

Consultation Response

FCA CP 21/13 A new Consumer Duty

30 July 2021

Introduction

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on **A new Consumer Duty**.

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.

AFME¹ 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.

We welcome the opportunity to respond to this consultation and have provided our comments to each of the questions below. We would be happy to talk through any aspects of our response with the FCA, if it would be helpful.

<p>Q1: What are your views on the consumer harms that the Consumer Duty would seek to address, and/or the wider context in which it is proposed?</p>	<p>AFME Members welcome the overarching objective of the FCA's approach of increasing levels of consumer protection in retail markets and recognize the FCA's strategic objectives for markets to work well.</p> <p>Members consider that it is important the FCA retains this focus on 'retail clients' as defined in the Handbook throughout the policy making process, so that any future consultations and subsequent draft Handbook text align with that approach.</p> <p>Our response focuses on wholesale firms' activities where we have identified a series of potentially detrimental outcomes for retail clients and unnecessary and complex obligations for wholesale firms.</p> <p>Based on the scenarios outlined in the CP, it is our view that the Consumer Duty is aimed at retail clients in traditional consumer-based activities. However, for non-high street retail banks and clients of sophisticated firms, the approach, and the harms the proposals are attempting to mitigate are already robustly addressed using the FCA's existing toolkit. We invite the FCA to consider this further and would be happy to provide additional information if this would be helpful.</p> <p>The application of the proposals as drafted, appear problematic for wholesale firms for a variety of reasons (provided in our response).</p>
--	---

¹ AFME is registered on the EU Transparency Register, registration number 65110063986-76.

<p>Q2: What are your views on the proposed structure of the Consumer Duty, with its high-level Principle, Cross-cutting Rules and the Four Outcomes?</p>	<ol style="list-style-type: none"> 1. We are supportive of the FCA's rationale for developing the new Consumer Duty proposals, but in reviewing the proposals, we are unclear how the FCA will in practice apply this new Consumer Duty alongside the new and existing Principles, the outcomes and the existing Handbook rules and guidance whilst also ensuring that the intention to achieve good outcomes is not in conflict of the existing regulatory obligations. We welcome further clarity on the proposed new structure of the FCA Handbook. 2. We also wish to suggest that the scope of the proposals inadvertently captures activities that the FCA may not have had in mind when drafting the CP. Please see below: 3. There is a clear difference between 'funding instruments' and 'investment products' for example - a firm that is issuing shares or bonds is mostly focussed on obtaining financing for itself, rather than designing products for other people's investment needs (in the way that a product manufacturer would); and we ask that the FCA recognises this. An issuer for example, has no control over the price of its shares or bonds and therefore cannot influence their performance or the value that they deliver to those who acquire them, either initially or in the secondary market. We do not consider that issuers themselves will be in scope of the proposed new Consumer Duty directly, but their advisers and/or underwriters may be. As a result, we request confirmation from the FCA that this was not the intention as these firms like their issuer clients, have no control and therefore should have no obligations in this space. 4. Furthermore, firms that are underwriting securities should legitimately be permitted to protect their own interest as underwriters. We note that there are existing conflicts rules related to underwriting, which protect clients in the context of these transactions, and we do not consider that it is appropriate or necessary to extend these obligations where one of the clients on the transaction involving underwriting happens to be a retail seller. 5. It is already recognised that in practice, underwriters, have even less control than the issuers themselves, since they cannot withdraw those securities from the market, they cannot change the target market, they cannot even influence the disclosure in relation to the company and the securities post the offering. 6. We also consider that structured products (or more broadly MiFID financial instruments) should be either a) carved out entirely from the Consumer Duty or b) the FCA should confirm
--	--

