FINANCIAL CONDUCT AUTHORITY

Consultation Paper

CP25/36**

Client categorisation and conflicts of interest

December 2025

How to respond

We are asking for comments on this Consultation Paper (CP) by **2 February 2026**.

You can send them to us using the form on our website.

Or in writing to:

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Chapter 1

Summary

Why we are consulting

1.1 We want to allow firms to confidently operate with professional clients that truly don't need retail protections. This will enable us to calibrate our rules appropriately for wholesale firms. In July 2025, we announced plans to review our client categorisation rules to unlock greater opportunities for wealthy investors, strengthen capital markets and drive economic growth. In our subsequent letter to the Chancellor in September 2025, we committed to design proposals to reset how wholesale firms distinguish between retail and professional clients. This consultation paper (CP) sets out our proposal to remove certain restrictions and allow firms to make well founded assessments of whether a client meets the threshold of a professional client.

1.2 However, the regime only works if firms can demonstrate that their clients genuinely meet the threshold of a professional client and that clients below this threshold continue to benefit from retail protections. Consequently, this threshold must remain high. We are setting out clear standards to give firms confidence to identify and categorise clients that can be opted out of retail protections, including the Consumer Duty, subject to their informed consent. We expect firms to implement rigorous processes to demonstrate they are meeting those standards. We know many firms already consider carefully who they opt out of retail protections. Our new standards will enable these firms to make considered judgments taking account of broader experience. At the same time, we set out clearly that a tick-box approach is not sufficient.

1.3 Our proposals will strengthen confidence in the system and free up firms to innovate and offer a more diverse range of products to truly experienced clients with the resources to bear the risks associated with more complex investments, while making sure consumers are not pushed into giving up protections. Our aim is to rebalance risk in a way that supports growth and competitiveness, which is at the heart of our strategy.

1.4 This CP also sets out proposals in relation to the rationalisation of conflicts of interest rules. Conflicts rules play a foundational role in protecting customers by ensuring firms manage competing interests in a way that prevents customer harm. This consultation sets out our proposal to make sure our conflicts of interest rules are proportionate and clear for firms to interpret and implement as part of our commitment to simplifying our rules.

1.5 We recognise that both client categorisation and conflicts of interest management are core processes for firms, so any rule change could have a significant impact on their systems. Based on industry feedback, we believe there are clear benefits to amending the client categorisation rules. While we recognise that firms will incur initial costs implementing these amendments, we believe the long-term benefits, both enhanced consumer protection and unlocking growth potential, significantly outweigh these costs. Our proposed changes to the conflicts of interest rules are not intended to

change obligations on firms, nor to require changes to systems and processes. These proposals merely reduce the length and complexity of the current rules.

1.6 We propose the following changes to the elective professional client categorisation rules:

- **Alternative Wealth Assessment:** We propose to introduce an alternative route for very wealthy individuals to opt out of retail protections where they do not serve their interests. Firms will be able to categorise individuals as elective professional clients where the client has investable assets (a portfolio of designated investments and/or cash) of at least £10 million, subject to the client's informed consent.
- **Remove the current COBS 3.5.3R(2) 'quantitative test':** We believe the current quantitative criteria no longer meet the objectives of the elective professional client category. Our supervisory work shows the 'quantitative test' can be open to misuse, leading to some consumers being inappropriately opted out of retail protections. At the same time, feedback to our Consumer Duty Call for Input and CP24/24 Discussion Chapter told us that individuals with significant expertise or substantial resources are sometimes unable to meet the rigid criteria. In those circumstances they are unable to access products and services that would better meet their needs.
- **Enhanced Qualitative Assessment:** We propose to retain the requirement that firms undertake a robust qualitative assessment of a client's expertise, experience and knowledge. We propose to identify a set of relevant factors firms must consider in undertaking a holistic qualitative assessment to determine whether a client meets the threshold to be categorised as an elective professional client.
- **Improved Safeguards:** A client can only be categorised as an elective professional if they have actively requested this and given informed consent to opt out of all retail protections. A firm may share information about the option to opt out with a client they reasonably believe would meet the threshold of a professional client, to help the client decide whether requesting to opt out is right for them. However, any attempt to incentivise, mislead or put pressure on a client to opt out will be strictly prohibited. How a firm approaches client categorisation should be compatible with the firm's existing obligations under the Consumer Duty and the 'client's best interests' rule, and in our new framework we place reliance on these overarching standards. In line with our commitment to the Prime Minister in January 2025, we encourage views in 3.70 on whether the Consumer Duty would be sufficient rather than any of our proposed new rules.

1.7 We also propose to simplify the per se professional client category criteria, based on feedback to the CP24/24 Discussion Chapter.

1.8 We propose rationalising the conflicts of interest rules in the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) 10 and SYSC 3. There would be no change of regulatory burden for firms subject to the rules. We are consulting on changes which seek to streamline the Handbook and make our existing rules more accessible and easier to navigate.

1.9 During the process of reviewing our conflicts rules, we also identified a technical issue with the non-MiFID personal account dealing rules which we have taken the opportunity to rectify as part of this CP.

Who this applies to

1.10 This consultation is likely to be of interest to:

- Authorised firms
- Cryptoasset firms
- Consumer organisations and individual consumers
- Industry groups/trade bodies
- Common platform firms
- Insurance intermediaries conducting insurance distribution activity (in relation to conflicts of interest only)
- Insurers conducting insurance distribution activity (in relation to conflicts of interest only)
- Alternative Investment Fund Managers (AIFMs)
- Managers of Undertakings for Collective Investment in Transferable Securities (UCITS)
- MiFID optional exemption ('Article 3') firms
- Pension trustees
- Third country firms

Outcomes we are seeking

1.11 We expect our proposed changes to client categorisation to improve consumer outcomes. They should make sure consumers are not miscategorised, induced into opting out of retail protections, or offered products or services that are inappropriately targeted.

1.12 However, we also want to remove barriers to genuinely expert and well-resourced individuals who wish to opt out of retail protections they do not need. That way, they can access products or services which better meet their needs and objectives, where it is in their best interests to do so. This in turn will allow firms providing services to, or designing products for, those truly professional clients to innovate, as well as reduce costs, to drive growth, strengthening the UK's position as a global leader in financial services.

1.13 We do not intend our proposals for conflicts of interest to change requirements for firms. We are seeking only to rationalise our Handbook to make it easier for firms to navigate and therefore understand their obligations. This should help foster competition by reducing costs for new and existing firms. This is true especially for those with multiple business lines, which may currently be required to reference multiple versions of the conflicts rules.

Measuring success

1.14 Under the Financial Services and Markets Act (FSMA) 2023, we must keep rules in our Handbook under review. For more information, please see the Rule Review Framework on our website.

1.15 On client categorisation, we intend to monitor the effectiveness of the rules through our supervisory work. That includes reviewing complaints made to the FCA regarding firm practices. We are exploring the possibility of collating client categorisation data through a regulatory return form, which could be used to develop monitoring metrics.

1.16 The proposals on conflicts of interest are a rationalisation exercise with no change in substance and so, we do not propose to monitor these on a proactive basis.

1.17 Other measures of success include the perceived effectiveness of our intervention within the wholesale markets regulation metrics in our annual report and through other feedback tools for industry stakeholders.

Next steps

1.18 We seek feedback on our proposals set out in chapters 3 and 4 by 2 February 2026. Please respond by completing the form on our website or by sending a response to cp25-36@fca.org.uk. We will consider the feedback we receive and plan to publish a policy statement subject to finalising our rules.

Chapter 2

The wider context

2.1 This chapter gives the background on our proposals, including the reasons for change.

2.2 In July 2024, we published a Call for Input to review areas of our conduct rules which could be simplified or amended to reduce the burden on firms without impacting consumer protection. This followed the implementation of the Consumer Duty.

2.3 In November 2024, we published a Consultation Paper on transferring the Markets in Financial Instruments Directive Organisational Regulation (MiFID Org Reg) into our Handbook (CP24/24). This included a Discussion Chapter asking firms for feedback on potential areas for reform to European Union (EU) derived conduct and organisational rules.

2.4 We then published the MiFID Org Reg Policy Statement in October 2025 (PS25/13). Now we are consulting on rule changes in response to feedback from the Discussion Chapter and the Call for Input, as well as feedback from engagement with wholesale firms and their representatives over the summer 2025.

2.5 The feedback told us there is a clear opportunity to reconsider the client categorisation rules for designated investment business and financial promotions. This would be in line with the Consumer Duty and would create a clear distinction between truly professional clients, and those that require the protection of our retail rules. This will open up investment opportunities for those who do not need retail protections and create clearer safeguards for those who need these protections.

2.6 We also received strong support for rationalising the conflicts of interest rules, which apply to almost all authorised firms, but have become over time overly complex to navigate.

Client categorisation

2.7 Our rules apply different protections to different types of clients, with retail clients being afforded the highest protection. Most types of products, even complex products, can in principle be sold to retail clients. However, firms must follow additional rules when sending financial promotions and making products available to retail clients. These include, conducting an appropriateness test, giving risk warnings, registering or authorising a fund and following certain financial promotion rules. FCA rules also impose restrictions on the types of services that can be provided to retail clients, such as restricting leverage ratios and prohibiting Total Transfer Collateral Agreements (TTCAs). Interactions with retail clients are also subject to the expectations of the Consumer Duty.

2.8 Our rules provide the option for a retail client to be opted out of retail protections, a mechanism which ultimately enables them to access a broader range of products more easily. But our regime can only work effectively if the right clients are re-categorised as professional.

2.9 We have received strong positive feedback to the question in our CP24/24 Discussion Chapter on whether we should amend our categorisation rules, and in response to our 2024 Call for Input on the Review of FCA Requirements following the introduction of the Consumer Duty.

- On the one hand, firms responded that they can be restricted in their ability to design products that meet identified client needs, as individuals with significant expertise or substantial resources are sometimes unable to meet the assessment criteria to be categorised as elective professional clients. This can increase costs for firms, as they are required to meet additional retail-only requirements. This makes them less competitive than their international peers and decreases investor access to appropriate opportunities.
- Challenges can arise due to some of the requirements set out in the existing rules requiring firms to carry out the assessment both in relation to the quantitative and qualitative limbs. For example, firms have told us that the frequency of trading criterion (10 trades per quarter over the previous four quarters) is not a realistic measure. This is because some clients invest in illiquid or long-term strategies where such frequent trading is either not possible or would in fact be considered indicative of inexperience.

2.10 Whilst we recognise the merit in this feedback, we have also observed poor practice in how pockets of the market categorise retail clients as elective professional. Poor practices included relying merely on clients' self-certification that they meet the threshold of a professional client, firms offering clients incentives to 'opt-up' to what is represented as a higher status, and inadequate qualitative assessments of clients' experience, expertise and knowledge. Some firms treat the quantitative criteria alone as determinative of a client's capability to be a professional client, rather than considering these criteria as contributory factors to the obligation to conduct an adequate qualitative assessment.

2.11 These practices can lead to individuals with limited financial resources or knowledge of financial products being sold speculative, complex and high-risk products which can lead to significant losses and consumer harm. While our work has reduced abuse through targeted interventions and multi-firm work, a risk remains for small numbers of consumers who may experience serious harm having been pressured to opt out of retail protections without fully understanding the risks. We want to use this opportunity to address these unacceptable practices by adding safeguards designed to prevent firms inappropriately opting clients out of the retail protection they need.

2.12 We have conducted several multi-firm reviews and targeted interventions to mitigate the risk of poor practice occurring. In particular, we have raised in Dear CEO letters concerns of potential non-compliance with our rules through weak assessment of knowledge and experience of clients. We have warned firms of poor practices where firms inappropriately opt clients out of retail protections, so that they can be sold riskier and more complex products and services. We have noted some smaller firms offering higher risk investments to non-advised retail clients and lacking sufficiently robust processes for these assessments or misunderstanding their differences and applicability.

2.13 Our observations from this work have been communicated to firms in the following publications:

- Press release: FCA warns investors in CFDs [Contracts for Difference] risk losing out on protections
- Multi-firm review of client categorisation in corporate finance firms: high-level observations
- Smaller asset managers and alternatives business model review: our findings
- Portfolio letters: CFDs (2018, 2022, 2023), Corporate Finance Firms (2023)
- Firms' preparations to comply with the cryptoassets financial promotions regime – feedback on good and poor practice

2.14 Overall, our client categorisation proposals seek to strike the appropriate balance between allowing flexibility for firms to meet the needs of investors with deep expertise and/or substantial resources, while strengthening safeguards to make sure the process is robust and serves clients' best interests. In addition to enhancing consumer protections, they should enable firms to innovate and strengthen the UK's position as a global leader in financial services. They should also reduce costs and provide new opportunities for firms and their clients.

2.15 We have discussed our proposals with the relevant FCA statutory panels and we will continue to engage with them as we finalise our rules.

Interaction with other regimes

2.16 Certain investor classifications in other product regimes in UK legislation are currently aligned with the MiFID derived per se and elective professional definitions in the Conduct of Business Sourcebook (COBS) 3. For example, the definition of 'qualified investor' in Public Offers and Admissions to Trading Regulations 2024 (POATRs), 'professional investor' in Alternative Investment Fund Managers Directive (AIFMD) and 'qualifying individual' in Private Intermittent Securities and Capital Exchange System (PISCES) cross reference the MiFID derived 'professional client' in article 2(1)(8) and schedule 1 of Markets in Financial Instruments Regulations (MiFIR). The Financial Promotion Order (FPO) also uses the concept of categorising clients. These regimes sit in legislation rather than FCA rules. However, we are interested in understanding how differences between our proposed client categorisation changes and other existing regimes could affect you. We explore this further in Chapter 3.

2.17 In our own Handbook, COBS 4 further subdivides retail clients. This CP is complemented by the Engagement Paper we released today on Expanding Consumer Access to Investments which also speaks to our approach to simplifying the Handbook for retail investments and revisits our overall approach to consumer risk. Most retail investors do not need to be categorised as elective professional to access products that meet their needs. Our rules for firms are intended to protect those retail investors' interests. However, we are keen to open a dialogue with industry and consumer stakeholders on how to make the UK retail investment market simpler, safer, and more accessible for consumers, while supporting economic growth. The paper builds on our 5-year strategy and previous work in Consumer Investments. It responds to evolving market dynamics,

technological change, and the FCA's commitment to rebalancing risk in the retail investment market.

2.18 Finally, in accordance with regulatory cooperation commitments in the Berne Financial Services Agreement (BFSA), the FCA will support the UK Government in engaging with the Swiss authorities on the implications of these proposals for firms covered by the BFSA.

Conflicts of interest

2.19 Requirements to manage conflicts sit at the heart of regulation to ensure customers achieve fair outcomes. Principle 8 requires a firm to manage conflicts of interest fairly, both between itself and its customers and between a customer and another client. This principle applies to all firms and plays a critical role in ensuring responsible conduct within UK financial services. SYSC 10 (and SYSC 3 for insurers in relation to insurance distribution) requires firms to meet specific obligations in relation to managing conflicts of interest. These rules apply to almost all authorised firms because identifying and managing conflicts of interest is fundamental to market integrity and the delivery of good outcomes for customers. Insurers, Lloyd's managing agents and the Society of Lloyd's itself, are excluded from the application of these more detailed conflicts of interest rules, unless they are conducting insurance distribution, due to the distinct nature of the activity of insurance.

