that information has been given at the correct time in the customer journey.

Q17: Do you agree with our proposals for providing a product summary in a durable medium if a sale is made? If not, please explain why. Do you have any comments on the requirement of a 'durable medium' for this?

AFME agrees, understanding that the intention here is to ensure customers have a record of information for future reference. Furthermore, it is noted that there are higher and closer levels of engagement if communications are sent and stored electronically (rather than paper-based).

Q18: Do you agree that we should require unauthorised firms to follow some of our principles for businesses and basic product governance standards when carrying out CCI activities? If not, please explain why. Do you have any comments on the standards that should be set for these?

Our interpretation of the proposed rules is that it would require any product manufacturer selling products cross border into the UK to comply not only with the new UK rules CCI regime, but also to adopt UK-like product governance requirements e.g. around target market, price and value, vulnerable clients. In our view, we see a risk that this additional layer may prove too great a burden, as it requires adaptation of global product governance processes, and may be the thing that triggers even more non-UK providers to withdraw products from the UK retail market. This could be particularly impactful on businesses that have a product offering which the traditional UK-based product providers do not feature highly. If that withdrawal happens at any scale that could mean one would need to build a distinct UK product offering, which would obviously be time consuming and resource intensive. This has potential for (further) negative effects including:

- Reduction of competition on the market by reducing foreign providers offering products into the UK retail market (one notable example is US ETFs) leading to higher costs for UK consumers because of the increased potential fee leverage for incumbent providers who are UK-based or closely tied to the UK;
- Contrary to UK Government growth agenda, this would make the UK less attractive to the internationally mobile wealthy if they cannot access the same product ranges from the UK; and
- It does not seem aligned to the general UK policy position on not regulating overseas firms' operational standards, systems and controls where they do not fall within the UK territorial jurisdiction. Indeed, in the 2021 HMT review of the Overseas Persons Exclusion (**OPE**), there was no desire from HMT to amend the regulatory perimeter for firms using the OPE, which is what this imposition of principles and basic product governance standards on unauthorised overseas firms would do.

This is particularly relevant (and timely) given the UK Prime Minister's speech of Thursday 13 March 2025 on cutting unnecessary regulation and making the state more innovative and efficient (for example, including the abolishment of the Payment Services Regulator).

Q19: Do you have any other comments on what obligations manufacturers should have in the CCI regime?

No, other than those set forth in our responses to Questions 10-15.

Q20: Do you have any other comments on what obligations distributors should have in the CCI regime?

With regards to the obligation for distributors to share information with manufacturers, the existing industry template for the distributor to provide feedback to the manufacturer works well and should already be appropriate to accommodate more flexible approaches to disclosures. Under the Consumer Duty it is already

common practice for manufacturers to gather feedback from the distributors often via a Distributor Feedback Template, so the additional nuances on the client base can already be incorporated in the summary document without creating additional documents which might ultimately burden the end clients with duplicative information. Members also like taking this more structured approach to the exchange of information, rather than the more ad hoc process that is being considered.

Q21: Do you agree with the costs and charges we are proposing to require the disclosure of? If not, please explain why and what alternative approaches you would suggest.

AFME believes that the current framework lacks a sufficient level of clarity, which has enabled manufacturers to take a variety of approaches with respect to cost information. Consequently, this can cause some confusion for distributors – some clarity with respect to what is included with help distributors. Further, we believe that a sufficient level of clarity and granularity would be helpful with respect to what manufacturers and distributors are expected to include, as there is a real benefit for investors if they are able to see what the costs are and to compare costs between products.

For structured products, we welcome the FCA proposal to remove the cost over timetable and the Reduction in Yield ("**RiY**"), which were concepts that were overly complex for retail investors.

However, we have some concerns in this respect. For example, the summary cost indicator is likely to omit some of the on-going costs over a longer period of time. The exclusion of costs for the recommended holding period would withhold what we believe to be key information from investors, conflicting with the principle of providing meaningful and transparent information. In order to ensure a level playing field between products, we believe that there should be an additional cost indicator expressing the total cost in percentage terms over the maturity (or recommended holding period) of the product. We therefore propose that the summary costs illustration should include costs over the recommended holding period (RHP), in addition to the 12-month period.