	<p>that the test of reasonableness (applicable to the Consumer Principle) is satisfied through the current framework i.e., PROD/PRIIPs/COBS. This is because these instruments (structured products) have had specific and individual attention within the regulatory framework (PROD), which is still relatively recent (MiFID II, 2018). PROD sets out obligations on manufacturers and distributors, that are tailored to the distribution chain, and allocate specific responsibilities (covering target market, distribution channels and stress and scenario analysis). We believe that the existing approach is already finely calibrated in a way that the proposed Consumer Duty is not.</p> <p>7. We also wish to highlight the findings of HMT’s Amendments to the Packaged Retail Investment and Insurance based Products Regulation which describes the shrinkage observed in UK Retail PRIIPS Market as a consequence of the application of the KIDs requirements which notes “There is currently significant uncertainty in industry as to the precise scope of PRIIPs, such as with respect to corporate bonds. This suggests that where the industry is uncertain about the applicability of PRIIPs to an investment product, retail issuance of that product has decreased. This may have reduced consumer choice and could mean that retail investors currently holding such products find it harder to exit their investment. We would caution against creating a similar situation.</p> <p>8. We would welcome the opportunity to discuss with the FCA how it envisages the duty applies to ‘indirect relationships. For example, where execution services are provided to a pension fund with underlying retail clients, if there is going to be any application of the Consumer Principle to the relationship between the pension fund manager and the firm which they instruct in connection with the execution of trading decisions, then the application of the Consumer Principle must be proportionate to the distance of the relationship with the retail customer (which in this case is so indirect as to almost be irrelevant as to the duties owed by the executing firm).</p> <p>9. We also note that the language in the CP suggests that firms should take ‘all’ reasonable steps. We understand that the FCA has clarified its intention that this is meant in a general sense and is not based on the UK law definition as established by the courts. Recognising the different status of each definition, we welcome confirmation and guidance from on this point. We would welcome the opportunity to explain the implications of the different approaches to the FCA.</p>
--	--

	<p>10. We also welcome further information on how the FOS will interpret the concept of ‘reasonable’ and whether this will apply to the firms and the retail client. We welcome clarity that the scope of the proposals will not apply to past business, Should the FCA anticipate applying this retrospectively, this is likely to have a significant impact on the PROD processes and would introduce new obligations and ongoing appropriateness and suitability assessments for pre-Consumer Duty products.</p> <p>11. We also want to raise concerns associated with firms tactically opting down to the retail client status in order to in order to benefit from increased levels of protection. An AFME Member has observed a recent trend in FCA authorised international banks requesting to ‘opt down’ to retail client status. This could create an incentive for other firms to do so; the consequent applicability of concepts designed for true retail clients (such as the Consumer Duty) to wholesale commercial relationships for which they were not conceived would create regulatory uncertainty and potentially make the UK a less attractive location for wholesale business. Whilst we support the FCA’s overall approach to apply the Consumer Duty to retail clients (as defined in COBS), we suggest that the FCA undertakes careful analysis on the practicality and workability of this approach to identify any unintended consequences..</p> <p>Whilst on the face of it these terms appear clear. It is important the FCA articulates what this means in practice for firms, not least because a lack of clarity could lead to a lack of consistency in application across the industry.</p> <p>The FCA may wish to consider alternative approaches that could achieve the same goal of better protection for retail clients, such as limiting the scope of the Consumer Duty to those retail clients that need additional protections and enhancing some of the tools already available to the FCA.</p>
<p>Q3: Do you agree or have any comments about our intention to apply the Consumer Duty to firms’ dealings with retail clients as defined in the FCA Handbook? In the context of regulated activities, are there any other consumers to whom the Duty should relate?</p>	<p>The FCA interchangeably uses the terms ‘retail’, ‘consumer’ and ‘client’. We understand that the FCA recently clarified that these terms are specific to ‘retail clients’ and do not include ‘professional clients’ or ‘eligible counterparties’.</p> <p>We consider that it is important that the FCA retains this focus on ‘retail clients’ throughout the policy making process, so that any future consultations and subsequent draft Handbook text align with that approach.</p>