2.20 The SYSC 10 conflicts of interest rules are intentionally high level. This is so they can be applied proportionally to the diverse range of services authorised firms provide.

2.21 Conflicts of interest are inherent to many areas of financial services. Firms offer services to different clients whose interests may conflict. There is also an inherent conflict between the interests of clients and the interests of the firm to make a profit. In some areas, the risk of harm from conflicts is so severe that regulation or legislation prohibits a firm from entering a conflicted arrangement. Conflicts can also arise between clients.

2.22 From a general perspective, we expect firms to make sure that conflicts of interest do not result in adverse outcomes for customers. In some circumstances, the potential risk of harm to a customer may be so great that the only reasonable action a firm should take is to prevent the conflict from arising – for example, by operating strictly enforced information barriers.

2.23 We expect a firm's management to be responsible for making sure that conflict identification and management are embedded in its culture. It's also their responsibility to ensure that the firm has robust systems, controls and procedures which are effective at preventing harm to a customer as a result of a conflict of interests. In addition, firms must provide customers with sufficiently clear information about conflicts of interest so they can make an informed decision about whether a product or service is suitable for their needs.

2.24 We recognise the importance of providing practical examples of how conflicts can arise and be managed across different business contexts. As we review different sectors of

the industry, we aim to offer relevant context to illustrate these situations. Below are some recent examples of where we have done so:

- Multi-firm review of consolidation in the financial advice and wealth management sector
- Smaller asset managers and alternatives business model review: our findings
- 2023 Corporate Finance Firms portfolio letter
- MiFID II: product governance review
- UKLA Technical Note – Sponsors: Conflicts of interest

2.25 Whilst these rules are important, we recognise that they are overly complex as currently presented in our Handbook. This is partly due to the layering of different inherited EU requirements stemming from different directives and regulations. We propose to keep the substance of these requirements but to rationalise them. We intend for our proposals to make it easier for firms to understand the obligations of the conflicts of interest rules and apply them to their specific business models or novel conflict scenarios that arise. In designing our proposals, we have considered feedback gathered through the CP24/24 Discussion Chapter, the July 2025 Regulatory Summit and other engagement with trade bodies and industry stakeholders. This engagement has informed us that rationalising SYSC 10, without changing the obligations, will give firms greater confidence to innovate and reduce costs. This will provide new opportunities for firms and consumers, strengthening the UK's position as a global leader in financial services.

Other relevant initiatives

2.26 We have committed to an action plan to address concerns about the application of the Consumer Duty for firms primarily engaged in wholesale activity. The publication of this CP represents one part of that plan. Other parts of the plan are:

- We have today published a statement on our expectations where firms work together to manufacture a product or service.
- In the first half of next year, we will consult on changes to rules on the application and requirements of the Consumer Duty, including through distribution chains. We want to make it clearer for firms where the Consumer Duty applies and how we can draw a clearer line when it doesn't. We will assess how our existing exemptions are working and consider if there is a case for further exemptions from the Consumer Duty.
- At the same time, we propose to consult on removing business for non-UK customers from the scope of the Consumer Duty.

Chapter 3

Client categorisation – feedback and proposals

3.1 In this chapter, we summarise the feedback to the client categorisation questions in the CP24/24 Discussion Chapter and then explain our proposals for change.

3.2 Our proposals for change are intended to balance the following considerations:

- Making sure persons who have deep expertise or substantial wealth can access products that suit their objectives and risk tolerance.
- Ensuring firms are better equipped to offer a more diverse range of products to appropriately experienced clients and those with the resources to bear the risks associated with more complex investments, while reducing regulatory uncertainty and compliance costs.
- Addressing bad practices where consumers who do not have adequate expertise or resources to bear losses are unduly influenced to opt out of retail protections and inappropriately given access to higher risk products.
- Adapting the process of assessing whether a client meets the threshold of a professional client to make it more outcome focussed, based on a holistic assessment of the client rather than fulfilling a list of rigid criteria that may not always be fit for purpose.
- Relying on existing rules where they are appropriate, minimising the number of changes, to facilitate the adoption of the new proposal.
- Ensuring that our rules promote competitiveness and growth whilst preserving the protection of consumers.

Elective professional client categorisation

3.3 Our CP24/24 Discussion Chapter asked for feedback on three specific suggestions for change. We also invited industry to make alternative suggestions. We received 14 detailed and constructive responses on client categorisation, out of 16 total responses to the Discussion Chapter. The responses highlighted the compelling need for change, and an understanding of the need to balance any additional flexibility with consumer protection.

Feedback received

3.4 We asked: *Do you think we should change our rules in relation to opting clients up to professional status? If yes, would you support any of the approaches suggested above, or a combination of these? Are there any alternative approaches you would suggest?*

3.5 We asked for feedback on options for changes to our approach including:

1. Updating and/or adding alternative quantitative test criteria.
2. Relying on an outcome-based qualitative assessment, with guidance on the factors firms should consider, and a minimum investment portfolio threshold.

3. Strengthening safeguards to ensure consumers understand the protections they would lose, e.g. outcome-based rules or guidance on client engagement, a cooling off period, and/or periodic review or consent refresh.

3.6 All responses were strongly supportive of the need for change to allow sophisticated clients to meet their investment objectives. But they also all emphasised the need to balance flexibility with adequate safeguards against abusive use of the elective professional regime.

3.7 Respondents highlighted that changing the elective professional rules would have the following additional benefits:

- facilitate increased participation in markets by investors with deep expertise and/or substantial resources, thereby boosting UK competitiveness and growth; and
- facilitate easier access for the employees of firms who offer or require co-investment (often to meet regulatory requirements on alignment of interests).

3.8 We received the following detailed comments on the options for change:

Option 1. Updating and/or adding alternative quantitative test criteria

3.9 All respondents agreed the quantitative test is too rigid as it does not reflect the investment objectives of modern wealthy and expert investors, nor the types of individuals who have the capability to be treated as professional investors.

3.10 Most respondents focussed on the difficulties with the trading frequency criteria. They argued that the current formulation of the quantitative test appears to have been designed with active equity traders in mind. It presumes that high trading frequency is a reliable proxy for investment knowledge and experience. In practice, however, many sophisticated investors engage in fewer but larger transactions, and therefore fail to meet the test, notwithstanding substantial market exposure and expertise.

3.11 Several respondents pointed out the threshold could be problematic for corporate executives, entrepreneurs, or industry experts who may have substantial wealth and experience of making complex risk decisions, but with capital concentrated in private business interests rather than in listed or transferable financial instruments.

3.12 A small number of respondents focussed on the difficulties with the portfolio size criteria. Two respondents told us it could be prohibitive for junior investment professionals, who may be offered the opportunity to participate in staff co-investment arrangements but often do not have a large enough investment portfolio. One respondent suggested reducing the portfolio size requirement to £250,000.

3.13 Most respondents told us the current requirement that a client must have worked in a relevant role in the financial services sector for at least one year is an overly narrow measure of expertise.

3.14 One respondent suggested the assessment of expertise should consider the knowledge and experience of the prospective investor's advisor, where applicable, whilst another pointed out other means of acquiring knowledge and expertise such as education and training.

Option 2. Relying on an outcome-based qualitative assessment, with guidance on the factors firms should consider, and a minimum investment portfolio threshold

3.15 All respondents supported maintaining a qualitative assessment, but most agreed that additional clarity on FCA expectations for the factors firms must consider in undertaking the qualitative assessment would be helpful. This would provide certainty that their decision to categorise a client as elective professional will not be second guessed. No respondent said that current guidance on the qualitative test in COBS 3.5.5G was sufficient or helpful. Several respondents stressed the importance of assessing financial resilience, and the clients' objectives as part of the assessment.

3.16 Respondents gave examples that illustrate why the current criteria to determine the level of experience of an individual are not always fit for purpose. They pointed out that individuals who work outside of the financial sector can have acquired the required level of sophistication by other means. But under the current rules, these clients could not be classified as professional investors, even if they could demonstrate they possess the appropriate level of capability to understand the relevant risks and complexities.

3.17 Several respondents made suggestions for an enhanced qualitative assessment, including focusing more on the client's ability to bear losses in addition to knowledge and experience. Others suggested an increased focus on the client's understanding of financial markets, investment experience, and ability to assess risk. One respondent suggested the factors to be considered for the appropriateness test in COBS 10.2.2R could be the basis for guidance or rules on the qualitative assessment. Two respondents suggested a factor should be whether a client is professionally advised.

3.18 There were mixed views on whether an outcome-based qualitative assessment should be enhanced by a fixed minimum financial threshold. Two respondents suggested the threshold should be a financial instrument portfolio (including cash deposits and financial instruments) of more than £500,000 (i.e. aligned with one of the current quantitative criteria). Three suggested a substantially higher threshold to allow clients to demonstrate financial resilience as a significant determining factor of their professionalism and sophistication as a client. Two respondents suggested that income (one suggested over £250,000) could be an alternative to a financial instrument portfolio. One respondent highlighted the current quantitative criteria are too low, relative to other jurisdictions.

3.19 However, two respondents were concerned the introduction of a minimum investment portfolio threshold would effectively reintroduce the MiFID quantitative test in a slightly different form. This would likely remain an issue for individuals with the skills to be treated as professionals, but who have not yet amassed significant personal wealth.

3.20 Through subsequent industry engagement, we asked a sample of firms whether the current threshold against which a firm must conduct a qualitative assessment of an elective professional client set by COBS 3.5.3R(1) is the right one, and if it is sufficiently clear. This rule requires a firm to assess the client's capability for making their own investment decisions and understanding the risks involved, in light of the nature of the transactions or services envisaged. We also wanted to understand how firms are currently conducting the qualitative assessment and whether they conduct the assessment across all products, or limit categorisation to specific products.

3.21 Through this process, we learnt that the qualitative assessment, if undertaken correctly, remains fit for purpose and that the threshold of a professional client set out in the current rules is right, and sufficiently clear. Firms also want to retain the flexibility to establish appropriate systems and processes to either categorise clients by product type or across all products. However, there was also consensus that we need to provide clarity on our expectations for how firms conduct a qualitative assessment, to give firms greater certainty.

Option 3. Strengthening safeguards to ensure consumers understand the protections they would lose, e.g. outcome-based rules or guidance on client engagement, a cooling off period, and/or periodic review or consent refresh

3.22 Several respondents said the Consumer Duty is an effective safeguard which should enable us to adopt greater flexibility in how firms assess a client's capability to be categorised as professional.

3.23 One respondent thought it was imperative that we have a robust package of safeguards to protect both clients and the integrity of the financial system. They cited the need for:

- **i.** informed consent where clients understand the benefits and responsibilities the categorisation entails;
- **ii.** a periodic reassessment of such categorisation;
- **iii.** clear communication regarding the differences in protections and rights between retail and professional clients; and
- **iv.** record keeping of the assessment process and clients' consent.

3.24 Three respondents cautioned against the concept of a cooling-off period, arguing that it could introduce additional administrative and compliance burdens.

Alternative approaches suggested by firms:

3.25 We also invited firms to tell us about alternative approaches to elective professional client categorisation.

3.26 Two respondents suggested that investors with very substantial wealth could be offered the opportunity to opt out without having to demonstrate capability. They suggested this would align with international standards in jurisdictions such as Switzerland, Singapore and the USA. They argued the Consumer Duty and the general UK regulatory framework (such as the obligation to treat customers fairly, product governance and disclosure requirements) offer sufficient protection for those very wealthy individuals.

3.27 Another suggestion was adding to the list of per se professional clients (i) individuals with a committed investment amount of £5,000,000 and (ii) the staff of the firm making the classification decision.

3.28 One respondent asked us to consider adding Local Government Pension Schemes (LGPS) to the list of per se professionals, given the Government's policy towards LGPS pooling and increased fund allocations to private markets assets – which are typically accessed by professionals and only available to retail investors on a highly restricted basis.

Our proposal for consultation

3.29 We agree that it is time to update our rules to better reflect the characteristics of today's markets. This includes the growing cohort of well-resourced and highly experienced investors, the range of investment opportunities available to them, as well as the risk of harm explained in Chapter 2. It also includes the rise of trading apps and higher-risk investments, targeted primarily at retail clients, offering higher risk terms to those who 'opt up' to be treated as a professional.

3.30 Treating a client as an elective professional opts them out of retail protections, including the Consumer Duty. This can provide opportunities for the client but also creates risks. It is therefore important that a firm considers carefully whether the client has the capability to be treated as an elective professional and that the client understands the new position they would be in. To achieve these outcomes, we propose to amend our elective professional client categorisation rules in COBS 3.5.3R for clients other than local authorities as follows:

3.31 A firm may treat a client as an elective professional client if:

a. either:

i. the client has net investable assets (defined as a portfolio of designated investments or cash) in excess of £10 million, or

ii. the firm has undertaken a qualitative assessment of the expertise, experience and knowledge of the client and is satisfied on reasonable grounds, that the client is capable of making their own investment decisions, and of understanding the risks in relation to the transactions the firm may undertake with the client and the products and services the firm may offer the client;

b. the client has requested categorisation as an elective professional and the firm has obtained the client's informed consent, by signature, to opting out of retail protections; and

c. the categorisation is compatible with the firm's obligations to act honestly, fairly and professionally in the best interests of the client and under the Consumer Duty.

Quantitative assessment

3.32 We agree that the current quantitative criteria in COBS 3.5.3R(2) are no longer fit for purpose. They are both too narrow, and, as explained in Chapter 2, open to misuse.

3.33 While we agree that some of the alternative/additional quantitative criteria mentioned in stakeholder feedback could address some of the concerns, there was no clear consensus on what those criteria could be. The suggestions tended to be sector-specific solutions. For example, there was an almost equal split between respondents who thought the portfolio size criteria should be increased, and those who thought it should be reduced. We think additional or alternative product or sector specific quantitative criteria could end up becoming very complex and would require regular updating. This would create additional costs for firms.

3.34 Amending the current quantitative criteria would also fail to address our concern that some firms consider the quantitative criteria alone as determinative of a client's capability to be a professional client, rather than considering these criteria as contributory factors to the obligation to conduct an adequate qualitative assessment.

3.35 We therefore propose to remove the current quantitative test as a mandatory element of the qualitative assessment (other than, as explained in 3.57, for local authorities). However, as explained in 3.50, we retain the concept that as part of the qualitative assessment, a firm must consider the client's capacity to bear losses.

Question 1: **Do you agree with deletion of the mandatory quantitative criteria from the qualitative assessment, (other than for local authorities)? [Yes, No, No view]**

If yes or no, please explain your answer.

Categorisation of clients with investable assets above £10 million

3.36 We think that the removal of the quantitative criteria, and clearer rules on the qualitative assessment, will give firms sufficient flexibility to provide clients with the services they need. We also think the Consumer Duty affords us the opportunity to go further and reduce prescriptive requirements where the risk to the client from giving up retail protections is lower as a result of their substantial resources.