Since the RIY concept will be removed, we also think that the narrative requirement explaining the impact of cost on return should be removed. This concept is very complex and is not necessarily well understood by retail investors. Therefore, we propose the removal of the requirement in the product summary section 3.3.1 to add a narrative "explanation of the impact of the costs on the returns". A specific reason to remove the 3.3.1 requirement for structured product is that all cost and performance formula are known in the product terms so that once the entry cost is set, the payoff (e.g. potential coupon / return level) is also fixed, unlike for funds where the total amount of cost depends on the NAV and the future performance of the fund. Therefore, the most relevant information for structured product is actually the entry cost and not the RiY.

We have concerns with respect to the proposal for inclusion of only the previous 12 months, as some CCI's, such as structured products, are designed to be held to maturity (in the UK usually 6-7 years). Presenting costs only for a 12-month period can be misleading in this context. In addition, such products would not have historical costs so we would be unable to provide historical cost information.

As noted, structured products do not have past performance, nor they have "historical costs", as all costs are known at the point of issuance of the note. Therefore, it is not possible to calculate cost figures using the preceding 12 months. We would suggest deleting the requirements in 6.1.2 (1) and 6.1.2 (2) for structured products. With respect to requirement of the core information required under 6.1.2 (3) ("*narrative description to assist firms in the distribution chain and retail investor in their understand of cost and charges*"), we propose to satisfy it in a concise way, by including a column in the composition of cost table , to explain what each line

of costs represent, namely entry cost, ongoing cost (usually none in structured products), and exit costs. We would not support a long narrative description or illustrations in the core information.

Q22: Do you agree with our approach to disclosing transaction costs? If not, please explain why.

Yes, we agree but we suggest clarifying that transaction costs are not applicable to structured products, structured deposits, debt securities/notes and derivatives. AFME looks forward to engaging with the FCA during the forthcoming consultation on transaction costs.

Q23: Do you agree with adopting the PRIIPs methodology for calculating transaction costs? If not, please explain why and what alternative methodologies you would suggest.

No comment.

Q24: Do you agree with our approach to pulling through costs? If not, please explain why.

The approach to pull through costs replicates the PRIIPs position by including the costs of all underlying fund costs, including investment trusts, as well as the costs of any other types of CCI (derivatives, contracts for differences, certain debt securities) held in the portfolio. The FCA consider this to be necessary to eliminate the incentive to hide costs in lower-level vehicles. This position appears to ignore the longer-term view expressed by the FCA in 2023 and creates inequality between the costs required to be pulled through for underlying investment trusts by funds of funds under the CCI proposals and by discretionary wealth managers under MiFID carve out made in November 2024.

Q25: Do you agree with our product specific cost disclosure requirements? If not, please explain why and if we should extend any of these more broadly? Are there any other product specific clarifications we should consider?

For structured products, there should be a clarification that the Ongoing cost line in Table 4 should be expressed per annum, except for product of maturity of less than 1 year, where ongoing cost should be expressed over the maturity period rather than annualised. These products of less than 1 year and with ongoing cost are to our knowledge a very rare instance in the UK market. However, this has the benefit of bringing consistency with the non-annualization rule of cost tables in current PRIIPs KID.

Q26: Do you agree with our proposals for the presentation of costs and charges? If not, please explain why and what alternative approaches would you suggest.

We agree that there should be flexibility with respect to presentation of costs and charges, but note that too much flexibility may be unhelpful for comparing products. However, since we also believe that the benefits of adequate comparability outweigh the benefits of increased flexibility in this particular context, we do not have a strong opposition to the proposals.

However, we query how these regulations are going to sit alongside the changes being considered by the FCA in relation to the MiFID Org Regulations. AFME's members are concerned about having two overlapping and duplicative regimes governing cost and charges.

We do not agree with the mandatory conversion of cost into pound sterling for structured products denominated in other major international currencies, as this risks showing a misleading number for ongoing cost in currency value if the FX rate changes over time.

