TheCityUK

TheCityUK response to FCA CP25/36 Client categorisation and conflicts of interest

TheCityUK is the industry-led body representing UK-based financial and related professional services. We champion and support the success of the ecosystem, and thereby our members, promoting policies in the UK and internationally that drive competitiveness, support job creation and enable long-term economic growth.

The industry contributes over 12% of the UK's total economic output and employs almost 2.5 million people, with two-thirds of these jobs outside London across the country's regions and nations. It pays more corporation tax than any other sector and is the largest net exporting industry. The industry plays an important role in enabling the transition to net zero and driving economic growth across the wider economy through its provision of capital, investment, professional advice and insurance. It also makes a real difference to people in their daily lives, helping them save for the future, buy a home, invest in a business and manage risk.

Summary

We broadly support the regulator's proposals on client categorisation and conflicts of interest and welcome the opportunity to respond. We recognise and support the policy intent to strengthen consumer protection while promoting proportionate access to markets, and we agree that reforms in this area are timely given changes in market participation, product distribution, and investor behaviour. We also welcome the FCA's continued focus on supporting growth and competitiveness, in line with the government's wider objectives.

In response to the proposals our main points are:

- There remains **ongoing confusion and complexity amongst regimes** for example, between this regime, COBS 3 client categorisation and the Financial Promotion Order. This continues to create operational complexity for firms.
- We support the FCA's outcomes-based approach but would welcome **clearer expectations in practice to reduce hindsight bias and increase legal certainty**. In parallel with FOS and redress reforms, firms need assurance that good-faith decisions made in line with the FCA's rules and guidance at the time will not later be judged against retrospectively applied or shifting standards.
- We believe the proposed **£10 million quantitative wealth exemption threshold is set too high**, which may limit access for a cohort of sophisticated investors and risks placing the UK at a competitive disadvantage relative to international peers.
- We believe that the FCA should work on the basis that **not all products will be suitable for everyone**. While we support the FCA opening access to individual investors, consumer protection should remain a key priority.

- We support the proposed updates to **the relevant assessment factors**, which we consider to be **more aligned with modern investing behaviours**, including increased self-directed investing and wider access to complex products.

We remain committed to engaging constructively with the FCA as it continues to evolve as a more growth-focused regulator. However, members have highlighted the practical challenges currently facing firms as a result of the volume and pace of regulatory change being delivered across the sector. This consultation is being considered alongside a substantial package of recent and forthcoming reforms from both the FCA and HM Treasury, many of which require firms to analyse final rules, assess firm-specific impacts, and implement significant operational, systems, and governance changes which overlap.

These initiatives are drawing on the same finite internal resources across compliance, legal, operations, technology, and senior management. As a result, firms are necessarily prioritising the implementation of finalised and time-critical regulatory obligations, which can constrain the time and resource available to engage fully with new consultations. While we appreciate the need to move at pace to maintain international competitiveness, we believe that allowing sufficient time for firms to provide considered, evidence-based feedback will best support the development of effective, proportionate, and durable policy outcomes.

Question 1: Do you agree with deletion of the mandatory quantitative criteria from the qualitative assessment, (other than for local authorities?

Yes, we support the deletion of the mandatory quantitative criteria from the qualitative assessment when a retail client is seeking to be treated as an elective professional client. The original EU-derived quantitative criteria conflated activity for sophistication in requiring a set number of transactions per quarter, ignoring that the shape of modern investing in the use of model portfolios, funds and alternatives and that it also involves fewer but more complex decisions. It also conflated wealth with understanding. The €500,000 wealth threshold is seen as outdated and could exclude highly knowledgeable investors who fall short of the threshold and include those with assets but who lack investment expertise.

However, we support the FCA's intent to retain the concept 'the ability to bear losses' in the qualitative assessment, as taken with other factors, this could be important in setting client categories.

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

Yes, we support the attempt to introduce an opt-out threshold. This will allow individuals who have resources, both wealth to absorb losses and professional advice, to bear greater risk. The change will enable broader participation in capital markets and private assets. It aligns with the government and regulators' objectives to create a more balanced risk culture and will support UK capital market depth and competitiveness.

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

No, we believe the proposed threshold is too high and puts the UK at a competitive disadvantage in comparison to other major markets such as Switzerland at around CHF 2 million, Australia at AUD 2.5million and Hong Kong at HKD 8million. Most of our members have coalesced around a reduction to £5million based on the need for it to be grounded in the financial resilience rationale. However, a considerable number of our members would support a £2million threshold, to make the qualitative test less central for day-to-day categorisation, align with comparable tests and requirements in other jurisdictions, including in the Berne agreement.

We note that on this issue, and as we have highlighted above more broadly, there remains misalignment between this regime and other regimes. For example, the Financial Promotion Order regime defines high net worth individual thresholds at a much lower level, i.e., £250,000 worth of net assets or £100k of income.

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

Yes, we support the introduction of relevant factors for professional clients, which aligned to the complexity of individual and individual behaviour provides nuance and optionality to allow firms to more effectively assess an individual's ability to take and awareness of risk. We support the FCA's intent to reduce reliance on self-certification alone which enabled clients to opt out through a process-focused rather than risk-focused approach. The focus on a written declaration in the previous regime relied heavily on information that could be incorrect.