3.37 We are introducing a new alternative for a client with investable assets (a portfolio of designated investments and/or cash) above £10 million to elect to opt out of retail protections and to be treated as an elective professional client. The structured qualitative assessment will not be required. We recognise that the new wealth assessment alternative could introduce a risk of poor client outcomes for a client with substantial wealth, but insufficient knowledge of investments to understand the risks of products they invest in. This option remains subject to obtaining the client's informed consent, and other wider client safeguarding rules including the 'client's best interests' rule and the Consumer Duty. Together with the client's substantial wealth, we think these provide sufficient safeguards.

3.38 We have carefully considered the minimum level for the wealth threshold. In addition to the feedback received during our industry engagement, we have considered whether there are comparable regimes to the UK client categorisation regime in other jurisdictions.

3.39 We received several responses which referred to regimes in other jurisdictions such as the US, Singapore and Hong Kong. These are similarly targeted at clients with substantial wealth and/or deep expertise. However, we do not consider these regimes directly comparable, as they tend to apply only to a limited range of products and clients may retain some retail protections. Most of these regimes are also time or transaction limited.

3.40 Our pre-consultation industry engagement, as well as our supervisory work, told us that it cannot be assumed that even very substantial wealth equates in all cases with high investment literacy. We are aware of some cases where individuals with high net worth

have, without advice, over-estimated their competence, and others where wealthy individuals have fallen prey to unscrupulous or even unauthorised advisors.

3.41 We want to balance our consumer protection objective with our commitment to supporting firms and our Secondary International Competitiveness and Growth Objective (SICGO). So, we have set the wealth threshold at a level where we think there is a low risk that an individual would not be able to access the level and quality of advice that may be suitable to their financial literacy, and the complexity of their investments and circumstances.

Question 2: **Do you agree with the proposal to introduce a new alternative for clients above a certain wealth threshold to opt out of retail protections, subject to informed consent and wider FCA client protection rules? [Yes, No, No view]**

If yes or no, please explain your answer.

Question 3: **Do you agree that the threshold for this assessment, set at £10 million, is an appropriate level to balance client protection with reducing regulatory burden on firms? [Yes, No, No view]**

If yes or no, please explain your answer.

Qualitative assessment

3.42 Overall, we think the current obligation to carry out a qualitative assessment of the client's capability to make investment decisions and understand risk in relation to the products and services they will be offered, remains fit for purpose. However, we recognise the need to clarify our expectations on how firms should carry out this qualitative assessment. We are therefore consulting on new rules setting out requirements, including relevant factors firms must take into account in undertaking the assessment (the 'Relevant Factors'), to provide firms with clarity on what they need to do.

3.43 Our proposal will require a firm to adopt a holistic and robust assessment process to determine whether a client meets the professional client threshold, based on information it already holds (e.g. trading history) and information it has obtained from the client in relation to the Relevant Factors. We have seen that setting very specific criteria in rules has resulted in some firms only seeking to meet those criteria and failing to apply judgement in whether clients really do meet the threshold of a professional client. We want to make sure that the qualitative assessment is an outcome-based assessment, and that the firm obtains from the client sufficient information to undertake an assessment adequate to form a reasonable assurance the client meets the threshold.

3.44 We have observed in our supervisory work that some firms were relying exclusively on self-certification by the client. We have already communicated that this does not meet our rules and we are now proposing to supplement our rules to place greater emphasis on our requirement for the firms to make their own judgment.

3.45 As such, we propose to add a rule that a firm may not rely solely on representations from the client, nor on any representation or information from the client that is manifestly inaccurate, deficient or out of date. We are also proposing to prohibit firms from inviting clients to undertake a self-assessment of the Relevant Factors, such as via an online form with click through access.

3.46 Firms must request sufficient information from a client to make the relevant assessment.

Relevant Factors

3.47 The objectives of the Relevant Factors remain broadly consistent with the intent of the current qualitative and quantitative criteria. They are intended to offer more flexibility and account for the feedback we received in relation to the existing criteria.

3.48 Occupational experience remains a relevant factor. However, we agree the objective of assessing occupational experience should focus on an investor's ability to understand and assess investment risk, rather than on employment history within the financial services industry. Individuals can gain relevant expertise, knowledge and experience in other sectors. Conversely, we think it should not be assumed that all individuals who have worked in a financial services firm will have gained the capability of a professional client.

3.49 A client's own account investment history remains a relevant factor. The UK has historically used transaction frequency as an indicator of trading expertise. But, we do not think this remains a reliably good indicator of expertise in all markets. Buy-to-hold strategies may also be an indicator of an expert investor for certain classes of financial instrument.

3.50 Financial resilience is an important determining factor in whether a client can be categorised as professional. However, we agree that substantial wealth is not the only determinant of financial resilience, so we have not proposed setting minimum quantitative threshold clients must meet. Rather, firms should take into consideration the client's financial capacity, risk tolerance and understanding of – and ability to bear – the potential losses they may incur.

3.51 Knowledge, understanding and ability to assess risk remains a core factor in the assessment and must include fundamental investment concepts, such as the benefits of risk diversification, as well as complex or higher risk features of the anticipated activity, such as leverage.

3.52 The client's objectives for requesting to opt out of retail client protections and their understanding of the implications of doing so.

3.53 The firm must consider any adverse information reasonably available to it that would indicate the client should not be treated as a professional client. Examples of such information might include evidence of characteristics of vulnerability; inconsistent or implausible information provided by the client; answers to any of the firm's assessment questions which would tend to suggest the client does not have the requisite knowledge or understanding. The firm must also consider any problems arising in the client's trading history with the firm such as failure to settle margin calls on a timely basis.

3.54 It is not always necessary for a client to demonstrate strong indicators of expertise in every individual factor, but weakness in one should be compensated by proportionally greater strength in others.

3.55 We will also add guidance that a personal investment history mainly in speculative high risk or leveraged products or crypto assets is not usually an indicator of professional capability, unless there is strong evidence that the client meets the threshold of a professional client from other Relevant Factors, including the client's ability to bear potential losses.

3.56 We agree that flexibility for investors to choose to opt out only in relation to specific products could offer choice. We therefore propose to retain the current option for firms to offer, or clients to elect to, opt out for a limited range of products or services. We recognise that not all firms will be able to offer clients this flexibility. We have therefore adapted our rules to allow firms to design processes that support their decision to only offer opt out if they intend to assess a client's capability as a professional client across all types of product and services they may offer.

Question 4: **Do the proposed Relevant Factors allow firms flexibility in demonstrating how they have determined a client has acquired the capability to be treated as a professional client? Are there any other factors that firms should be required to consider? [Yes, No, No view]**

If yes or no, please explain your answer.

Question 5: **Do our proposed rules and Handbook guidance give firms sufficient clarity on how to conduct an adequate assessment of a client's capability to be treated as a professional client? [Yes, No, No view]**

If yes or no, please explain your answer.

Question 6: **Do you agree that financial resilience as a Relevant Factor should be outcome-based, without any minimum financial threshold? [Yes, No, No view]**

If yes or no, please explain your answer.

Question 7: **Do you agree with our proposal to continue to allow opting out in relation to specific products and services, or generally in relation to all products and services? [Yes, No, No view]**

If yes or no, please explain your answer.

Local authorities and Local Government Pension Schemes

3.57 There are significant changes under way in the pension landscape. The Government is proposing measures in the Pensions Bill that encourage or require the consolidation of various schemes, including LGPS; 86 LGPS will become 6 larger pools by March 2026. LGPS already act as elective professionals and collectively manage £392bn of assets. Where an LGPS is authorised as a regulated firm, they will already be a per se professional.

3.58 We have not at this time proposed to make any changes to the rules for categorising local authorities or local authority pension schemes.

3.59 We did not receive any feedback that the current rules prevent local authorities from being categorised as elective professional where they would want to be. We understand firms have established processes for assessing the capability of these clients and do not think extending our proposed rules for assessing the professional capability of other retail clients is warranted for now. We have therefore proposed amendments to the rules for categorisation of local authorities only to maintain their current obligations.

3.60 During the consultation period, we may also need to consider pension definitions currently used in the Handbook to ensure they remain fit for purpose. We would welcome views on what needs to be captured.

Question 8: **Do you agree with our proposal to maintain the current qualitative and quantitative assessment for local authorities? [Yes, No, No view]**

If yes or no, please explain your answer.

Informed consent

3.61 Obtaining the client's informed consent to opting out of retail protections in order to be categorised as an elective professional is an essential safeguard. It ensures that a client understands the protections they will lose and agrees that they no longer need most retail protections. It also empowers a client to take responsibility for the decision they are making. So, we propose to expressly require firms obtain informed (rather than basic) consent, by signature, before categorising a client as elective professional. For the avoidance of doubt, our proposals do not require a 'wet' signature.

3.62 Whether consent is informed will be a matter of fact in the circumstances, however, to help ensure that the client's consent is informed, we propose to specify that consent will not be informed unless:

i. the client is given sufficient information about the protections they are opting out of and sufficient time to consider the implications of being classified as a professional client, before they are asked to consent to opting out; and

ii. at the time of being asked to give consent, the client is given a clear and prominent warning that they are consenting to opt out of retail protections including, where relevant, access to regulatory redress.

3.63 Firms should also be able to demonstrate that their process for obtaining informed consent from clients is effective in enabling clients to understand the protections they forfeit. For example, by considering their Consumer Duty customer understanding obligations when designing the content, format and delivery mechanism of these disclosures and warnings, and by conducting appropriate testing or monitoring.

Question 9: **Do you agree with the proposed requirement that firms must obtain the client's informed consent to opting out of retail protections and being treated as a professional client? [Yes, No, No view]**

If yes or no, please explain your answer.

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, No, No view]**

If yes or no, please explain your answer.

Communication with clients prior to categorisation

3.64 We understand from feedback to our CP24/24 Discussion Chapter that the requirement in COBS 3.5.3R(3)(a), along with European Securities and Markets Authority (ESMA) Q&A, is understood by most in the market to mean that firms cannot discuss the option to opt out unless the client initiates a discussion. It remains an essential safeguard that a client cannot be categorised as an elective professional unless they themselves request to be so categorised. However, we recognise that clients may not know they can request re-categorisation in order to request it at their own initiative. We also think clear factual communication with clients about the option of opting out of retail protections, which would need to include both the potential benefits to the client of opting out, and clear information on the protections they will lose, is an essential component of informed consent.

3.65 We propose to allow that firms may provide a client with information about the option to request to opt out of retail protections where it would contribute to the client's ability to make an informed decision as to whether this would be right for them. However, firms may only initiate such engagement if they have a reasonable basis to believe the client is likely to meet the conditions to be treated as a professional client. We propose such communications be subject to the following conditions:

- Any practices intended to incentivise, induce or pressure clients into opting out of retail protections are prohibited. This proposed rule is similar to the current ESMA Q&A, to which UK firms should already have regard.
- Communications must be in line with the existing MiFID derived rules for communications with clients (COBS 4.5A.3R). For example, they must be balanced and likely to be understood by the average member of the group to which it is directed (or who may access it).

- Any information on products which the firm anticipates will only be made available to professional clients must be exclusively generic materials.

3.66 COBS 4.5A.3R already applies to firms that conduct MiFID, equivalent third country or optional exemption business when providing communicating with clients, including in relation to categorisation. To avoid creating a new duplicative rule for other firms, we propose to extend COBS 4.4A.3R to other firms, but only for the purpose of communications in relation to categorising a client as elective professional.

3.67 Firms must know before communicating with a client (including a potential client) whether the client is retail, professional or an eligible counterparty (ECP), in order to ensure it is meeting the relevant rules applicable to communications with that category of client. Under COBS 3.4.1R, unless a client is a professional or ECP client, it is a retail client. This means that unless a client meets the criteria of a per se professional, a firm must afford it retail protections until the firm has met all the conditions to categorise the client as elective professional. This is the case even where the firm does not have permissions required to provide services to retail clients, should it determine that the client cannot, or does not want to, be categorised as an elective professional. We propose to add an additional provision to make this clearer to firms.

Question 11: **Do you agree with our proposals to allow firms to initiate discussions with clients about opting out of retail permissions, where they have a reasonable basis for believing the client will meet the professional client threshold, and to the proposed conditions for such communications? [Yes, No, No view]**

If yes or no, please explain your answer.

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, No, No view]**

If yes or no, please explain your answer.

Other Safeguards

3.68 We do not at this time propose to introduce a requirement for periodic review of client categorisation. However, recognising that individuals' circumstances and needs change over the course of time, we propose to amend COBS 3.5.9R to make clear that firms have an obligation to reassess a client's categorisation as elective professional if they become aware, or should reasonably suspect, that a client no longer meets the threshold of a professional client. This may be the case for example if the firm has had no interaction with the client who is a natural person for two years or more, so could not reasonably assume their circumstances remain unchanged.

3.69 We propose to amend current COBS 3.5.8R to be guidance that it is reasonable for the firm to ask a professional client (including an elective professional) to keep the firm informed about any change to their circumstances, and for the firm to rely on the client doing so, as long as the firm has communicated that expectation to the client. This guidance neither diminishes the firm's obligations under proposed COBS 3.5.9R, nor is it intended to require a change in a firm's contractual arrangements with per se professionals.

3.70 As consent is an essential prerequisite of elective professional categorisation, clients must never be prevented from withdrawing consent. We propose to clarify our existing rules on when a client may request higher protection to ensure firms make clients aware prior to categorisation that they can withdraw consent and that they respond promptly to any such withdrawal of consent or request to be recategorised.

3.71 We do not propose, at this time, to introduce new specific obligations on firms to establish governance and ongoing systems and controls to ensure that their process for categorising clients as elective professional, including their communications with clients prior to categorisation are effective. We believe our existing SYSC and Consumer Duty rules already require firms to have control frameworks in place appropriate to the activities they conduct and the characteristics of clients they engage with.

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

If yes or no, please explain your answer.

Question 14: **Taken together, do our proposals adequately balance protecting consumers from being inappropriately categorised, with reducing obstacles to clients accessing the products and services that meet their needs and risk profile? [Yes, No, No view]**

If yes or no, please explain your answer.

Question 15: **Do you agree with our proposed approach to rely on existing client safeguarding and governance rules (e.g. 'client's best interests' rule, fair clear and not misleading rules, SYSC rules and the Consumer Duty) rather than introduce additional new safeguards specifically for the elective professional categorisation process? Would the Consumer Duty be sufficient rather than any of our proposed new rules? [Yes, No, No view]**

If yes or no, please explain your answer.

Per se categorisation

Feedback received

3.72 A per se client is one who automatically qualifies as belonging to a particular client category based on their nature, size, or regulatory status, without needing to opt in or be assessed.

3.73 We asked: *Do firms that act on behalf of clients tend to request to opt down to professional status? Should such firms be removed from the list of entities that can be treated as per se eligible counterparty (ECP)? Would this help clearer calibration of client protection rules?*

3.74 We received mixed responses to this question.

3.75 All respondents to this question agreed it is current practice for asset managers to be reclassified as professional clients, rather than per se ECPs. However, only one respondent supported a change of rules to remove all firms acting on behalf of underlying clients from the per se ECP category. They argued such a change would better reflect established market practice.