The breakdown of cost suggested in the below table 4 is generally relevant for structured products. We however suggest minor changes to preserve consistency with the current PRIIPs KID Composition of cost table:

- a re-ordering, starting with the Entry cost in first line, exit cost in second line, and ongoing cost in the third line
- a clarification Ongoing cost should be expressed per annum, except for product of maturity of less than 1 year
- the summary costs illustration should include costs over the recommended holding period in addition to the 12-month period.

Table 4

Cost categories that must be disclosed
Ongoing costs => reorder to One-off entry costs on the first line
One-off entry costs => reorder One-off exit costs on the second line
One-off exit costs => reorder Ongoing costs (expressed per annum for products of maturity of 1year or more) on the 3rd line.
Performance fees – narrative and example
Carried interest – narrative and example
Transaction costs

Q27: **Do you agree with our proposed changes to MiFID costs and charges? If not, please explain why. Are there any broader comments you would like to make on cost disclosure requirements under MiFID II?**

AFME does not support the *"removal of the requirement for investment firms distributing PRIIPs to disclose product costs not contained in the PRIIPs KID".* In some instances, IFA/advisor networks can take advisory fees on top of the entry cost. These fees are not considered part of the products (following the RDR regime in the UK) and are negotiated between the investor and the advisor directly, are therefore not under the control of the manufacturer/issuer (e.g. billed on basis of time spent by the advisor, sometimes they can be waived, sometimes these advice fees are not a percentage of the invested notional). Therefore, advisory fees should not be in the KID produced by the manufacturer. It should remain an obligation of the advisor to disclose their fees when taken outside the product and directly negotiated between the advisor and the retail investor.

Q28: **Do you agree that we should maintain a standardised horizontal risk score for CCIs? If not, please explain why.**

AFME supports retaining a horizontal presentation for the risk indicator.

However, we do not believe that the volatility buckets used for the 1-10 scale are well calibrated as they do not sufficiently differentiate extremely risky / volatile payoffs against other more balance payoffs like downside barrier protection note on indices.

We do not agree that both market risk and complexity should be included in a risk score, and specifically to the requirement to assign a minimal risk score of 9 to products with worst-of or gearing features, because they:

- create inconsistencies between risk score assigned for direct investment in equity underlying and one of the structured product exposed to the same underlying and similarly between a structured deposit and a structured note
- create confusion between risk and complexity of products, the latter should be assessed independently from the former.

With regard to the risk metric, we note that the basis will be the UCITS methodology. We note that using this methodology would be impracticable for structured products and note that the UK had previously, and helpfully, removed the performance scenarios and replaced them with a narrative performance description. We appreciated having this flexibility.

Q29: **Do you agree with our proposals for narrative risk and reward requirements? If not, please explain why.**

We believe that for structured products, the 5.4.10 requirement should be adapted to state that the risk score is calculated on the basis of forward-looking simulations and that the product is held to maturity. We also think that the narrative information related to the risk indicator should be standardised for all structured products, depending on the risk scale.

Q30: **Do you agree that the starting basis for this risk score should be the standard deviation of volatility of the product's historical performance or proxy over the past 5 years? If not, please explain why.**

We believe that the 5 years historical volatility makes sense for funds or products which have historical performance. We endorse the alternative approach set out by the UK Structured Products Association in their response to this Consultation as the approach that should be used as the UK market standard for structured products.

Please see Annex B for specific structured product feedback.

Q31: **Do you agree that we should expand the risk metric from 1-7 to 1-10 to differentiate a larger range of products? If not, please explain why.**

AFME does not agree with the current volatility buckets used in the 1-10 scale. We recommend amending the buckets from 6 to 10 to better differentiate risk levels between 20% and 80% volatility, which is a relevant spectrum in the equity linked investments. Furthermore, using different risk scores for UK CCIs and EU PRIIPs could lead to retail consumers receiving two different KIDs for the same product with different risk scores in the UK and EU. We believe that investors receiving different KIDs may raise liability issues for the manufacturer and /or distributor.