<p>Q4: Do you agree or have any comments about our intention to apply the Consumer Duty to all firms engaging in regulated activities across the retail distribution chain, including where they do not have a direct customer relationship with the 'end-user' of their product or service?</p>	<p>Please also see our response to Q2.</p> <p>It would be helpful if the FCA could provide clarity on how responsibilities throughout the distribution chain should be allocated and apportioned.</p> <p>We consider the outcome that the FCA is intending to achieve, is clear when applied to customers (direct retail clients of a firm) but, when applied to indirect recipients of a product or service e.g., in the context of underwriters (manufacturers) who do not control the price performance of the securities in the market once issued (outside limited tools such as stabilisation) the benefits and intended outcome is less certain.</p> <p>We also believe that the approach could impact different business models, such as e-trading platforms, and including others who are based online or via apps, where firms are embracing technology and innovation to better serve their clients' needs. We are concerned that the application of the new Consumer Duty and a Private Right of Action (PROA) as drafted, could create barriers to entry limit direct retail access as it is deemed too risky for firms to support. We welcome clarity from the FCA on how the proposals will address innovation and different business models.</p> <p>Firms also welcome clarity on the territorial scope of the Consumer Duty. In particular, where authorised firms carry on business with UK clients from overseas establishments we suggest aligning the scope with UK COBS rules as set out in COBS 1 Annex 1 Part 2 2.1.</p> <p><i>[We refer to COBS 1 Annex 1 Part 2 2.1 ("Business with UK clients from overseas establishments") which states that COBS applies to a firm which carries on business with a client in the United Kingdom from an establishment overseas. However, it also states that COBS does not apply to those activities if the office from which the activity is carried on were a separate person and the activities would fall within the overseas person exclusion or would not be regarded as carried on in the UK]</i></p> <p>It is unclear how the FCA would expect firms to behave in accordance with the Consumer Duty Principle for unregulated activities, and in a way that is consistent with regulatory expectations for other Principles for Business, or recognised Codes of Conduct. We welcome clarification that the policy intent is that the Consumer Duty would not apply to unregulated activities or products. We urge the FCA to carefully consider whether the Consumer Duty proposal, as currently designed, may result in any unintended scope creep into unregulated activities and/or create an unlevel playing field between regulated entities providing unregulated services or products and their unregulated competitors (e.g., money exchanges).</p>
--	---

<p>Q5: What are your views on the options proposed for the drafting of the Consumer Principle? Do you consider there are alternative formulations that would better reflect the strong proactive focus on consumer interests and consumer outcomes we want to achieve?</p>	<p>We note that the concept of ‘good’ is open to interpretation – what is a good outcome for a retail client may not be the most appropriate (COBs 10/10A) nor in their best interests, nor fair (to either party to the contract). We note that the FCA appear to be changing its focus from TCF to ‘good’ and welcome clarity on if this signifies a shift in regulatory expectations and if so, what are the FCA’s minimum expectations in respect of this.</p> <p>Finally, we wish to note that whilst the CP states that option 2 would not give rise to a fiduciary duty, we consider that would be at least equivalent as there is not much to distinguish it from the legal definition of a fiduciary duty.</p>
<p>Q6: Do you agree that these are the right areas of focus for Cross-cutting Rules which develop and amplify the Consumer Principle’s high-level expectations?</p>	<p>If the Consumer Duty sets a higher standard than principles 6 & 7 the FCA should remove the application of these principles to retail clients.</p> <p>We believe that the proposals risk cutting across the existing Handbook provisions, and, if the intention is that some existing rules would need to be applied differently to retail clients, then we would ask clarity from FCA in form of draft Handbook text showing, for example, how the proposed Consumer Duty will interact with client’s best interest rules in COBS 2.1, COBS 9/9A suitability obligations, COBS 10/10A appropriateness obligations and COBs 11.2 best execution rules.</p> <p>We have previously welcome clarity on the FCA’s expectations for ‘reasonable steps’ in our response to Q2.</p> <p>We also welcome clarity on what is ‘foreseeable’ for example can it be foreseeable if a client does not provide information (COBS 3 and 10/10A) –and does a firm need to ‘warn the customer or refuse to transact.</p> <p>This in turn raises a series of questions concerning how firms treat the information that clients provide. For example, will firms be required to undertake additional checks to determine if a client has provided accurate information and in doing so, does this conflict with existing Data Protection requirements? Any changes are likely to require additional resources, processes and procedures and data storage requirements , resulting in tangible costs to the firm</p>
<p>Q7: Do you agree with these early-stage indications of what the Cross-cutting Rules should require?</p>	
<p>Q8: To what extent would these proposals, in conjunction with our Vulnerability Guidance, enhance firms’ focus on</p>	<p>We note that certain harms may emerge after the sale of the product. A client may not be considered vulnerable at date of purchase but may become vulnerable at a later point in time. We welcome clarity from the</p>