3.76 Another respondent noted the potential for future differentiation between funds that are retail oriented (such as UCITS and pension funds) and non-retail vehicles such as alternative investment funds, so that the latter would be able to be treated as ECPs. They suggested this would reflect the historic differentiation of 'true' wholesale business.

3.77 Finally, one respondent suggested the regime should be simplified into two categories: 'Retail' (for the application of the Consumer Duty) and 'Wholesale' for institutional activities which would include asset managers, hedge funds and family offices, thereby in effect combining the professional and ECP categories.

3.78 We asked: *Could the per se categories be simplified in other ways, e.g., replacing different types of authorised firm listed separately with 'authorised person'? Or harmonising the differences in certain thresholds within the wholesale categories which differ for MiFID and non-MiFID business?*

3.79 All respondents to this question supported simplifying the per se professional rule by replacing the different types of authorised firm with a single 'authorised person'.

3.80 Two trade associations supported harmonising the thresholds that determine whether a large undertaking qualifies as a per se professional client. They argued that the difference in criteria between MiFID and non-MiFID businesses creates unnecessary complexity for firms operating across different business lines.

3.81 The discussion paper was also an opportunity for industry to tell us whether any other types of entity are challenging to categorise under the current per se professional criteria. Two respondents asked that we expressly include special purpose vehicles (SPVs) and other 'below the fund' vehicles into the per se category. These entities are professional investors in all practical respects, as they are controlled by the relevant fund and are used to deploy its capital.

Our proposal for consultation:

3.82 To reduce firms' compliance costs, it should be clear who can be treated as a per se professional client. In response to the CP24/24 Discussion Chapter, we received support for simplifying the per se professional criteria, by removing the list of different types of entities in COBS 3.5.2R(1). We are now proposing to make this change. This change is intended to make it clearer that any entity authorised or regulated in the UK or a third country to operate in the financial markets can be treated as a per se professional client, without firms needing to identify the specific sub-criteria met by the client. This will make it easier for firms to verify that a client meets the criteria. However, we are concerned that this change may have unintended consequences or create ambiguity rather than simplifying this process. So, we are interested in feedback on whether we should maintain a list of specific types of entities and if so, what types of entities should be on this list.

3.83 We agree that SPVs, which are controlled by authorised firms, can be considered as per se professional. We propose to amend COBS 3.5.2R(5), which allows other institutional investors that are not authorised or regulated, to be categorised as per se professionals, to expressly include SPVs.

3.84 We agree that the distinction in the size thresholds for categorising undertakings as per se professional, depending on whether the firm is doing MiFID, non-MiFID, or mixed business appears to add unnecessary complexity. With the passage of time since they were established, these thresholds also now appear unjustifiably low. We are mindful of feedback that the differentiation merely causes administrative burden for many firms. From our industry engagement and supervisory work, we think that, in practice, a limited number of non-MiFID firms currently rely on the non-MiFID criteria to categorise clients as per se professional. We therefore propose to require all firms seeking to categorise a client as a per se professional, where the client does not fall within any of the other criteria for per se professionals, to apply the existing MiFID thresholds for large undertakings. This will avoid costs of change for most firms. For those firms who will need to adjust to a change in the thresholds for large undertakings, we propose a transitional provision to give them time to implement new procedures.

3.85 Similarly, we propose to remove the distinctions between large undertakings which can elect to be treated as an ECP for the purpose of MiFID and non-MiFID business.

3.86 We propose to remove COBS 3.5.2R(3)(d), which permits firms conducting exclusively non-MiFID business with trustees other than pension trustees, to categorise them as per se professional if the trust has assets over £10 million. Again, we believe a limited number of firms will be relying on this provision to categorise non pension trustees, and with the passage of time since the threshold was set, it no longer seems justified, given our proposed changes. Firms conducting non-MiFID business with non-pension trustees should review and re-categorise these clients under one of the other options. This could include our revised elective professional client wealth assessment option, which is set at £10 million.

3.87 We have for now retained COBS 3.5.2R(3)(e), which permits categorisation of pension trustees as per se professional clients in relation to exclusively non-MiFID business if the trust has assets over £10 million and at least 50 members. We note there are significant

changes under way in the pension landscape and may need to revisit the requirements for pension trustees in due course.

3.88 Categorisation of pension trustees is also subject to COBS 14.1.1R, which requires firms to treat trustees or operators of specified types of pension scheme as retail clients for the purpose of pre-trade disclosure of product information.

3.89 We do not think there is a clear benefit to removing asset managers from the list of per se ECPs in COBS 3.6.2R (as suggested in our CP24/24 Discussion Chapter). There appears to be sufficient flexibility within the current framework for firms who are eligible to be treated as ECPs to opt down where they require greater protections. Equally there is the ability for entities who do not fall within the per se ECP criteria to request to be treated as an elective ECP, should they feel that the protections within the professional category add undue friction. Accordingly, we propose no changes to the per se ECP criteria.

Question 16: **Do you think that our proposals to remove the list of types of entities in COBS 3.5.2R(1) simplify the per se professional criteria? [Yes, No, No view]**

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

Question 17: **Do you agree this category should include SPVs, and if so, do you agree with our proposed definition of an SPV for this purpose? [Yes, No, No view]**

If yes or no, please explain your answer.

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? [Yes, No, No view]**

If yes or no, please explain your answer.

Question 19: **Do you currently categorise clients under the criteria we propose to remove (COBS 3.5.3R(3)(a)-(d))? [Yes, No, No view]**

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

Question 20: **Do you agree that pension trustees should currently continue to be treated as per se professional clients for non-MiFID business? [Yes, No, No view]**

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

Policy, procedures and record keeping

3.90 FCA rules under SYSC 6 and 9 require all firms to maintain adequate policies and procedures and to arrange for records to be kept of their business and internal organisation, in particular, to demonstrate compliance with their obligations under the regulatory system. COBS 3.8 also has specific rules regarding policies and procedures and record keeping related to client categorisation, applicable to firms providing services in connection with designated investment business. However, we have seen consistently poor record-keeping in certain sectors.

3.91 Systems and controls, including adequate policies, procedures and records are an essential safeguard in ensuring client protection. We therefore propose to amend COBS 3.8R to clarify that maintaining records to support the client categorisation includes keeping records which explain the basis for the categorisation and how the categorisation assessment of elective professional clients, in particular, was undertaken. These should include information obtained from the client, any verification the firm undertook, and the firm's justification/reasoning for determining that the client meets the threshold to be categorised as an elective professional.

Question 21: **Do you agree with our proposals to clarify the record keeping requirements for client categorisation? [Yes, No, No view]**

If yes or no, please explain your answer.

Application

3.92 Firms are required categorise and notify a client of their categorisation under COBS 3 before they provide the client services in connection with designated investment business. However, the application of some Handbook rules relating to activities other than designated investment business can also depend on whether a person is categorised as retail, professional or an ECP under COBS 3 rules.

3.93 In particular, certain COBS 4 rules about financial promotions are less prescriptive if the client is professional or an ECP. For this purpose, a client may be either a person to whom the firm provides regulated services (COBS 3.2.1R(1)), or a person to whom the firm sends or approve a financial promotion (COBS 3.2.1R(3)). We understand from our engagement with market participants that firms categorise clients for financial

promotion purposes mostly in relation to promotion of an alternative investment fund (AIF) or promotions to corporate finance contacts.

3.94 Firms can categorise potential investors (clients under COBS 3.2.1R(3)) under the COBS 3 client categorisation rules, including the elective professional category, for the purpose of the financial promotion rules. This is so long as the firm complies with all the conditions for categorising a client as an elective professional. This includes undertaking the relevant assessment, obtaining the client's informed consent and the requirements regarding communications with the client prior to completing the categorisation conditions. Firms must also, under SYSC rules, maintain adequate policies, procedures and records to demonstrate compliance with these obligations.

3.95 To that effect, we propose to expressly extend COBS 3.8 to all firms categorising clients under COBS 3 for any purpose. We do not believe this will result in an increase in compliance burden for firms as they are already subject to general SYSC requirements which require adequate policies, procedures and records in relation to all of a firm's regulated activities.

3.96 We propose to take the opportunity to clarify how COBS 3.2.3R(4) applies in relation to services provided to a fund without separate legal personality. We propose to specify that when a firm is providing a service to a fund in line with paragraph (1) of COBS 3.2.1R, the fund itself is the firm's client, not the underlying investors or participants in the fund. COBS 3.2.3R(4) would not apply when the firm communicates or approves a financial promotion to potential participants, in line with paragraph (3) of COBS 3.2.1R. We would also remove the distinction between MiFID and non-MiFID business to align with the current Glossary definition.

3.97 We have considered existing EU Level 3 materials associated with client categorisation. Where relevant, this guidance has been replicated in our proposals. Following our new rules coming into force, firms need therefore no longer have regard to ESMA Questions and Answers on MiFID II and MiFIR investor protection and intermediaries topics, in relation to client categorisation.

Question 22: **Do you agree our proposal to remove the disapplication of COBS 3.8 for firms not carrying out designated investment business, as set out in COBS 3.1.3R, will make the record keeping obligations for these firms clearer? [Yes, No, No view]**

If yes or no, please explain your answer.

Question 23: **Do you agree with our proposal to clarify COBS 3.2.3R(4)? [Yes, No, No view]**

If yes or no, please explain your answer.

Client classification beyond the Handbook

3.98 Client categorisation requirements are referenced in provisions outside our Handbook. Examples of this include:

- Qualified investor definition in POATRs
- Professional investor definition in AIFMD
- Qualifying individual definition in PISCES

3.99 In these regimes, exemptions from regulatory requirements are available if the firm is offering products exclusively to non-retail investors/clients. To benefit from these exemptions, firms must categorise the clients by reference to the definition of a professional client in Article 2(1)(8) and schedule one of MiFIR. This definition currently aligns with the COBS 3 definition of professional client (including elective professional). Whilst any legislative changes are a matter for the Government, we welcome views on whether maintaining alignment of these regimes with the changes proposed in this CP would be desirable.

3.100 The FPO also references investor classification requirements, which do not align with COBS 3 client categories. Firms will therefore need to consider both the FPO and the client categorisation rules when providing services. We are interested in what consequences this may have.

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

Please explain your answer.

Transitional arrangements

3.101 We want to ensure that the right clients can access the right products. As set out in Chapter 2, we have observed some very poor practice in some pockets of the market.

3.102 To ensure the integrity of the regime going forward is not undermined by historically miscategorised clients, who do need retail protections, when our new rules come into force, firms will be required to review the categorisation of all existing elective professional clients against the new rules, within one year of them coming into force. In undertaking this categorisation review, firms may consider whether existing documentation or information they have on or from the client, including their dealings with the client since the original categorisation, is sufficient to enable them to undertake the qualitative assessment, having regard to whether such information is current.

3.103 Firms who have complied with the current rules and conducted an adequately robust qualitative assessment (rather than relying only on assessment of whether a client meets the minimum quantitative thresholds, or on the client's self-certification) may not need to request new information from existing clients to make an adequate assessment of whether the client meets the threshold of a professional client.

3.104 It will be for each firm to consider whether it has obtained informed consent from existing clients that they wished to be opted out of retail protections, based on our new rules. However, we expect, given the specific requirements of our new rule on informed consent, that many firms may conclude they need to obtain new consent. For example, if a firm has accepted a client ticking a box to indicate they consent, this will not demonstrate informed consent.

3.105 Firms conducting non-MiFID business with per se professional clients, or elective ECP clients, who have been categorised under one of the thresholds in COBS 3.5.2R(3) (a)-(d) or COBS 3.6.4R for non-MiFID business will also need to review the categorisation of these clients and consider whether they need to be re-categorised. Again, we will give firms a transitional period from the rules coming into force to complete this exercise.

3.106 Firms need not re-notify clients of their categorisation if it does not change following their reassessment.

Question 25: **Do you agree that a one off re-categorisation of existing elective professional clients is the right way to ensure the integrity of the elective professional regime going forward and achieve our goal of resetting how firms differentiate between retail and professional clients? [Yes, No, No view]**

If yes or no, please explain your answer.

Question 26: **If you are an authorised firm, do you anticipate our proposed changes could lead to you seeking to vary your part 4A permissions? [Yes, No, No view]**

If yes or no, please explain your answer.

Chapter 4

Conflicts of interest – feedback and proposals

4.1 In this chapter, we summarise the feedback we received to our proposal in the Discussion Chapter of CP24/24 to rationalise the conflicts of interest rules in SYSC 10 and explain the changes we propose to make.

Feedback received

4.2 In the Discussion Chapter of CP24/24, we sought views on whether it would be beneficial to rationalise our rules on conflicts of interest under SYSC 10. The majority of respondents supported this idea.

4.3 Several respondents pointed out that the various conflicts of interest rules applicable to different types of firms were in fact substantively similar and their overarching intention was the same.

4.4 Several firms told us that the current Handbook rules are complex to navigate, create uncertainty and add unnecessary costs because conflicts of interest rules applying differently under MiFID, AIFMD, the Insurance Distribution Directive (IDD) and UCITS Directive mean firms have to undertake duplicative processes.

4.5 We have heard that navigation of the current Handbook conflicts of interest rules can be particularly challenging for firms working cross sector, for example in insurance and investments. Firms often struggle to determine which rules apply in this multi-regulated environment.

4.6 Firms have highlighted that any rationalisation of the conflicts of interest rules would need to be undertaken carefully to ensure that it does not result in inadvertent changes in scope or substance. This would in turn create an implementation burden on firms without a corresponding benefit.

4.7 One respondent noted that any changes to SYSC 10 would require a review of internal policy. As firms should be doing regular reviews of policies, this should not be a significant additional compliance cost for firms.

4.8 Finally, respondents noted that SYSC 10 currently lacks clarity around our expectation on firms, in particular the circumstances in which it is reasonable to manage a conflict of interests, rather than prevent it.

Our response

4.9 We are proposing to rationalise SYSC 10 by removing minor unnecessary distinctions between rules that currently apply to different types of activity, without changing the current scope or application of the rules for firms.

4.10 The objectives of our proposal are as follows:

- Maintain the current core obligations, neither increasing nor reducing the current obligations for any firm.
- Merge very similar, or duplicative provisions. This requires addressing minor differences in terminology where we think they have no substantive difference in effect.

4.11 A table setting out which rules we propose to merge has been provided in Annex 4 to help firms compare current rules to the proposed new rules and identify differences. The terminology changes are also explained in more detail below, to give assurance to firms that they are not intended to represent a change in obligation.

4.12 A small number of distinctions have been kept for certain activity where we feel it is necessary to maintain the current scope of the rules.

4.13 Duplicative conflicts of interest rules derived from IDD, applicable only to insurers, will be deleted from SYSC 3.3, so that all firms undertaking insurance distribution, whether insurers or distributors, will follow the same rules, which will be in SYSC 10.

4.14 The SYSC 1 annex will no longer be relied on to extend or vary the application of SYSC 10 provisions for different types of products and/or activity. Lloyd's of London (the Society and managing agents) will however remain excluded from the scope of SYSC 10 (as explained in SYSC 1.1A.1G).