We also support the UKSPA response to this question.

Q32: **Do you agree that firms should consider amending the risk class where they deem it does not accurately reflect the risk of product specifics? If not, please explain why.**

We welcome some degree of flexibility. However, it should be used on a limited set of products/payoffs, and not for the majority of products. Otherwise it would be much more difficult to properly compare risk scores amongst manufacturers.

In any case, it would not be helpful if adjustments are made in an inconsistent or confusing manner. This would greatly reduce the effectiveness of the standardised risk framework. We believe industry associations can be helpful in developing and providing guidance on when and how such adjustments should be made.

We also support the UKSPA response to this question.

Q33: **Do you agree with the proposals for products within the high-risk category? If not, please explain why.**

We partially agree with the proposal. We would like to ensure that only products with no liquidity or no clear bid-ask defined under normal market conditions are categorized as high-risk.

- We also do not agree that both market risk and complexity should be included in a risk score, and specifically oppose the requirement to assign a minimal risk score of 9 to products with worst-of or gearing features. This would create inconsistency and confusion between risk score assigned for direct investment in equity underlying and one of the structured product exposed to the same underlying and similarly between a structured deposit and a structured note, and

- creates confusion between risk and complexity of products, the latter should be assessed independently from the former.

Risk and complexity of products should be assessed independently from each other. Here, products have been put into the high-risk category because of perceptions of complexity as well as potential for loss. However, while complexity can make a product harder to understand, it doesn't inherently increase risk to an investor. Risk should reflect volatility and potential loss, not product structure. This conflates quantitative and qualitative features of the product and uses the risk score to represent both, which is not appropriate. Narratives should be used for qualitative items such as features/complexities of the product, rather than having them arbitrarily override the risk score.

Complexity in products is addressed through, *inter alia*, (i) disclosures in documents (the Product Summary will include a complex warning where required), (ii) proper product governance (including using appropriate distribution channels) and (iii) the Consumer Duty requirements.

In order to address those issues, we would suggest the following changes:

- ➢ adding a "complexity" warning (separately from the risk scale) calibrated order to outline the possible complexity feature of the product for the end-investors (e.g., for not protected capital notes, a warning that prominently reads as "you may lose part or all of your money by investing in that product")

- ➢ requiring the "market risk indicator" methodology for structured products to rely on the VaR Equivalent Volatility (see Annex B for more details), for the following reasons:

- this method has been proved efficient under EU PRIIPs regime, including proven granular enough, and
- it would ensure convergence of results across structured products.

Combined with the "credit risk indicator" will adequately take into account the credit risk incurred which is particularly key for structured notes and under the current PRIIPs methodology.

Instead, an alternative approach should be contemplated, as detailed in Annex B. We also support the UKSPA response to this question.

Q34: **Do you agree with the proposals for how to apply the risk score to different types of structured products? If not, please explain why.**

The proposals regard application of the risk score to different types of structured products is problematic in the following ways: 1) they create confusion between complexity and market risk, which are two distinct features, 2) downside risk is not captured in a way that is granular enough in the 20% to 80% volatility range, which might lead to inconsistent risk score, and 3) they do not capture the credit risk of issuers in a way that is granular enough, which is an important element in the space of senior unsecured bonds investments.

In order to address those issues, we would suggest the following changes:

- adding a "complexity" warning (separately from the risk scale) calibrated order to outline the possible complexity feature of the product for the end-investors (e.g., for not protected capital notes, a warning that prominently reads as "you may lose part or all of your money by investing in that product")

- requiring the "market risk indicator" methodology for structured products to rely on the VaR Equivalent Volatility (see Annex B for more details), for the following reasons:

  - this method has been proven efficient under EU PRIIPs regime, including proven granular enough, and
  - it would ensure convergence of results across structured products.

Combined with the "credit risk indicator" will adequately take into account the credit risk incurred which is particularly key for structured notes and under the current PRIIPs methodology.

We also support the UKSPA response to this question.