appropriate levels of care for vulnerable consumers?	FCA on if the Consumer Duty creates any additional responsibility for firms.
Q9: What are your views on whether Principles 6 or 7, and/or the TCF Outcomes should be disapplied where the Consumer Duty applies? Do you foresee any practical difficulties with either retaining these, or with disapplying them?	<p>We note that the FCA does not specify if this is a new principle or if existing <u>Principle 6 - Customers' interests - A firm must pay due regard to the interests of its customers and treat them fairly</u>, will be revised or deleted.</p> <p>We welcome further detail from the FCA on what changes will be made (if any) to Principles 6 & 7 as a result of the new consumer duty Principle. We are currently unclear if Principles 6 and 7 will apply as previously, and if a new Principle 12 will be limited in purpose but apply to a broader range of clients, thus having a broader scope.</p> <p>It is currently unclear where firms' duties will begin, in respect of the application of principles 6 and 7, to indirect retail clients, for example:</p> <p>We note that a manufacturer will provide target market instructions, but should an IFA then provide advice to a retail client that is subsequently considered to be in breach of the principles, we are unclear if the manufacturing firm will be held accountable or exposed to a PROA, and welcome clarity from the FCA on this point.</p> <p>We welcome clarity on the FCA's expectations in respect of UK parts of a distribution chain. EEA and global products are already marketed in the UK, but as drafted, we are concerned that this could create complexity and uncertainty, particularly when considered alongside a potential PROA. We would also welcome views from the FCA on any consequences for UK firms distributing to clients outside of the UK.</p>
Q10: Do you have views on how we should treat existing Handbook material that relates to Principles 6 or 7, in the event that we introduce a Consumer Duty?	<p>We consider that pending the decision whether to create a 12th Principle (per our response in Q9) and a decision <i>vis</i> the intended scope of that duty / principle (per our response in Q2) that any changes to what is expected of firms is clearly signposted in appropriate sections of the Handbook where existing provisions are deemed insufficient to meet the new duty's aim. This will provide consistency, clarity and allow firms to focus efforts on where change is needed.</p> <p>If substantial changes are anticipated by the FCA, we wish to clearly signal now, that firms will need sufficient time to implement these changes. In essence, the more significant the changes are, in terms of scope and raising existing standards, then a longer implementation period is required for firms and retail clients to adapt.</p> <p>If the changes that the FCA expects to make in introducing a new Consumer Duty are substantial and cross cutting firms will need a significant period of time to review and amend their existing processes to meet these new standards.</p>