4.15 While removing the need to refer to the SYSC 1 annex will make navigation of the rules significantly easier for the vast majority of firms, we recognise that for a small number of firms, in particular third country firms, full-scope AIFMs of unauthorised AIFs, residual collective investment scheme (CIS) operators and small AIFMs who are not subject to AIFMD, this will mean certain rules will no longer be varied to apply to them as guidance, but rather will now apply as rules. However, we understand from our industry engagement that firms tend to adopt policies which do not, in practice, distinguish between whether a conflicts of interest obligation applies as a rule or guidance, and that this change will not have significant practical impact.

4.16 We have balanced this proposed change with the addition of a proportionality provision, which states that the requirements apply in a manner that is proportionate to the nature, scale and complexity of the business model. Compliance with the rules will always be assessed considering what is proportionate in the circumstances. We think removing the variation of rules to guidance for a subset of firms, but introducing an express proportionality provision for all firms, is fairer, particularly to small firms with non-complex business models.

4.17 This rationalisation exercise will significantly shorten the length of SYSC 10, by removing duplicative provisions and reducing the need for firms to cross-reference their obligations for each activity and to interpret whether small nuances in language represent meaningful differences in obligations for different activities.

4.18 Firms will not be required to update their policies and processes to reflect the changes before their next scheduled review of their conflicts of interest policy. The proposed changes to SYSC 10 are not intended to require change to client documentation.

4.19 Where appropriate, we have added references to investors as well as clients. This is to ensure that existing requirements for full scope AIFMs to identify and manage conflicts relating to both clients and investors are maintained.

4.20 For management companies, we are retaining the existing application. Management companies should continue to read SYSC 10 in light of the best interests rules for UCITS. The proposed changes to SYSC 10 include conflicts of interest provisions which apply to full-scope UK AIFMs and are currently set out in the UK version of the AIFMD Level 2 Regulation. Our proposed rule changes will not come into force for firms subject to AIFMD until revocation of the AIFMD Level 2 Regulation provisions is commenced by the Treasury.

Proposed SYSC 10 rules

4.21 To aid firms in understanding the changes we propose, the table in Annex 4 sets out the existing conflicts of interest provisions in SYSC 10 and SYSC 3 and identifies where provisions have been transferred and which provisions have been amended/deleted. The table also sets out where the conflicts provisions in AIFMD Level 2 Regulation have been replicated in our rules, ahead of the proposed revocation of this instrument, as referred to in 4.20.

4.22 Unless otherwise specified, all changes have been made to maintain the scope of the original provisions. The following table indicates where we propose to apply a more detailed rule, which currently applies to a subset of firms, to all firms. We do not think these amendments change firms' obligations but instead that these provisions can provide helpful clarity and consistency for firms on how to comply with the high-level requirements in SYSC 10. We provide a summary and rationale for each change in the table below, along with the new proportionality provision discussed above.

New SYSC 10 provision	Proposed change and rationale
10.1.2BG (Proportionality)	This new provision incorporates existing proportionality provisions that apply to firms undertaking insurance distribution and extends this principle to all firms and activities. This ensures that compliance with the conflicts of interest rules will be assessed with consideration to the size and complexity of a firm's business.

New SYSC 10 provision	Proposed change and rationale
10.1.7R (Managing conflicts)	SYSC 10.1.19R and SYSC 10.1.25R have been incorporated into this rule and therefore deleted. The requirements from the current SYSC 10.1.19R and SYSC 10.1.25R(2) provisions have been applied to all firms. We do not believe this represents a new obligation for any firm, as these obligations are implicit under the existing SYSC 10.1.7R. However, we believe this will give firms additional clarity on our expectations for how they manage conflicts. We do not intend to incorporate or extend the obligation for management companies and AIFMs to 'avoid' conflicts. We think that the obligations here are not substantively different from those for other firms, and the language around 'avoid', which derives from the Investment Services Directive which preceded MiFID, introduces unnecessary ambiguity. A reference to SYSC 19F has also been added for firms conducting insurance distribution activities to improve navigation of our Handbook for these firms.
10.1.11R (Contents of policy)	The requirement for firms conducting insurance or funeral plan distribution to maintain a gifts and benefits policy in SYSC 10.1.11R(2)(vi) has been extended to apply to all firms. This is not a change in standard as we would expect all firms already include gifts and benefits in their conflicts policies. The UCITS specific provision SYSC 10.1.11R(3) has been amended and applied to all firms. This provision has also incorporated SYSC 10.1.11R(4), which will be deleted, and Article 33(2), last paragraph, of AIFMD Level 2 Regulation. As these provisions refer to all other necessary measures, which are already included under the high-level requirements of SYSC 10.1.11R, this does not change firms' obligations.

Terminology changes

4.23 As our proposed rationalisation entails merging provisions which contain equivalent requirements but apply to different types of firms, certain terminology changes need to be considered.

4.24 Terminology differences largely stem from the onshoring of EU Directives and Regulations, which use different words to describe the same standard. Therefore, we propose to use one set of common phrasing which is applied across all firms.

4.25 We are aware that small differences in language may give rise to substantive impacts for firms. The language changes below do not represent any change in our expectations of firms. We want to make sure we do not create misperception as to our intention in these wording changes. We therefore set out below the proposed terminology changes in the chapter below and explain what this means for firms.

Terminology	Proposed change
'material risk of damage' vs 'risk of damage'	Currently SYSC 10 requires some firms to record conflicts entailing 'a risk of damage' whereas all other firms must record conflicts entailing a 'material risk of damage'. We have proposed consistently using the term 'material risk'. We do not consider this a change in standard for any firm. MiFID II changed the threshold from 'material risk,' to 'risk of damage'. We did not tell firms in CP16/19 that this change represented a change in expectation. In particular, we are not aware that firms changed their processes in response to the change from 'material risk of damage' at time of MiFID II. We would therefore not expect any firm to understand this change as a reduction in our expectations.
'all appropriate steps' vs 'all reasonable steps'	At present, SYSC 10.1.3R requires firms to 'take all appropriate steps' to identify conflicts, whereas SYSC 10.1.23R requires a full scope AIFM must 'take all reasonable steps' to identify conflicts. We have proposed to apply the terminology 'all appropriate steps' to all firms.
'conducting activities' vs 'providing a service'	The last paragraph of SYSC 10.1.3R requires firms to consider conflicts when 'providing a service'. We have changed this terminology to 'conducting activities' to make application clear for asset managers.
'prevent or limit' vs 'prevent or restrain'	Under AIFMD, full-scope UK AIFMs must have measures to 'prevent or **restrain**' any person from exercising inappropriate influence over the way in which a relevant person carries out collective portfolio management activities in the contents of their conflicts policy. All other firms are required to 'prevent or **limit**' the exercise of inappropriate influence. We have proposed to retain the phrasing 'prevent or limit' in SYSC 10.1.11R and apply this to all firms. We believe this is more in line with regulatory terminology and adequately captures the expectation for full scope AIFMs.
'manage' vs 'prevent or manage' vs prevent, manage and monitor' vs 'manage and prevent conflicts from damaging the interests of the client'	Currently SYSC 10.1.11R(1) requires a firm to include in its conflicts policy procedures and measures to 'manage' conflicts, or in the case of a common platform firm to 'prevent or manage' conflicts. Article 31 of AIFMD Level 2 Regulation requires procedures to 'prevent, manage and monitor' conflicts to be specified, and SYSC 10.1A.4R (transposing IDD requirements) requires the policy to specify procedures to 'manage and prevent conflicts from damaging the interests of the client'. This requirement has been transferred to SYSC 10.1.10R and we have proposed to require measures to 'prevent or manage', for consistency with SYSC 10.1.3R. We think there are no substantive differences between these requirements, so we do not believe this change represents a change in obligations for firms.

Terminology	Proposed change
'monetary or non-monetary benefit' vs 'monies, goods or services'	Currently, provisions mean that AIFMs, UCITS management companies and firms conducting insurance distribution activity must consider whether a firm or relevant person receives or will receive an inducement, in the form of '**monies, goods or services**'. In contrast, common platform and Article 3 firms must consider whether this inducement is in the form of a '**monetary or non-monetary benefit**', other than the standard commission or fee for that service, when identifying conflicts. We have proposed to apply the phrasing 'monetary or non-monetary benefit' to all firms, as this wording is more consistent with other rules such as COBS 2.3A and ICOBS 2.3 and therefore supports the intention to simplify.
'to the potential detriment of the client' vs 'at the expense of the client'	Currently certain firms must consider whether a firm or relevant person is likely to make a financial gain, or avoid a financial loss, '**to the potential detriment of the client**'. Other firms must consider whether the financial gain, or loss is at '**the expense of the client**'. We have proposed to use the wording 'to the potential detriment of the client' and apply this to all firms, as this wording is consistent with the obligation on firms to consider the risk of harm to the client in the future, as a result of the conflict, rather than only actualised harm. This ensures consistency with other areas of the Handbook and other FCA publications. This does not change the standard for any firms, as the substantive meaning of both descriptions is the same.

Question 27: **Do you agree with our proposed terminology changes? Do any of the proposed choices of terminology create any difficulties? [Yes, No, No view]**

If yes or no, please explain your answer.

Question 28: **Do you agree with the proposed rationalisation of the conflicts of interest rules? Do our proposed changes make our rules on conflicts of interest easier to understand and navigate? [Yes, No, No view]**

If yes or no, please explain your answer.

Personal account dealing rules

4.26 We have considered the rules on personal account dealing while working on this CP. There are 2 similar but slightly different sets of rules for firms doing MiFID business (in COBS 11.7A) and for non-MiFID investment firms (in COBS 11.7). The rules achieve the same policy objectives but use different wording.

4.27 The most significant area of difference is the exclusion from these rules for transactions in certain types of funds. The effect of the exclusion is that firms can choose not to apply their policy on personal account dealing to transactions in those funds. The wording of this exclusion differs between the MiFID and non-MiFID rules. It is somewhat complicated, reflecting the drafting of the different EU Directives.

4.28 We have identified that the non-MiFID rules contain a technical issue. They exclude transactions in certain European funds, but not in UK funds. The current wording does not appear to reflect the policy intention of the rules. We consider this is to exclude transactions in retail funds that are authorised or recognised in the UK. This comprises FCA authorised retail funds (UCITS and non-UCITS retail schemes), and funds that are recognised either under the Overseas Fund Regime or individually under s.272. This was effectively the UK standard prior to the original MiFID. We would retain the rider that this does not exclude transactions in a fund where the person involved is managing the fund.

4.29 We consider that this corrects a technical error in the rules. It sets an appropriate standard and makes the rules clearer and simpler to implement. We have not had feedback from firms subject to the non-MiFID rules that they have, in practice, adjusted policies since Brexit to align with the erroneous drafting, so we do not think that making this change is likely to have a material practical impact.

4.30 We are also continuing to consider whether to combine the COBS 11.7A rules and the COBS 11.7 rules into a single set of rules, potentially using this language. We could also extend the COBS 11.7A rules to include transactions in life policies. Any other amendments would be technical drafting changes that would not change the substance of the rules.

Question 29: **Do you agree with our proposal to amend the COBS 11.7 rules? [Yes, No, No view]**

If not, what alternative would you suggest?

Question 30: **What is your view on whether the COBS 11.7A rules should be combined with the COBS 11.7 rules, using the revised language we propose in this CP? Should life policies also be excluded from the COBS 11.7A rules? [Yes, No, No view]**

If yes or no, please explain your answer.

Annex 1

Questions in this paper

Question 1: Do you agree with the deletion of the mandatory quantitative criteria from the qualitative assessment, (other than for local authorities)? [Yes, No, No view]

If yes or no, please explain your answer.

Question 2: Do you agree with the proposal to introduce a new alternative for clients above a certain wealth threshold to opt out of retail protections, subject to informed consent and wider FCA client protection rules? [Yes, No, No view]

If yes or no, please explain your answer.

Question 3: Do you agree that the threshold for this assessment, set at £10 million, is an appropriate level to balance client protection with reducing regulatory burden on firms? [Yes, No, No view]

If yes or no, please explain your answer.

Question 4: Do the proposed Relevant Factors allow firms flexibility in demonstrating how they have determined a client has acquired the capability to be treated as a professional client? Are there any other factors that firms should be required to consider? [Yes, No, No view]

If yes or no, please explain your answer.

Question 5: Do our proposed rules and Handbook guidance give firms sufficient clarity on how to conduct an adequate assessment of a client's capability to be treated as a professional client? [Yes, No, No view]

If yes or no, please explain your answer.

Question 6: Do you agree that financial resilience as a Relevant Factor should be outcome-based, without any minimum financial threshold? [Yes, No, No view]

If yes or no, please explain your answer.

Question 7: Do you agree with our proposal to continue to allow opting out in relation to specific products and services, or generally in relation to all products and services? [Yes, No, No view]

If yes or no, please explain your answer.

Question 8: Do you agree with our proposal to maintain the current qualitative and quantitative assessment for local authorities? [Yes, No, No view]

If yes or no, please explain your answer.

Question 9: Do you agree with the proposed requirement that firms must obtain the client's informed consent to opting out of retail protections and being treated as a professional client? [Yes, No, No view]

If yes or no, please explain your answer.

Question 10: Do our proposed minimum disclosure requirements to inform the client's consent, including reliance on the firm's existing Consumer Duty obligations, pose any particular challenges? [Yes, No, No view]

If yes or no, please explain your answer.

Question 11: Do you agree with our proposals to allow firms to initiate discussions with clients about opting out of retail permissions, where they have a reasonable basis for believing the client will meet the professional client threshold, and to the proposed conditions for such communications? [Yes, No, No view]

If yes or no, please explain your answer.

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, No, No view]

If yes or no, please explain your answer.

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

If yes or no, please explain your answer.

Question 14: Taken together, do our proposals adequately balance protecting consumers from being inappropriately categorised, with reducing obstacles to clients accessing the products and services that meet their needs and risk profile? [Yes, No, No view]

If yes or no, please explain your answer.

Question 15: Do you agree with our proposed approach to rely on existing client safeguarding and governance rules (e.g. 'client's best interests' rule, fair clear and not misleading rules, SYSC rules and the Consumer Duty) rather than introduce additional new safeguards specifically for the elective professional categorisation process? Would the Consumer Duty be sufficient rather than any of our proposed new rules? [Yes, No, No view]

If yes or no, please explain your answer.

Question 16: Do you think that our proposals to remove the list of types of entities in COBS 3.5.2R(1) simplify the per se professional criteria? [Yes, No, No view]

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

Question 17: Do you agree this category should include SPVs, and if so, do you agree with our proposed definition of an SPV for this purpose? [Yes, No, No view]

If yes or no, please explain your answer.

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? [Yes, No, No view]

If yes or no, please explain your answer.

Question 19: Do you currently categorise clients under the criteria we propose to remove (COBS 3.5.3R(3)(a)-(d))? [Yes, No, No view]

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

Question 20: Do you agree that pension trustees should currently continue to be treated as per se professional clients for non-MiFID business? [Yes, No, No view]

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

Question 21: Do you agree with our proposals to clarify the record keeping requirements for client categorisation? [Yes, No, No view]

If yes or no, please explain your answer.

Question 22: Do you agree our proposal to remove the disapplication of COBS 3.8 for firms not carrying out designated investment business, as set out in COBS 3.1.3R, will make the record keeping obligations for these firms clearer? [Yes, No, No view]

If yes or no, please explain your answer.