Q35: **Do you agree with our proposals to require showing past performance? If not, please explain why.**

Yes, we partially agree with the proposal. We generally agree with the FCA's proposals to require the provision of information on past performance when available. In the case of structured products, for example, it is not possible to show past performance or any form of "back test" because at the point of launch/subscription, the product is not yet been issued and therefore has no past performance.

Q36: Do you agree with our proposed requirements for a line graph for products that have past performance? If not, please explain why.

Yes, we generally agree with the proposal, except for structured products where, as stated, past performance is not applicable to structured products.

Q37: Do you agree with our proposal to require up to 10 calendar years of past performance data to be shown where data is available? If not, please explain why.

Yes, we generally agree with the proposal, except for structured products as past performance is not applicable to structured products.

Q38: Do you agree with our proposed requirements for the inclusion of benchmarks in the line graph? If not, please explain why.

We generally agree with the proposal, except for structured products as past performance is not applicable to structured products.

Q39: Do you agree with our proposals for required basic information that must be disclosed? If not, please explain why.

Please see our answer to Question 3.

For Structured products, this disclosure cannot relate to the SDR since those products are not within the scope of SDR.

Instead, we may propose to define straightforward and simple principles such as:

- structured products that have ESG elements may disclose those, under the basic information section ("what the product is and its aims"), and
- such ESG elements should be identified as either:
    - An issuance with specific use of proceeds (social, green or sustainable wrapper) and/or
    - the ESG characteristics of the underlying exposure (e.g. an ESG index such as Climate benchmarks).

Further suggested amendments below to support this:

"DISC 5.2.2G A manufacturer may include in information it provides under DISC 5.2.1R(5)(e) (environmental and sustainability information) any disclosures it has prepared under ESG 5.1.1R (sustainability disclosures) in respect of the consumer composite investment or a link to those disclosures **or any other information relevant for the CCI (a security issued with a specific use of proceeds with an exposure to sustainable assets)**."

Q40: Is there any other basic information you think should be communicated to consumers?

No comment.

Q41: Do you agree with our Cost Benefit Analysis? If not, please explain why.

Generally no, because the proposal brings less comparability across products and issuers, has significant shortcomings regarding the risk score, blurs responsibilities in the distribution chain by creating 2 sets of disclosures to investors (product summary and core information disclosures), and will cause significant implementation costs to issuers because at present it diverges significantly from EU PRIIPs rules. It will also cause severe issues with regards to the automatisation of our documentation and the systems implemented to ensure its continuous review and update. The numbers quoted appear significantly underestimated (cost estimation £48.8mm in 10 years split amongst 778 manufacturing firms).

ANNEX A

"retail market business":

the regulated activities and ancillary activities to those activities, payment services, issuing electronic money, and activities connected to the provision of payment services or issuing of electronic money, of a firm in a distribution chain (including a manufacturer and a distributor) which involves a retail customer, but not including the following activities:

(1) the manufacture of a product that is:

(a) only marketed and approved for distribution to non-retail customers; and

(b) not a product provided by Firm A to Firm B (further to an arrangement between them) to enable Firm B to distribute another product to a retail customer, or operate a specified investment held by a retail customer;

(2) activities carried on in relation to non-retail financial instruments;

(3) an offer and any associated promotional communications, where that offer is:

(a) carried on by a firm with or for any issuer, holder or owner of a financial instrument and relates to the offer, issue, underwriting, repurchase, exchange or redemption of, or the variation of the terms of that financial instrument or any related matter; and

(b) of a financial instrument which meets all the following criteria:

(i) it is when issued, traded or intended to be traded on an RIE or trading venue operated by a regulated market;

(ii) it does not involve any actual or potential liability for the investor that exceeds the cost of acquiring the instrument;

(iii) it does not incorporate a clause, condition or trigger that could fundamentally alter the nature or risk of the investment or pay out profile, such as investments that incorporate a right to convert the instrument into a different investment; or where the return of initial capital invested at the end of the investment period is linked by a pre-set formula to the performance of an index, a combination of indices, a 'basket' of selected stocks (typically from an index or indices), or other factor or combination of factors;