<p>Q11: What are your views on the extent to which these proposals, as a whole, would advance the FCA's consumer protection and competition objectives?</p>	<p>Conversely, we consider that the FCA's approach could reduce competition and result in less choice for retail clients, as firms take risk averse approaches and reduce the availability of products that would otherwise be more suitable and appropriate to the client's preferences. Coupled with the PROA these proposals potentially create a chilling effect on the provision of products and services to this client type.</p> <p>The impact of differing interpretations by firms is likely to lead to confusion and complexity leading to lack of innovation and product availability for the retail market, as has happened with regard to corporate bonds and the uncertainty as to whether they would be in scope for PRIIPS. We believe that other non- price related factors should be considered and recognised, and we welcome clarity on how the proposals will align with the existing COBs 11 (Best Execution) processes and obligations.</p>
<p>Q12: Do you agree that what we have proposed amounts to a duty of care? If not, what further measures would be needed? Do you think it should be labelled as a duty of care, and might there be upsides or downsides in doing so?</p>	<p>We believe that this is well intentioned, but based on our response to other questions, and when considering the remit of our members' activities, we do not agree that introducing a Consumer Duty (as drafted) will deliver any significant additional benefits to retail clients.</p> <p>In respect of the implications for manufacturers of structured products, we are not in favour of labelling the Consumer Duty as a "duty of care". However, regardless of terminology it could still be considered a duty of care by a court. If the duty of care (regardless of terminology) is included in the way suggested there is a heightened risk of investor litigation at the manufacturer level as it seems to cut through the roles and responsibilities of the structured product chain (manufacturer v distributor). It will be possible for an investor to make two claims potentially: the first is the PROA under statute (if this is given - and it is subject currently to the consultation) and the second is a claim under tort law, that the manufacturer had a duty of care. Our view is that the existing arrangements (including FOS provisions) are sufficient in protecting consumers and we are not in favour of retail clients being able to claim against manufacturers under tort law (as the same negative consequences would apply as per a PROA). Please also refer to our response to Q21.</p> <p>We are interested in the interplay between good outcomes and acting in a client's best interest for example, a good outcome for a firm may be different to a perceived good outcome for a client, or indeed both parties. If a retail client fails to make a margin payment on a derivative product, that could be considered a good outcome for a client but would represent a poor outcome for their counterparty and the system as a whole. We would suggest that the FCA instead focuses on a 'fair outcome'.</p>

	<p>This could also result in a potentially negative impact on product provision for retail clients – making those products that are available more expensive and therefore unlikely to be ‘good’ outcome overall.</p>
Q13: What are your views on our proposals for the Communications outcome?	<p>We believe that the FCA’s proposals do not reflect the activities of wholesale market firms. The communication outcome infers a direct correspondence with a retail client, we are therefore unclear as to the additional risks this outcome attempts to mitigate that are not addressed by product specific rules.</p>
Q14: What impact do you think the proposals would have on consumer outcomes in this area?	<p>We believe that this requires careful consideration by the FCA, as this may result in firms issuing more client communications, that may not be read and understood, particularly if such communications are detailed and provided too frequently. An additional challenge for firms is in ensuring that retail clients have read and understood relevant communications.</p>
Q15: What are your views on our proposals for the Products and Services outcome?	<p>We believe that the FCA’s proposals do not reflect the activities of wholesale market firms.</p> <p>In addition to our earlier points, we request that the FCA makes clear that the new Consumer Duty approach only applies to products and services for UK retail clients and should not have any extra territorial application. (i.e., in the same way that certain other similar requirements only apply to UK retail clients (e.g., RDR)) In our view, the FCA focus should be on protecting UK retail clients, whilst local regulators focus on retail clients in other countries.</p> <p>We also note that firms operating under EU/UK MiFID II already follow rules that apply to the design, manufacture, and distribution of products to clients and are unclear what additional benefits the new consumer duty package will add. We also believe that it may create level playing field concerns and make the UK less attractive as a manufacturing location, while not delivering substantially greater benefits to UK retail clients receiving MiFID products and services. We have also considered scenarios where an EEA firm manufactures a product via a [non-UK, non-EEA branch] and would welcome a discussion with FCA on the territorial application of the proposed duty, especially in the context of products manufactured in the UK for distribution abroad.</p>
Q16: What impact do you think the proposals would have on consumer outcomes in this area?	
Q17: What are your views on our proposals for the Customer Service outcome?	<p>We welcome clarity on how this approach will work with products purchased online without a salesperson and if this creates any obligations in respect of how retail clients access non-regulated</p>