Question 23: Do you agree with our proposal to clarify COBS 3.2.3R(4)? [Yes, No, No view]

If yes or no, please explain your answer.

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

Please explain your answer.

Question 25: Do you agree that a one off re-categorisation of existing elective professional clients is the right way to ensure the integrity of the elective professional regime going forward and achieve our goal of resetting how firms differentiate between retail and professional clients? [Yes, No, No view]

If yes or no, please explain your answer.

Question 26: If you are an authorised firm, do you anticipate our proposed changes could lead to you seeking to vary your part 4A permissions? [Yes, No, No view]

If yes or no, please explain your answer.

Question 27: Do you agree with our proposed terminology changes? Do any of the proposed choices of terminology create any difficulties? [Yes, No, No view]

If yes or no, please explain your answer.

Question 28: Do you agree with the proposed rationalisation of the conflicts of interest rules? Do our proposed changes make our rules on conflicts of interest easier to understand and navigate? [Yes, No, No view]

If yes or no, please explain your answer.

Question 29: Do you agree with our proposal to amend the COBS 11.7 rules? [Yes, No, No view]

If not, what alternative would you suggest?

Question 30: What is your view on whether the COBS 11.7A rules should be combined with the COBS 11.7 rules, using the revised language we propose in this CP? Should life policies also be excluded from the COBS 11.7A rules? [Yes, No, No view]

If yes or no, please explain your answer.

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

Annex 2

Cost benefit analysis

Executive summary

1. Following a review of the provisions in our Handbook that stem from MiFID, we are proposing to amend the client categorisation rules contained in Chapter 3 of the Conduct of Business Sourcebook (COBS 3) and to rationalise our conflicts of interest rules (SYSC 10). The responses to the discussion chapter of Consultation Paper (CP 24/24) indicated broad support from industry for both these measures.

2. The current SYSC 10 rules have become lengthy and complex for firms to navigate. We propose to streamline these rules and remove unnecessary duplication, without imposing additional burden on firms.

3. The current COBS 3 rules allow firms to mis-categorise clients, undermining safeguards, which can result in clients losing appropriate protections and facing unfair outcomes. Our proposed intervention amends the requirements for how firms assess whether a retail client can be re-categorised as an elective professional, aiming to ensure the categorisation process is robust and prevents poor practices. This will require firms to re-assess all existing elective professional clients and comply with new, strengthened standards, while also simplifying the per se professional client categorisation process by removing unnecessary distinctions between MiFID and non-MiFID business (except for pension trustees). This approach seeks to balance reducing barriers for sophisticated investors with maintaining strong client protections.

4. The main benefit incurred by firms as a result of the proposed changes to SYSC 10 is a time saving from being able to navigate the rules more easily. We anticipate that the monetised benefit from streamlining the SYSC 10 rules will be £27.2m over the 10-year appraisal period, with one-off costs incurred by firms familiarising themselves with the changes, estimated at £5.1m.

5. For client categorisation, we anticipate the main benefit will be additional protections provided to clients who had previously been mis-categorised. We expect firms to incur one-off implementation costs of £32.3m, largely resulting from reviewing and re-categorising existing clients as part of the COBS 3 proposals.

6. With regards to client categorisation, by removing barriers to investment for very experienced or very wealthy investors, we expect firms to benefit from increased business opportunities which may lead to higher revenues. We also expect firms to experience time savings from harmonising the per se professional categorisation process. Due to limited data, we have not been able to carry out a full monetisation of benefits of the client categorisation proposals. Instead, we conducted a breakeven analysis, which indicates that each firm will need to incur an annual monetary saving of £21,246 for the client categorisation rule changes to be net beneficial for them.

7. Using the evidence available to us, in conjunction with judgement-based assumptions, we have estimated that the equivalent annual net direct cost to business (EANDCB) of both sets of proposals is £4.47m.

8. For both SYSC 10 and client categorisation, we expect ongoing costs to be minimal. For client categorisation specifically, despite there being an additional burden on firms to review and re-categorise clients, this will be a one-off exercise from which clients will benefit.

9. We intend to monitor the effectiveness of our new client categorisation rules through our supervisory work, which includes reviewing complaints made to the FCA. Other measures of success include the perceived effectiveness of our intervention within the wholesale markets regulation metrics described in our annual report and through other feedback tools we have in place for industry stakeholders.

Introduction

10. The Financial Services and Markets Act (2000) requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish a CBA of proposed rules, defined as 'an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made'.

11. This analysis presents estimates of the significant impacts of our proposal. We provide monetary values for the impacts where we believe it is reasonably practicable to do so. For others, we provide a qualitative explanation of their impacts. Our proposals are based on weighing up all the impacts we foresee and reaching a judgement about the appropriate level of regulatory intervention. The CBA has the following structure:

- The market
- Problem and rationale for intervention
- Options assessment
- Our proposed intervention
- Baseline and key assumptions
- Summary of impacts
- Benefits
- Costs
- Wider economic impacts, including on secondary objective
- Monitoring and evaluation

The Market

SYSC 10 conflicts of interest

12. SYSC 10 sets out the requirements for firms to identify and manage conflicts of interest. Firms must refer to these rules when seeking authorisation, when conducting their business on an ongoing basis, considering new products or commencing new business activities, or when taking on new clients. The rules apply to almost all FCA-authorised firms, including banks, investment firms, asset managers, and intermediaries.

13. A significant proportion of small firms use compliance consultants to help interpret and implement SYSC 10 requirements. These consultants provide advice on establishing and maintaining conflicts of interest policies, as well as on periodic reviews and updates of such policies. The reliance on external consultants reflects the complexity of the current rules and the limited in-house compliance resources available to smaller firms.

14. Most FCA-authorised firms (47,560) are in scope of the SYSC 10 rules; we therefore assume that these firms will be affected by the proposed changes. The firms not captured by the SYSC 10 rules are referred to as managing agents; these are defined by the FCA as firms that underwrite and manage insurance for members of Lloyd's of London. Of these 47,560 firms in scope, we classify 45,827 as small firms; 1,489 as medium-sized firms; and 244 firms as large, in accordance with our Standardised Cost Model (SCM). This is discussed further in the 'Costs' section of the CBA.

COBS 3 client categorisation

15. Client categorisation rules apply to firms providing investment services, for example when advising on or selling investment products, and when approving or sending financial promotions. They require clients to be categorised as retail, professional (per se or elective) or eligible counterparty (ECP), which facilitates the calibration of client protections to different types of clients with varying levels of sophistication.

16. Clients which meet certain conditions may be automatically considered professional clients under the client categorisation rules; these entities are referred to as per se professionals. It could include authorised firms, large undertakings which meet certain size criteria relating to net turnover, balance sheet totals, total employees or own funds, or institutional investors whose main activity is to invest in financial instruments or designated investments. Under the current rules, the criteria for categorising non-financial services entities or trustees as per se professional differs depending on whether it is a MiFID or non-MiFID entity.

17. The COBS 3 client categorisation rules also include a mechanism for certain retail clients that wish to, and qualify for, opting out of retail protections to be treated as an elective professional, where that better meets their needs. The rules set out specific procedures for a firm to determine whether a retail client can be opted out of retail protections. This process currently includes conducting qualitative and quantitative assessments to determine the capability of clients in making their own investment decisions, and of understanding the risks in relation to the transactions the firm may undertake with

the client and the products and services the firm may offer the client. It also includes providing the client a written warning on the protections they will forfeit, and obtaining their written agreement.

18. Firms use the per se and elective professional categories to offer more specialised services to clients who do not need retail protections. This could include tailored investment strategies and funds that are not targeted at the wider retail market, for example because they do not meet an identified need in retail investors.

19. Based on the most recent data available to us, we estimate that there are 1,518 firms that currently deal with elective and per se professional clients. Our internal data indicates that there are approximately 54,000 elective professional clients and 300 per se professional clients which have been categorised solely for non-MiFID business and that have been categorised under the existing COBS 3.5.2R(3)(a)-(d) (i.e. corporate bodies, large undertakings, partnerships etc.). It should be noted that these may be under-estimates due to limited data. For this reason, we have also been unable to calculate the number of elective and per se professional clients as a proportion of total clients across the firm population, but believe this proportion to be small.

Problem and rationale for intervention

Drivers of harm

20. We have identified the main driver of harm as being ineffective and outdated regulatory interventions. This not only places a high operational burden on firms as they need to navigate SCYC 10 rules which are unnecessarily lengthy and complex, but also leads to market inefficiencies. In addition, we have seen evidence of firms engaging in poor practices, particularly in relation to the COBS 3 rules, resulting from a failure to maintain adequate processes.

Case for intervention and summary of harms

21. For SYSC 10, the market failure arises from regulatory complexity. Rules on conflicts of interest are fragmented across multiple European Union Directives and Regulations, each with slightly different wording but the same underlying purpose. This complexity makes it difficult for firms to identify which rules apply, increasing compliance costs and the risk of errors. Without intervention, firms would continue to face unnecessary operational burdens and a heightened risk of unmanaged conflicts of interest, undermining market integrity and consumer protection.

22. For COBS 3, the market failure is outdated and rigid client categorisation criteria, and poor firm practices in assessing client categorisation. The current rules do not reflect changes in the market or investor expertise, leading to inappropriate categorisation of clients. This exposes less experienced clients to unsuitable products and risks, while also creating barriers for experienced investors. Without intervention, these weaknesses would persist, resulting in ongoing consumer harm and inefficiencies in the market.

SYSC 10 conflicts of interest rules

23. In response to CP24/24, firms expressed their support for rationalising the SYSC 10 rules. Firms noted that the current rules are unduly complex, and that a consistent, streamlined framework would provide greater clarity and would make it simpler for them to navigate the rulebook and determine which rules apply to their business. This would ultimately not only lead to a lower operational burden and lower compliance costs for firms, but would also reduce the risk of errors, thereby leading to lower risk of harm from conflicts of interest occurring.

24. SYSC 10 rules have become lengthy and complex for firms to navigate. The rules on conflicts of interest are set out in several European Union Directives and Regulations, including the MiFID, the Undertakings for Collective Investment in Transferable Securities directive, the Alternative Investment Fund Managers Directive, and the Insurance Distribution Directive. Each of these applies to specific types of activities. Although their purpose is the same, the wording in each is slightly different. Firms doing mixed business may be subject to two or more different SYSC conflicts rules in relation to their different activities, even though the standard in each is substantially the same.

25. It is also necessary to read SYSC 10 in conjunction with SYSC 1 Annex 1, which modifies certain SYSC provisions. It also provides a road map for different types of firms, setting out which SYSC 10 rules apply to them in relation to different aspects of their activity. This adds another layer of complexity to firms having to navigate SYSC 10.

COBS 3 client categorisation rules

26. While we have noted that there are several areas of COBS 3 that can be reviewed, industry particularly highlighted the need to focus on the requirements for how firms assess whether a retail investor can be re-categorised as an elective professional.

27. Categorising clients appropriately allows firms to understand the unique needs and required protection levels of each category and supports good functioning of the market. However, most of the thresholds and criteria for determining the category of a client were established over 17 years ago. In that time, there have been significant economic, social and technological changes. It is therefore appropriate for us to consider whether the client categorisation rules function well, and ensure that the operational burden and costs align with the expected regulatory value and wider market benefits.

28. Through our supervision and enforcement work, we have observed some poor practices where firms have not conducted adequate qualitative assessments of clients' expertise, experience and knowledge when opting them out of retail protections. For example, some firms ask poor quality questions of clients, accept weak answers and keep insufficient records to support their assessment. Of particular concern are those firms whose processes appear to be designed to encourage clients to opt out of the retail protections, or incentivising clients to 'opt up' by pitching the elective professional as a higher status. Inappropriately opting a retail client up to an elective professional means that an individual with limited financial resources or knowledge of financial products could be sold speculative, complex or high-risk products which can lead to significant losses, whilst retail protections are no longer available to them.

29. Such practices undermine consumer protection, increase the likelihood of significant financial loss, and reflect systemic weaknesses in governance and compliance processes around categorisation. We have communicated to firms where we noted the occurrence of such poor practices through Dear CEO letters, the publication of multi-firm review findings and targeted interventions, including enforcement action.

30. Whilst we observe some poor practices, for investors who can understand and have the necessary financial resilience to bear the losses associated with higher levels of risk, our rules should not act as a barrier to their ability to act in their financial interests and objectives. In their feedback to CP 24/24, firms highlighted that the rigidity of our rules could restrict their ability to design products that meet the needs of their clients. In particular, they pointed out that the quantitative criteria set out in the current client categorisation test could be better calibrated, more flexible, and redesigned to better reflect the realities of some investment markets. For instance, for longer term and illiquid investments, requiring 10 trades per quarter over four previous quarters is unrealistic. Similarly, it is recognised that individuals may gain expertise in assessing risk, understanding complex structures and making informed investment decisions in a variety of ways other than employment in the financial services sector.

31. In their feedback, firms also expressed support for measures which would simplify and harmonise the per se categories. They noted that the existence of different criteria leads to inconsistencies and creates unnecessary complexity for firms which conduct both MiFID and non-MiFID business.

32. We believe there is an opportunity to add flexibility to the client categorisation process and remove barriers to investment for very experienced or very wealthy investors, while further discouraging poor practices. The proposed changes will support a more coherent approach as we undertake wider reform to ensure our rules more effectively reflect the FCA's appetite and tolerance towards consumer protection in relation to different sectors and types of business.

Options assessment

33. The proposed policy changes to SYSC 10 are designed to reduce the operational burden on firms. The changes to COBS 3 are designed to strike the right balance between removing regulatory barriers to greater participation in capital markets, whilst also preventing poor practices by ensuring that firms have adequate processes in place. These proposals have already garnered early support from firms, based on feedback in the discussion chapter for CP 24/24, and pre-consultation industry engagement.

34. In considering how best to achieve our aims, we assessed several alternative policy options while we developed our proposed interventions. In this section, we describe key alternatives and summarise our assessment of them.

Alternative options: SYSC 10 conflicts of interest

35. We considered taking no action or delaying the rationalisation of SYSC 10 pending industry feedback on a potential wider SYSC review, as discussed in FS 25/2, which set out plans for reviewing firms' requirements following introduction of the Consumer Duty. This approach has been discounted due to interactions between other coinciding policy changes which would increase the complexity of SYSC 10 if delayed, such as the planned review of AIFMD and plans to bring crypto asset firms into the perimeter.

Alternative options: COBS 3 client categorisation

36. We considered maintaining the current approach of both qualitative and quantitative tests, with an aim to refine them. For example, we could calibrate the quantitative criteria for different products or widen the types of experience or education to be demonstrated. This could be consistent with the direction we understand the EU are considering as part of their Retail Investment Strategy. We also considered strengthening the process for ensuring consumers understand the implications of requesting to opt up, through introducing a minimum financial threshold and adding new requirements such as introducing a cooling off period and requiring periodic confirmations that a client wishes to remain an elective professional client.