(iv) it does not include any explicit or implicit exit charges that have the effect of making the investment illiquid even though there are technically frequent opportunities to dispose of, redeem or otherwise realise it;

(v) it is not a collective investment scheme or an AIF; and

(vi) it is not a structured finance product;

Note: paragraphs (ii) to (iv) derive from article 57 of the MiFID Org Regulation

(4) activities carried on in relation to contracts of large risks for a commercial customer or where the risk is located outside the United Kingdom;

(5) the regulated activity of administering a benchmark, any ancillary activity to that activity and any activities undertaken by a benchmark administrator for the purpose of complying with the Benchmarks Regulation;

(6) insurance distribution activities carried on by a firm in respect of a group policy that:

(a) are carried on by the firm at the time the group policy is entered into or subsequently;

(b) are for the purpose of a person, other than the legal holder of the policy, becoming a policyholder; and
(c) do not involve any direct contact between the firm and that person.

"non retail financial instrument":
a financial instrument in respect of which the conditions in either paragraphs (1)(a) and (b) or (2) are met: (1)

(a) the marketing materials for the financial instrument (including the prospectus, if there is one) feature prominent and clear disclosures to the effect that the financial instrument:
(i) is being offered only to investors eligible for categorisation as professional clients or eligible counterparties under the FCA's rules; and
(ii) is not intended for retail customers;
(b) the issuer of the financial instrument or, in relation to secondary market offers, the distributor, has taken reasonable steps to ensure that the offer and any associated promotional communications are directed only to investors eligible for categorisation as professional clients or eligible counterparties;
(2) a minimum denomination or otherwise a minimum investment of £50,000 applies to the financial instrument, or equivalent amount for a financial instrument denominated in another currency, where the equivalent amount is calculated not more than three business days before the date the financial instrument was first issued.

ANNEX B

Alternative risk methodology for SPs : VEV

For structured products, both those with capital protection and those with capital at risk, we recommend using the VaR Equivalent Volatility.

This approach effectively captures risk for all asset classes, even those that do not follow a lognormal distribution, ensuring a robust and consistent risk assessment across different structured products. Using this method will also enable manufacturers of structured products to leverage existing efforts already invested in PRIIPs compliance. Since the methodology is based on scenario generation using a bootstrap of the last 5 years, similar to PRIIPs Category 3, it aligns with established risk assessment frameworks. This reduces the need for entirely new infrastructure and calculations, allowing firms to streamline processes, maintain consistency, and minimise implementation costs while ensuring compliance with the new CCI framework.

Testing results have demonstrated a very high correlation with the 5-year price volatility approach as proposed.

Rationale

While standard deviation of a product's historical performance over the past five years is appropriate for Delta-1 products, such as funds, this methodology presents significant challenges for structured products.

Structured products are primarily sold in the primary market, meaning they do not have a 5-year price history. Simulating such data is highly difficult. Simulating such data is highly difficult, as a wide range of market data is required at the historical date, including implied volatilities for specific maturities and moneyness, implied correlations, projected dividends, and interest rate forecasts across multiple terms and currencies.

However, a party won't know in advance which structured products will be launched and cannot know the exact combination of payoffs, underlyings, and maturities for which data will be required. The immense scale of the data that would be required alone makes a historical volatility-based approach unworkable for structured products.

There are also methodological issues with relying on 5-year price volatility for structured products:

- Structured products' key features, such as capital protection and participation, only take full shape at maturity. Using mid-life price swings misrepresents the true risk profile of structured products.

- Standard deviation assumes a linear relationship between risk and return, but using standard deviation for non-linear products, such as structured products barriers, caps, or path-dependent features, can lead to misleading outcomes.

Given these challenges, we believe a more tailored approach is required to ensure that structured products are assessed in a way that accurately reflects their risk characteristics. We believe a risk score based on simulated prices at maturity is a viable alternative to the 5-year price history approach. This method better reflects structured products' risk and payoff structure while ensuring comparability with the FCA's 5-year price volatility approach. Please refer to our answer to Question 34 for detailed information on our suggested methodology for structured products.