	products A retail client may have legitimate, often business based needs to access derivatives products online (and often out of hours), and welcome clarity on his this will interact with non-regulated products.
Q18: What impact do you think the proposals would have on consumer outcomes in this area?	We do not condone sludge practices or firms applying undue influence over retail clients that create poor outcomes for consumers. However, we note that there can be friction in a sales process that is outside of the control of a firm. We also note that there are examples of positive friction, where for example certain products are not available online and require the intervention of a salesperson to ensure the client understands the products and the nature of the risks and benefits of that product.
Q19: What are your views on our proposals for the Price and Value outcome?	<p>We urge the FCA to consider that in respect of wholesale market activities, fair value to clients can include non-monetary value.</p> <p>We have observed that where the FCA has recently made determinations in respect of fair value, that their approach has generally been bespoke and specific to those particular sectors. We would support the FCA in continuing this approach and caution against developing an overarching standard or determination of fair value.</p> <p>We note that the FCA recently provided a series of determinations for assessing fair value for Asset Managers² and would not support the FCA using this as blueprint for the assessment of 'fair value' for retail clients; moreover, any potential read across to wholesale markets activities would be problematic.</p> <p>On the concept of fair value, we note the differing levels of retail client sophistication when considering requirements for fair value and price. The lowest price is not always the most appropriate choice and non-financial factors may be sufficiently significant that the higher price is actually the fairest one to the client in certain situations.</p>
Q20: What impact do you think the proposals would have on consumer outcomes in this area?	We strongly believe that this could restrict innovation, limit retail choice and favour vanilla products at the expense of retail consumers with needs in excess of available high-street offerings.
Q21: Do you have views on the PROA that are specific to the proposals for a Consumer Duty?	We consider that a PROA does not fit naturally within the FCA's current remit. We also consider that any litigation against the high-level nature of the FCA's Principles would prove problematic for retail clients, firms and the FCA. There is a potential risk of creating parallel and contradictory case law that would supplant the FCAs ability to interpret and issue guidance on its rules.

² Asset Management Market Study remedies and changes to the handbook – Feedback and final rules to CP17/18

	<p>There are existing routes within the existing FCA rules and the FOS for protecting retail clients. The existing arrangements (inc. FOS) are sufficient and were specifically designed to give retail clients a redress route that did not involve them needing to take legal action. It has always been considered that such action is out of reach of most retail clients for a variety of reasons (costs, timescales, access to law firms) and it is hard to see how the PROA would change that. If the FCA considers the existing framework is not delivering sufficient consumer protection then we think that the FCA should identify where there are any gaps and why they could not be addressed through amends to the existing framework.</p> <p>Furthermore, PROA activity is expensive for all parties, is likely to take years to resolve and could pose a significant financial risk for retail clients, customers, or consumers in terms of the cost of bringing action or in introducing higher product costs, as service costs may then be passed on to retail clients.</p> <p>We would also like to highlight the potential risk of such activity facilitating the emergence of claims via claim management firms and private individuals.</p> <p>We also note that retail clients (along with non-retail clients) already have the ability to sue for breach of contract. As a result, we do not consider that there is any additional benefit in introducing a PROA in respect of the Consumer Duty and caution that, if anything, this will create complexity and uncertainty.</p> <p>We believe that there is a clear risk that case law established following a PROA could impact the interpretation and application of the PROD and product governance rules. If a court makes a determination following a PROA, in respect of a client contract, the firm involved and their peers are likely to make subsequent changes to other contracts in light of that decision, applying case law and not the FCA rules.</p> <p>It would create a level of complexity and provide less certainty to the status of FCA rules and interpretation of the Principles. This would be even more problematic should a court disagree with the FCA's approach.</p> <p>On an individual firm basis, this creates case law that firms may be compelled to follow and given the individual circumstances of the PROA it may be difficult to carry across to contracts with other clients.</p> <p>A further unintended consequence could see firms adopt a risk averse approach that limits their potential exposure to litigation. This would be counterproductive and ultimately restrict choice for retail clients and compromising firms' ability to act in a client's best interest and undermines the product governance rules.</p> <p>The FCA will also be aware that definition of 'private individual' for the purposes of s.138D is narrower than the proposed definition of 'retail consumers' under the Consumer Duty. The definition of 'private</p>
--	--

