

30 January 2026

Client categorisation and conflicts of interest

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

Yes. We agree that the move toward an outcome-based, holistic qualitative assessment is appropriate and better reflects the varied ways in which sophisticated investors demonstrate their capability. The current quantitative test is too rigid and does not reflect the trading frequencies in real estate, and long-term alternative strategies. The removal of the quantitative criteria would enable more tailored assessments.

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 agree. Allowing a simplified process for high-net-worth individuals to opt out of retail protections will make it easier for those investors to access more complex products in the market, while maintaining sufficient investor protection for those who do not wish to be treated as professional clients.

We also advocate creating an additional test for employees of regulated firms looking to invest in products managed by the regulated firm. We propose allowing firms to opt out of retail protections employees who are certified as a Material Risk Taker or hold SMF3 role under the SMCR (subject to informed consent and wider FCA client protection rules). While all those individuals could be opted up on the basis of qualitative assessment, a separate test would decrease administrative burden on firms in respect of employees who, due to the nature of the roles, must possess the requisite knowledge and should be able to assess the investment decision better than any client.

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

Yes. The £10 million threshold appropriately balances investor protection and market accessibility. Please note that limiting the relevant assets counted towards the £10 million threshold to *'designated investments and/or cash'* could exclude the high-net-worth prospects investing predominantly in real estate and alternatives (depending on the holding structure their holdings may not fall within the definition of designated investments). However, if the £10 million threshold is introduced alongside the removal of the current quantitative test – the impact of such exclusion should be limited in practice.

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, the factors provide ample flexibility and reflect a pragmatic understanding of client diversity. We do not believe it would be beneficial to include additional factors. However, as the proposed draft focuses specifically on individual investors, it would be beneficial for the FCA to clarify how these

factors should be applied in respect of corporates that do not fall within the definition of per se professional clients.

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

Yes, the guidance and rules are sufficiently clear regarding the assessment expectations and evidence requirements.

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

Yes, we agree. An outcome-based approach is preferable because it recognises the variety of ways financial resilience can be demonstrated.

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

Yes, we agree. The proposed continued flexibility is valuable, especially for firms managing products across the risk spectrum.

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

No. We believe that maintaining a separate framework solely for LGPS introduces unnecessary complexity without delivering additional protections and benefits to LGPS. While we agree that LGPS should not be treated as per se professional clients, they should be subject to the same opt up process as all other retail investors.

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. Informed, documented consent is an essential safeguard.

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

No, we do not foresee any compliance challenges.

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 agree with this proposal and support the suggested conditions. We would like to emphasise the importance of being able to share high-level generic information about investment products and services available only to professional investors prior to completing the opt out and client categorisation process to ensure that the prospective investors have sufficient information to determine whether they would want to opt out of retail protections and feel comfortable with sharing supporting documents required for the proposed qualitative assessment.

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. The proposed changes should provide firms with more flexibility and are more coherent with how prospective clients interact with regulated firms.

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. This approach is proportionate and adequately balances the risk of inappropriate categorisation.

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, the proposals strike an appropriate balance. While we do not agree with the maintenance of separate rule applicable to LGPS, the proposal is unlikely to limit their access to products and services that meet their needs. It will, however, increase compliance costs for the firms.

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 agree. Consumer Duty, SYSC, and similar rules already provide the necessary governance framework.

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?

If not, should we retain the list or make any amendments to the list?

Yes, we agree that deletion of the list of types of entities in COBS 3.5.2R(1) will reduce potential for confusion.

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 agree that inclusion of SPVs in the definition of per se professional clients reflects market practice and legal reality in alternative investment markets. However, we do not agree with the proposed definition of an SPV. SPVs are used by all types of investors, not only per se professional clients. Limiting the definition solely to per se professional clients will result in lack of clarity and unnecessary complexity when categorising elective professional clients using SPVs (especially family offices). Furthermore, limiting the ‘establishing or managing’ of SPVs to ‘purpose connected with the carrying on of regulated activities or ancillary activities’ could exclude SPVs set up to manage investments in alternative assets (including real estate and real estate debt) that do not qualify as ‘designated investments’ and do not fall within the scope of regulated activities.

We suggest simplifying the proposed definition to: “(2) (in COBS 3) a *body corporate* that is established by one or more *persons* who are or include a *per se professional client* or an *elective professional client* for a specific purpose connected with making investments in regulated and unregulated assets.”

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

If yes, do you see any challenges in applying the MiFID criteria?

We agree. This change increases harmonisation and reduces administrative burden. Moreover, we do not envisage the proposed change resulting in any challenges.

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

We understand that the question relates to COBS 3.5.2R(3)(a)-(d) rather than COBS 3.5.3R(3)(a)-(d). While some of our members did categorise clients under these criteria in the past, they do not envisage the proposed change resulting in any challenges.

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

If not, what do you think the criteria should be for categorising those trustees? Should it be a monetary threshold, and if so what, or something else, such as single vs master trust?

Yes, we agree.

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

We agree that the client categorisation record keeping requirements should extend to the results of elective professional client assessments and supporting documents. However, we believe that firms should not be required to keep records noting the type of per se professional client category or keep evidence of supporting such status (beyond the information and documents collected as part of KYC/DD checks). In cases of per se professional clients, the rationale for categorisation is evident and extension of more elaborate record keeping requirements to per se professional clients would result in unnecessary administrative burdens.

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

Yes, we agree.

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

Yes, we agree with the clarification which reflects our understanding of the rules and the market practice.

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

While we are very supportive of the proposed changes and believe they will positively impact the UK market, we want to recognise that diverging from EU MiFID rules will increase compliance complexity and costs for firms operating across UK and EU markets.

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?

While we are supportive of the one-off re-categorisation of existing elective professional clients in respect of clients receiving ongoing investment services (e.g. investment advice, portfolio management etc.), we believe that firms should be allowed to rely on the existing categorisation in respect of existing investors in both open- and closed-ended funds. Changing investor categorisation for existing investors could result in increased compliance costs for the fund manager (connected with the requirement to produce a KID), inadvertently breaching NPPR/ passporting rules or fund documents/ authorisation conditions. For the avoidance of doubt, we do not advocate for such exemption to be extended to firms advising clients on their existing holdings, just the AIFMs/ CIS operators.

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, our members do not anticipate impact on their permissions.

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

We agree. The proposed terminology is clear. We do not envisage difficulties resulting from the terminology change.

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 agree with the changes. We expect that furthering consistency will make the application easier to manage.

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

Yes, we agree with the proposed changes.

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 believe that one single set of rules on personal account dealing should apply to firms conducting MiFID and non-MiFID business. Consequently, we would be supportive of combining COBS 11.7 and COBS 11.7A.

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

We agree with the cost-benefit analysis and agree that the long-term efficiencies outweigh the one-off transitional implementation costs.