From an operational/compliance perspective, the ability to compensate between the relevant factors is highly subject and open to varying interpretations. We would welcome illustrative examples of how this would work in practice.

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

No, we believe that the FCA could consider giving further guidance to firms on how to effectively assess clients using the relevant factors. Without this, there is a concern that inconsistencies may appear across the industry.

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

Yes, we believe the focus on actual risk-bearing ability, not just raw numbers is a positive step and reflects the diversity of investors. There is a concern that as a standalone relevant factor it conflates several issues. As with question 4 would welcome illustrative examples of how this works in practice.

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

We support the FCA's intent to allow opting out in relation to specific products to ensure that individuals continue to be protected from the necessary retail protections when a product is not match their resources or ability to bear risk.

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

Yes we agree.

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

Yes, we agree with the proposed requirement that firms must obtain the client's informed consent to opt out of retail protections and be treated as a professional client. We would welcome as much clarity as possible on the standardisation of disclosure on the loss of retail protections and suggest the FCA work with industry groups to develop a standard form of disclosure which could be adapted to their client base's information needs.

We believe there is a need for clearer FCA guidance on how informed consent, proportionate record-keeping, and the boundary between generic information and product-specific promotions should operate in practice, especially for time-sensitive opportunities and digital channels, to avoid unnecessary barriers to engagement.

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

Yes we see a challenge in ensuring consumer understanding as part of informed consent. We would welcome guidance from the FCA on how firms can confirm understanding without overstepping boundaries or placing undue responsibility on the client.

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

Yes, we support the FCA in its proposals to allow firms to initiate discussions with clients about opting out of retail permissions. Firms should be able to demonstrate the 'reasonable basis' to initiate discussions, and evidence that a client has opted out without undue pressure. We believe it would be useful for the FCA to provide illustrative examples of where firms could initiate discussions.

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

Yes, however we would welcome clarity on the type of generic product information that could be made available without it being considered product specific promotion.

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

Yes, we agree that the FCA's approach is proportionate. Elective professional clients have the resources and sophistication to understand their obligations, and it is appropriate that they take responsibility for notifying firms of any material change in circumstances. Firms can make this obligation explicit when confirming a client's elective professional status.

However, the FCA expectations on *when* firms must recategorise elective professional clients back to retail remain unclear. In practice, the only materially relevant change would be a significant deterioration in a client's financial position, which firms would already identify through existing credit and risk-monitoring processes. It is therefore

uncertain what further updates firms could reasonably require from clients. We would welcome more clarity from the FCA on this.

Question 14: Taken together, do our proposals adequately balance protecting consumers from being inappropriately categorised, with reducing obstacles to clients accessing the products and services that meet their needs and risk profile?
Yes, we believe the proposals effectively balance protecting customers and enabling those with sufficient resources and knowledge to access a broad range of products. A number of these changes will have an impact on the questions set out in DP

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

Yes, we support the FCA's proposed approach to rely on existing client safeguarding and governance rules rather than introduce new safeguards.

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

Yes.

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

We welcome the absence of financial thresholds in the definition of an SPV. However, because the revised definition applies only to SPVs controlled by authorised entities, a significant number of SPVs will nonetheless fall within scope of the new wealth assessment or be assessed as large undertakings. We also consider that the relevant thresholds should be aligned.

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

Yes, we support the proposal to remove the distrinctions in thresholds for categorising large undertakings and trustees other than pension trustees for MiFID and non-MiFID business.

Question 19: Do you currently categorise clients under the criteria we propose to remove (COBS 3.5.2R(3)(a)-(d))?

We have no position on this issue at this time.

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

We have no position on this issue at this time.

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

Yes, we agree with the proposals for clarification of the record keeping requirements.

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

We have no position on this issue at this time.

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

We support the proposal to clarify COBS 3.2.3R (4) to reflect the distinction that when a firm provides services to a fund that doesn't have it's own legal identity, the fund as a whole, rather than the individual investors are treated as the client but when a firm is marketing the fund, COBS 3.2.3R (4) does not apply. This is a helpful change to make the rules consistent.

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

While we welcome the changes set out in this consultation, we believe there is more to be done to align client categories across regulation and legislation in a proportionate way that doesn't add undue burden to firms.

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

Yes, we support the FCA in its decision that all clients should be reassessed following the adoption of these proposals and the removal of the quantitative criteria.

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

No, we do not believe that the changes would lead to variations in part 4a permissions.

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

Yes, we support the proposed terminology changes and have no concerns.

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

Yes, we support the proposed changes ad believe they will make the rules on conflicts of interest easier to understand.

Question 29: Do you agree with our proposal to amend the COBS 11.7 rules?
We have no position on this issue at this time.

Question 30: What is your view on whether the COBS 11.7A rules should be combined with the COBS 11.7 rules, using the revised language we propose in this CP? Should life policies also be excluded from the COBS 11.7A rules?
We have no position on this issue at this time.

Question 31: Do you have any comments on our CBA?
No.