	<p>individual' under the Rights of Action Regulations specifically excludes any legal person carrying on any form of business activity. This will prevent sole traders or SMEs using s.138D to enforce any future breach of a Consumer Principle should the PROA be extended in the manner suggested at Chapter 5 of the consultation paper, notwithstanding the fact that they fall within the definition of a 'retail consumer'. There is no suggestion in the consultation paper that the FCA is planning to extend the private right of action to business customers - this would require an amendment to the Rights of Action Regulations. This difference in eligibility would need to be clearly communicated (to prevent confusion) should the PROA be extended in future.</p>
<p>Q22: To what extent would a future decision to provide, or not provide, a PROA for breaches of the Consumer Duty have an influence on your answers to the other questions in this consultation?</p>	<p>We remain of the view that the application of the proposals to wholesale activities will be problematic. These firms follow existing FCA rules and adhere to the FCA's Principles. Should these activities not be expressly excluded, we would welcome an exemption.</p>
<p>Q23: To what extent would your firm's existing culture, policies and processes enable it to meet the proposed requirements? What changes do you envisage needing to make, and do you have an early indication of the scale of costs involved?</p>	<p>The lack of a draft text proposing amendments to the Handbook means the extent of these changes cannot be meaningfully assessed at this stage. However, we would be happy to provide feedback once more detailed policy options are available.</p> <p>We remain of the view that the application of the proposals to wholesale firms' activities will be problematic. Member firms' current suites of policies and processes typically reflect their lack of direct engagement with retail clients. The application of indirect obligations would be highly complex and sit awkwardly with members' existing focus on product governance and the existing principles. The proposals if developed and applied to wholesale firm are likely to introduce additional cost to wholesale firms.</p>
<p>Q24: [If you have indicated a likely need to make changes] Which elements of the Consumer Duty are most likely to necessitate changes in culture, policies or processes?</p>	<p>The lack of a draft text proposing amendments to the Handbook means the extent of these changes cannot be meaningfully assessed. We would welcome the opportunity to revisit this question and Q23 in the subsequent consultation.</p>
<p>Q25: To what extent would the Consumer Duty bring benefits for consumers, individual firms, markets, or for the retail financial services industry as a whole?</p>	<p>As far as the predominantly wholesale business of our members is concerned, we do not think that the introduction of a new Consumer Duty would bring the significant additional benefits that the FCA is seeking but we recognize that the situation may be different for businesses that have more direct relationships with retail clients and/or are not currently subject to MiFID product governance rules, for example.</p>

	We also note that the proposals will not address where harm crystallizes in respect of unregulated firms and activities.
Q26: What unintended consequences might arise from the introduction of a Consumer Duty?	<p>Our response to Q2, provides a series of scenarios to which we do not believe the proposed consumer duty should apply to and some of the unintended consequences .</p> <p>We have also summarized our key considerations below:</p> <ul style="list-style-type: none"> • A lack of clarity concerning obligations for firms, clients, and activities in scope of the proposals • That this could restrict innovation, limit retail choice and favour vanilla products • The approach may introduce level playing field and competition concerns for UK firms and the competitiveness of the UK regime for wholesale firms, which is currently recognised as one of the significant strengths of the UK • The approach undermines the effectiveness of the existing legal and regulatory framework creating additional complexity and potentially contradictory interpretations of the new consumer duty and Handbook rules • Potentially limits the FCA's ability to maintain pace with innovation in changing business models , for example, online platforms. • Additional regulatory costs for firms, may lead to a number of firms exiting the retail client market (as recently observed in respect of PRIIPs). • We have identified a series of workability considerations identified in the proposals that we urge the FCA to consider. <p>We welcome further engagement with the FCA and clarity on the points we have made in our response and would be happy to talk through those considerations with the FCA, if it would be helpful.</p>
Q27: What are your views on the amount of time that would be needed to implement a Consumer Duty following finalisation of the rules? Are there any aspects that would require a longer lead-time?	Please see Q24. We also note that we will be better placed to respond to this question when we have seen draft rules. Following this information, we envisage that firms will need a period of time in which to implement the new requirements.

AFME Contact

Louise Rodger
Louise.rodger@afme.eu