37. We proposed these options in the discussion chapter in CP 24/24, along with our proposed intervention below. However, it was determined that none of these options would address all the issues and could introduce additional complexity with potential unintended consequences. Several respondents expressed concerns with the safeguards proposed, arguing they would significantly increase administrative and compliance burden. We also received conflicting feedback on the merit of a minimum financial threshold in addition to the qualitative assessment, compared with strong support for moving to a more holistic, qualitative approach. Firms have also anecdotally stated that they see no benefit in remaining aligned with the EU on these rules. We note that, at this time, the EU have not agreed on proposed changes to these rules.

Our proposed intervention

Proposed intervention: SYSC 10

38. We are proposing to simplify SYSC 10 by consolidating its requirements into a set of core obligations that apply to all relevant firms and activities. These obligations focus on the identification, prevention, and management of conflicts of interest, including maintaining appropriate arrangements, record-keeping, and ensuring senior management oversight. The approach involves merging provisions from various EU regulations and directives where they are substantively equivalent, addressing inconsistencies in terminology, and removing unnecessary distinctions between rules and guidance. While some activity-specific provisions, such as disclosure requirements for asset managers, will be retained where justified, the overall intention is to rationalise the rules without changing the standard for conflicts of interest, thereby reducing compliance costs for firms.

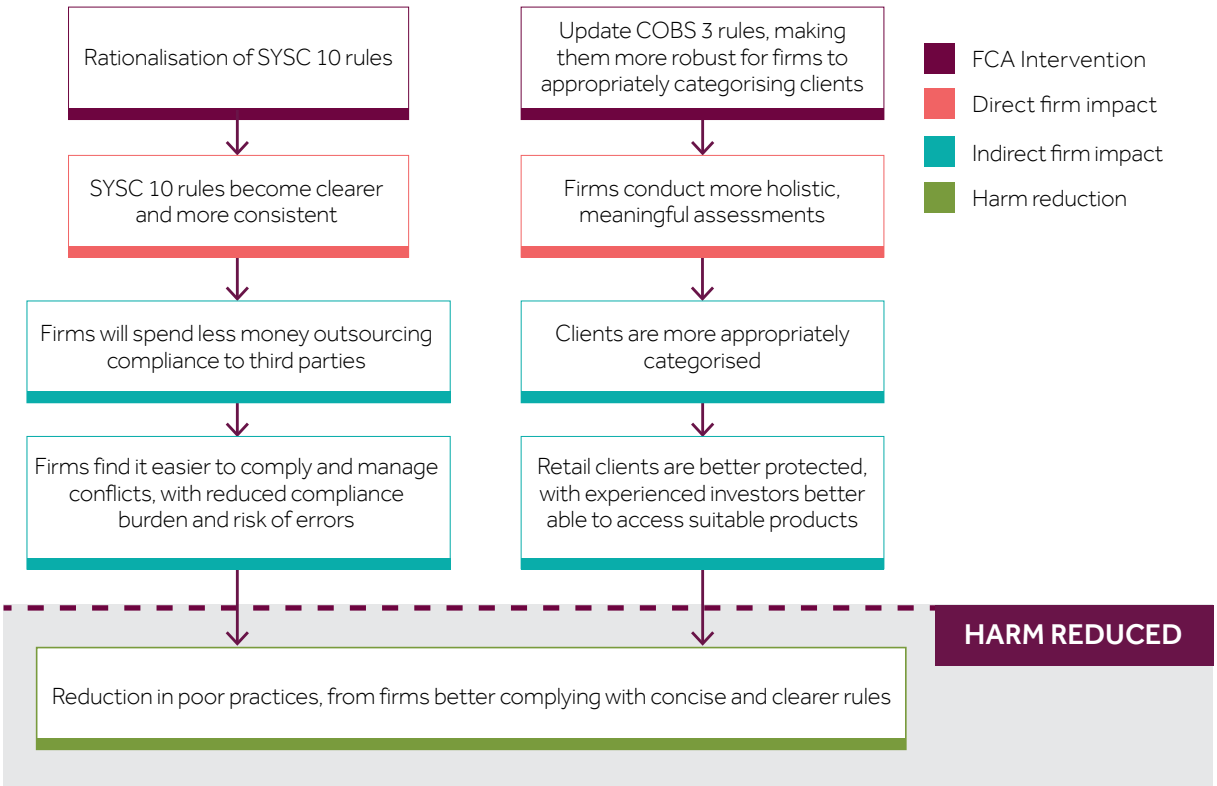
Proposed intervention: Client categorisation

39. We propose making client categorisation rules both more flexible and robust, responding to industry feedback about the rigidity of current requirements and addressing harms from inadequate firm processes. Key changes include removing the quantitative test and introducing an alternative route for very wealthy individuals (with at least £10 million in investable assets) to opt out of retail protections without a qualitative assessment. Otherwise, firms must conduct a holistic qualitative assessment of a client's capability and understanding of investment risks, using a set of relevant factors. Enhanced safeguards will ensure clients actively request elective professional status and provide informed consent, with clear information and warnings about lost protections. Firms must reassess all existing elective professional clients within a year of the new rules, ensuring compliance with updated standards. Additionally, the FCA will simplify per se professional criteria and harmonise thresholds across MiFID and non-MiFID business, requiring some firms to review and potentially re-categorise affected clients.

Causal chain

40. Figures 1 below summarises the mechanisms through which we anticipate the SYSC 10 and COBS 3 proposals will lead to a reduction in the harms that currently persist.

Figure 1: Causal chain for SYSC 10 and COBS 3 proposals



41. In identifying how intervention in this market can support both FCA strategic and operational objectives, we consider our approach from a perspective of 'rebalancing risk'. This approach recognises the important role risk-taking plays in driving innovation and delivering benefits for consumers in financial services markets, whilst also reducing

harm where needed. In 'rebalancing risk' we look to assess the relationship between the benefits being sought and the potential harm that could be caused in pursuing these benefits. This approach is not about accepting harm, but rather about ensuring we make balanced, risk-informed decisions that reflect the real-world complexity of dynamic markets, and allow us to be a smarter, more adaptive regulator.

42. To assess our policy intervention within the context of rebalancing risk, we consider the following:

- There are trade-offs when making choices for policy interventions, and that the FCA does not operate a zero-fail regulatory regime.
- There may be a risk 'safety zone' where an increase in risk can deliver benefits without significant impacts on harm.
- As the level of risk increases, there may be a 'danger zone' where harm starts to outweigh the benefits from increased risk-taking and we would want to avoid this space.

43. Applying our approach to the proposed changes in SYSC 10 and COBS 3, we expect these interventions to significantly reduce regulatory and consumer harms, particularly those arising from complex rules and inadequate client categorisation processes. However, we recognise that some residual risks and harms may persist within financial markets, including those related to conflicts of interest and client mis-categorisation. We do not anticipate these harms will be widespread or pose systemic risks, and accept that a proportionate regulatory framework may allow for some ongoing risks in order to support innovation and growth.

44. This balanced approach has shaped our policy interventions and the range of options considered. By streamlining requirements and enhancing safeguards, we aim to ensure that regulation remains effective and proportionate – protecting consumers and maintaining market integrity, while also enabling firms to operate efficiently and pursue new opportunities.

Baseline and key assumptions

45. In our CBA, we assess the costs and benefits of our proposals against a baseline. In this baseline, we assume that all current rules set out in SYSC 10 and COBS 3 remain the same over the appraisal period.

46. We have used data from regulatory returns and other recently undertaken firm surveys to inform our understanding of the market affected by these proposed changes. We have used this data alongside the core assumptions in our Standardised Cost Model (SCM) to estimate the costs associated with this intervention. We set out further information on our SCM in Appendix 1 of our Statement of Policy on Cost Benefit Analysis.

47. Finally, we have applied the standard assumptions set out in Chapter 7 of our Statement of Policy on Cost Benefit Analysis. Consistent with the HM Treasury Green Book, the impacts are assessed over a 10-year appraisal period and a discount rate of 3.5% is applied to estimate present value stream of costs and benefits over the appraisal period. All costs are expressed in 2025 prices unless otherwise stated.

Summary of impacts

48. For SYSC 10, the main benefit incurred is the time saving from firms being able to more easily navigate the rationalised rules; we have monetised this benefit in table 1 below. For COBS 3, the main benefit to firms is the minimisation of risk associated with mis-categorising clients.

49. We anticipate firms will only incur one-off familiarisation costs because of the SYSC 10 changes. For COBS 3, we anticipate firms will incur one-off costs associated with familiarisation, staff training, and re-categorisation of clients.

50. We do not anticipate firms to incur significant ongoing costs from either of the proposals. As the SYSC 10 proposal involves rationalising the existing rules without placing new burdens on firms, we expect any ongoing costs to be minimal. Similarly for COBS 3, firms will only be expected to conduct their review and re-categorisation of clients on a one-off basis, thereby incurring minimal ongoing costs.

51. Table 1 below summarises the costs and benefits we expect firms to incur as a result of the proposed changes. Additionally, we include an estimate for the net present value (NPV) which has been calculated by subtracting the total costs in table 1 below from the total benefits; for SYSC 10, this means subtracting £5.1m from £27.2m to reach £22.1m, and for COBS 3 this means subtracting £32.3m from £0m to give -£32.3m. We subsequently calculated the equivalent annual net direct cost to business (EANDCB) by multiplying the total costs (£37.4m) by an annuity factor of 0.1195, to reach £4.47m. The annuity factor is calculated by simply dividing the discount rate (3.5%) by 1 minus the PV of £1 over the appraisal period, which converts a lump sum into an equal amount.

Table 1: Summary of impacts (where a hyphen has been populated, we have not been able to quantify the impact)

Proposal	One-off costs (£m)	Ongoing benefits (£m)	Firms affected	NPV (£m)
SYSC 10	£5.1m	£27.2m	47,560	+£22.1m
COBS 3	£32.3m	–	1,518	-£32.3m
Overall EANDCB	£4.47m per year			

Benefits

52. Due to limited data, we have been unable to provide a quantitative estimate for the benefits that could be incurred from the client categorisation proposals. Instead, we have conducted a breakeven analysis which sets out the estimated benefits each firm would need to incur on average, in order for the proposals to be net beneficial over the 10-year appraisal period.

53. For SYSC 10, we provide a monetised estimate for the expected benefits to firms over the appraisal period.

Description of benefits: SYSC 10

54. We anticipate that the key expected benefit to firms will be the time saved in the review of rules, from the simplification of the SYSC 10 obligations. When a firm applies to be authorised by the FCA, they must demonstrate adherence with the conflicts of interest rules, and whenever they conduct a new activity or take on a new client, for example, they must consider the conflicts rules.

55. To estimate the time saved by firms, we break firms down by size, in accordance with our SCM. For small firms, the requirement is mostly to establish a conflicts policy and subsequently review it annually; this annual review takes approximately one hour. For medium-sized and large firms, the time spent will be dependent on the diversity and size of their business; for simplicity, we estimate approximately one working day a year for medium-sized firms and two working days a year for large firms. It is worth noting that these time estimates are conservative.

56. More widely, it is anticipated that firms may have more time and resource to allocate to innovate. The reduction in regulatory burden may also improve the UK's competitiveness on the global stage. However, we do not consider it reasonably practicable to quantify these effects.

Quantified benefits: SYSC 10

57. To calculate the expected benefits to firms as a result of the proposed changes to the SYSC 10 conflicts of interest rules, we firstly multiplied the assumed time saving to firms from rationalising the rules, by the total number of FCA-authorised firms. For small firms, this meant multiplying 1 hour by 45,827 firms; for medium-sized firms, this meant multiplying 7 hours by 1,489 firms; and for large firms, this meant multiplying 14 hours by 244 firms. We assume the time savings based on our own judgement, and intend to use the consultation responses to adjust these assumptions, if necessary. In line with our SCM, we assume that 1 working day is represented by 7 working hours. We subsequently multiplied the products of these multiplications by the assumed hourly rate of each member compliance staff. For small firms, we assumed an hourly rate of £52; for medium-sized firms, we assumed an hourly rate of £63; and for large firms, we assumed an hourly rate of £68. These estimates have been informed by the Office for National Statistics' Annual Survey of Hours and Earnings data.

58. Table 2 below summarises these assumptions, calculations and resultant outputs. The column entitled 'Discounted time saving (£m)' presents the monetised time saving to firms, after applying the standard 3.5% discount rate over the 10-year appraisal period.

Table 2: Monetised benefit (time saving) from simplifying SYSC 10 conflicts of interest rules

Firm size	Assumed time saving (hours)	Number of affected firms	Total time saving (hours)	Department	Hourly rate (£)	Monetised time saving (£m)	Discounted time saving (£m)
Small	1	45,827	45,827	Compliance	£52	£2.4m	£19.8m
Medium	7	1,489	10,423	Compliance	£63	£0.7m	£5.5m
Large	14	244	3,416	Compliance	£68	£0.2m	£1.9m

Description of benefits: COBS 3 client categorisation

59. It is anticipated that updating the COBS 3 client categorisation rules will mitigate risks of harms associated with poor firm practices around client mis-categorisation. We expect there to be fewer instances of firms abusing the opting up provision to inappropriately opt up clients that are not adequately knowledgeable or experienced.

60. It is also expected that the right investors will have better access to investments when the process is clearer, more streamlined, and more outcomes-focused for firms. Asset managers and wealth management firms have anecdotally expressed that this in turn could improve investment opportunities for very experienced and wealthy clients.

61. Through simplifying the categorisation of per se professionals by removing the distinction between MiFID and non-MiFID business, we anticipate it being easier for firms to navigate a single threshold for categorising clients. In turn, this may reduce compliance costs.

Costs

FCA

62. As a result of the SYSC 10 and COBS 3 proposals, we anticipate on incurring a small cost in relation to updating the rules in the FCA Handbook. We have not monetised this cost as we expect it to be very minimal.

Consumers

63. We do not anticipate on the SYSC 10 and COBS 3 proposals having any direct impacts on consumers.

One-off costs to firms: SYSC 10

64. We estimate one-off costs as a result of the proposed changes to SYSC 10, to be £5.1m, across most FCA-authorised firms (47.6k firms). To calculate this estimate, we used our SCM, which differentiates between large, medium, and small firms, basing this classification using data on firms' annual FCA fee blocks, and ranking them accordingly. We define the highest-ranking 244 firms as large, the next highest-ranking 1,489 firms as medium, and all remaining firms (45,827) as small. We report average cost estimates. As these figures are mean averages, individual firms may experience higher or lower costs than those set out below.

65. We anticipate that firms will only incur one-off familiarisation costs as a result of the proposals. We have estimated familiarisation costs to firms based on assumptions on the time required to read and review 25 pages of non-legal text in the consultation paper (CP). We assume there are 300 words per page and reading speed is 100 words per minute. We estimate that familiarisation for large firms will require 6 members of compliance staff to read the document, with an average salary of £68 per hour, including overheads. For medium-sized firms, we assume 4 compliance staff members with an average salary of £63 per hour, including overheads. For small firms, we assume 1.5 compliance staff members with an average salary of £52 per hour, including overheads.

Table 3: Summary of firm population by size

Large	Medium	Small	Total
244	1,489	45,827	**47,560**

Table 4: Summary of one-off costs

Cost type	Industry Total
Familiarisation	**£5.1m**

One-off costs to firms: COBS 3 client categorisation

66. We estimate one-off costs as a result of the proposed changes to client categorisation, to be £32.3m across a population of approximately 1.5k firms. These firms have been identified as opting out their clients currently. This firm population also includes those that currently classify clients as elective professionals and the firms we estimate will need to review categorisation of the affected per se professionals.

Table 5: Summary of firm population by size

Large	Medium	Small	Total
10	76	1,432	**1,518**

Table 6: Summary of one-off costs

Cost type	Industry Total
Familiarisation and gap analysis	£0.4m
Training	£0.1m
Review and re-categorisation	£31.7m
TOTAL	**£32.3m**

67. As we did when calculating one-off costs due to the proposed changes to SYSC 10 rules, we utilised our SCM to calculate one-off costs to firms as a result of the client categorisation proposals. We will update the assumptions underpinning these costs accordingly, if better evidence is provided through the consultation.

68. We anticipate that firms will incur one-off costs related to familiarisation, staff training and re-categorising clients, due to the proposed changes to client categorisation rules.

69. We estimate that the review and re-categorisation of clients will account for £31.7m of total one-off costs; familiarisation costs will account for £0.4m; and training costs will account for £0.1m.

Familiarisation

70. We have estimated familiarisation costs to firms based on assumptions on the time required to read and review 30 pages of non-legal text in the consultation paper, pertaining to COBS 3 client categorisation rules. We additionally assume that 25 pages of legal text will require review. We assume there are 300 words per page and reading speed is 100 words per minute. We estimate that familiarisation for large firms will require 6 members of compliance staff to read the non-legal text, with an average salary of £68 per hour, including overheads. For medium-sized firms, we assume 4 compliance staff members with an average salary of £63 per hour, including overheads. For small firms, we assume 1.5 compliance staff members with an average salary of £52 per hour, including overheads. With regards to the review of the legal text, we assume that large firms will have 2 staff members reviewing the legal text across 14 days, at an hourly rate of £79 each. For medium-sized firms, we assume 2 staff members reviewing the legal text across 7 days, at an hourly rate of £74 each. For small firms, we assume 1 staff member reviewing the legal text across 4 days, at an hourly rate of £70 each.

Staff training

71. Furthermore, we assume that compliance staff will undergo basic training to disseminate the proposed rule changes. On average, we anticipate that it will take each member of compliance staff approximately 7 hours to do so. Our SCM assumes that 7 hours equates to 1 working day. Due to insufficient evidence, we have made this assumption using our judgement. However, if better evidence is provided through the consultation, we will update this assumption accordingly.

Review and re-categorisation of elective and per se professionals

72. We additionally anticipate that the largest one-off costs to firms will be incurred through conducting a one-off review of their existing elective professional clients and re-categorising, as applicable, to ensure that all clients' categorisations comply with our new proposed rules.

73. Transitional arrangements will also be required to manage the placement of certain clients outside the elective or per se categories.

74. To re-categorise existing elective professional clients, firms will need to design a process to review information and documentation they have from each relevant client, reach out to clients for any additional documentation needed to meet the new rules, and monitor their responses. Firms will also need to set up transitional processes as some of their clients, following re-categorisation, may be classified under a different categorisation.

75. As part of the re-categorisation exercise for existing per se professional clients, firms that do not do MiFID business will need to identify and assess their client base. This process will involve reviewing publicly available information, or information they have on file for each client. In some cases it may involve reaching out to certain clients within this category to obtain relevant information. Corporate finance firms and some asset managers are expected to be most affected, as these firms typically provide non-MiFID business to corporate clients. We anticipate that Article 3 corporate finance firms will face the highest cost impact, as the majority of their clients will be corporates, whom they may categorise under non-MiFID criteria.

76. To calculate the one-off cost of assessing and re-categorising elective and per se professionals, we conduct a simple multiplication (see below). We additionally provide the cost breakdown by firm size. It should be noted that we have only been able to calculate the number of per se professional clients served by non-MiFID corporate finance firms. We have been unable to estimate the number of clients impacted outside of these firms, due to limited data; however, based on feedback to CP 24/24 discussion chapter, our supervisory work and judgement, we assume that this number is small.

One-off cost of review and re-categorisation = Number of per se and elective professional clients x Hours it takes to assess and re-categorise x Hourly rate of a member of compliance staff

Table 7: Assumptions underpinning one-off review and re-categorisation costs

Compliance staff hourly rate	Hourly rate
Small	£52
Medium	£63
Large	£68
Time taken to review and re-categorise one client (hours)	3
Number of per se professional clients categorised by firms providing non-MIFID business to them (corporate finance firms)	3,387
Number of elective professional clients	54,393

Table 8: Summary of one-off review and re-categorisation costs by firm size

Firm size	Total one-off review and re-categorisation cost
Small	£9m
Medium	£10.9m
Large	£11.8m
Total	**£31.7m**

77. The cost calculation reflects the effort required for assessment and client outreach. For simplicity, we assume that all elective and the affected per se professional clients will need to be re-classified.

Ongoing costs

78. Due to limited data, we have not been able to quantify ongoing costs to firm as a result of the proposals. We anticipate that firms will incur minimal, if any, ongoing costs.

Breakeven analysis: Client categorisation

79. We estimate a total of 1,518 firms will be affected by the proposed changes to the COBS 3 client categorisation rules. This total captures firms that currently categorise their clients as elective and relevant per se professionals. The total number of firms includes those who have appropriately categorised, and those who have mis-categorised, as we have been unable to ascertain an estimate for the latter. The firm population captures MiFID and non-MiFID firms, as well as firms belonging to the following portfolios: Advisers and Intermediaries, Asset Management and Alternatives, Contracts for Difference (CFD) Providers, Corporate Finance Firms, Wealth Management, Wholesale Banks, and Wholesale Brokers.

80. On average, we estimate that each firm in scope would need to make a minimum cost saving of £21,246 for the proposed changes to be net beneficial to them. To reach this average breakeven benefit, we simply divide the one-off cost of COBS 3 client categorisation changes (£32.3m) by the total number of firms in scope (1,518).

81. The limitations to our breakeven approach should be noted. This is a very simplistic calculation that does not take into account differences in firm size. The calculation also assumes that all additional revenues can be equated to a net benefit, without considering profit margins, or discounting.

Wider economic impacts, including on secondary objective

82. We consider the policy proposals to be compatible with the FCA's secondary international competitiveness and growth objective (SICGO). Our proposals in relation to client categorisation are designed to give individuals the ability to access products that meet their investment objectives and to give firms more confidence to identify those clients. The new guardrails are designed to enhance client protections by preventing clients from being inappropriately opted out of retail protections. By introducing these measures, we may encourage a 'cleaner' wholesale market, enhancing the reputation and standing of the UK markets on the global stage.

83. As part of our effort to simplify and rationalise our Handbook, our proposals in relation to the conflicts of interest rules will make it easier and less costly for firms, in particular those with cross sector businesses, to navigate and comply with our rules. We do not anticipate any adverse distributional impacts. It is not expected that low-income and vulnerable consumers will be negatively or disproportionately impacted by the policy proposals, as they relate to FCA Handbook changes pertaining to streamlining processes.

84. It should be noted that the Chancellor wrote a letter on 24th December 2024, to find out how we plan to support growth through regulatory reform. In response to the letter, one of our pledges was to reduce regulatory burden on firms through streamlining our Handbook. The policy proposals therefore not only support the FCA's own growth objective, but also the Chancellor's.

Monitoring and evaluation

85. Under the Financial Services and Markets Act (FSMA) 2023, we must keep rules in our Handbook under review. For more information, please see the Rule Review Framework on our website.

86. In relation to the proposals relating to client categorisation, we intend to monitor the effectiveness of the client categorisation rules through our supervisory work which includes reviewing complaints made to the FCA regarding firm practices. We are currently exploring the possibility of collating client categorisation data through a regulatory return form, which could be used to develop monitoring metrics.

87. The proposals relating to conflicts of interest constitute a rationalisation exercise with no change in regulatory burden and therefore we do not propose to monitor these on a proactive basis.

88. Other measures of success include the perceived effectiveness of our intervention within the wholesale markets regulation metrics described in our annual report and through other feedback tools we have in place for industry stakeholders.

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

Annex 3

Compatibility statement

Compliance with legal requirements

1. This Annex records the FCA's compliance with a number of legal requirements applicable to the proposals in this consultation, including an explanation of the FCA's reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).

2. When consulting on new rules, the FCA is required by section 138I(2)(d) FSMA to include an explanation of why it believes making the proposed rules (a) is compatible with its general duty, under section 1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with its strategic objective and advances one or more of its operational objectives, (b) so far as reasonably possible, advances the secondary international competitiveness and growth objective, under section 1B(4A) FSMA, and (c) complies with its general duty under section 1B(5)(a) FSMA to have regard to the regulatory principles in section 3B FSMA. The FCA is also required by s 138K(2) FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.

3. This Annex also sets out the FCA's view of how the proposed rules are compatible with the duty on the FCA to discharge its general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (section 1B(4)). This duty applies in so far as promoting competition is compatible with advancing the FCA's consumer protection and/or integrity objectives.

4. In addition, this Annex explains how we have considered the recommendations made by the Treasury under s. 1JA FSMA about aspects of the economic policy of the Government to which we should have regard in connection with our general duties.

5. The proposals set out in this document have had due regard to the remit letter from the Chancellor of the Exchequer dated 14 November 2024.

6. This Annex includes our assessment of the equality and diversity implications of these proposals.

7. Under the Legislative and Regulatory Reform Act 2006 (LRRA) the FCA is subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This Annex sets out how we have complied with requirements under the LRRA.

The FCA's objectives and regulatory principles: Compatibility statement

8. The proposals set out in this consultation in relation to client categorisation are primarily intended to advance the FCA's operational objectives of securing an appropriate degree of protection for consumers through robust requirements. Firms need to consider clients' best interests and provide appropriate disclosures for the purposes of informed consent. The safeguards are designed to address existing poor client categorisation practices identified through our supervisory work as detailed in Chapter 2.

9. The proposals set out in relation to conflicts of interest are primarily intended to maintain the consistency of the regulatory framework with no policy changes in terms of content and/or scope. To ensure that the conflicts of interest rules address potential harms to consumers, we want to adapt existing obligations to better suit the activities and risks of different business models and ensure that consumers and investors continue to benefit from the intended levels of protection.

10. Our proposals on client categorisation are also relevant to the FCA's commitment to help consumers navigate their financial lives, through disclosure requirements on firms to ensure that clients receive sufficient and clear information on the loss of retail protections.

11. We consider the conflicts of interest proposals are compatible with the FCA's strategic objective of ensuring that the relevant markets function well because they maintain existing regulatory requirements, whilst effectively calibrating our rules relating to investment business by reference to our objectives.

12. We consider these proposals comply with the FCA's secondary objective in advancing competitiveness and growth. With regards to the proposals in relation to client categorisation, the proposals will streamline the categorisation process, adding flexibility and the new wealth only option may attract non-UK investors to the UK driving positive economic outcomes. The proposals in relation to the rationalisation exercise of SYSC 10 do not introduce new requirements on firms, nor remove existing requirements. The proposed amendments and drafting style edits will ensure clarity and consistency with the wider Handbook, ensuring continuity of the regulatory regime and its proportionate application.

13. In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles set out in s.3B FSMA.

The need to use our resources in the most efficient and economic way

14. Our proposals are designed to be as proportionate as possible relative to risk and ensure that firms and clients have clarity about expectations. By clarifying our expectations our proposals are intended to reduce the need for supervisory interventions.

The principle that a burden or restriction should be proportionate to the benefits

15. We have carefully considered the proportionality of our proposals, including through consultation with internal and external stakeholders through the development of our proposals.

16. The proposals may require firms to make changes, with associated costs, as to how they conduct their business. However, we consider that our proposals are proportionate, and the benefits outweigh the costs. For instance, firms will be required to review the categorisation of some clients in line with the new proposals, which would generate a one-off cost but would enhance market integrity and consumer protection. The CBA in Annex 2 sets out the costs and benefits of our proposals.

The need to contribute towards achieving compliance by the Secretary of State with section 1 of the Climate Change Act 2008 (UK net zero emissions target) and section 5 of the Environment Act 2021 (environmental targets)

17. This principle is not relevant to our proposals.

The general principle that consumers should take responsibility for their decisions

18. We have had regard to this principle including consideration of proportionate requirements on disclosures and informed consent according to the level of knowledge and experience of different types of clients.

The responsibilities of senior management

19. Our proposals do not specifically relate to the responsibilities of senior management. Nevertheless, we have had regard to this principle and do not consider that our proposals undermine it.

The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons including mutual societies and other kinds of business organisation

20. Our proposals are designed to be flexible and outcome-based to ensure taking into consideration different business models, operating structures and objectives of businesses. We have regard to the wide range of businesses that rely on the client categorisation process and to whom the conflicts of interest rules apply – with the aim of proposing appropriate and proportionate elective professional client criteria.

The desirability of publishing information relating to persons subject to requirements imposed under FSMA, or requiring them to publish information

21. This principle is not relevant to our proposals.

The principle that we should exercise of our functions as transparently as possible

22. By explaining the rationale for each of our proposals and the anticipated outcomes, the FCA has had regard to this principle.

23. We do not regard our proposals as being relevant to the need for the FCA has had regard to the importance of taking action intended to minimise the extent to which it is possible for a business carried on (i) by an authorised person or a recognised investment exchange; or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by s 1B(5)(b) FSMA).

Expected effect on mutual societies

24. The FCA does not expect the proposals in this Consultation Paper to have a significantly different impact on mutual societies. Our proposals will apply equally to any regulated firm, regardless of whether it is a mutual society.

Compatibility with the duty to promote effective competition in the interests of consumers

25. In preparing the proposals as set out in this consultation, we have had regard to the FCA's duty to promote effective competition in the interests of consumers.

Equality and diversity

26. We are required under the Equality Act 2010 in exercising our functions to 'have due regard' to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Act, advance equality of opportunity between persons who share a relevant protected characteristic and those who do not, to and foster good relations between people who share a protected characteristic and those who do not.

27. As part of this, we ensure the equality and diversity implications of any new policy proposals are considered. Overall, we do not consider that the proposals materially impact any of the groups with protected characteristics under the Equality Act 2010. We will continue to consider the equality and diversity implications of the proposals during the consultation period and when making the final rules.

Legislative and Regulatory Reform Act 2006 (LRRA)

28. We have had regard to the principles in the LRRA for the parts of the proposals that consist of general policies, principles or guidance relating to the new proposed rules on client categorisation and the rationalisation of the conflicts of interest rules. We consider that these parts of the proposals have had regard to the five LRRA principles – that regulatory activities should be carried out in a way which is transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.

- **Transparent** – We are consulting on our policy proposals with industry to articulate changes. Through consultation and pro-active engagement both before and during consultation, we are being transparent and providing a simple and straightforward way to engage with the regulated community.
- **Accountable** – We are consulting on proposals and will publish final rules after considering all feedback received in our Policy Statement (PS) in 2026. We are acting within our statutory powers, rules and processes.
- **Proportionate** – We recognise that firms may be required to make changes to how they carry out their business and have provided for an implementation period to give them time to do so. The CBA sets out further details on the costs and benefits of our proposals.
- **Consistent** – Our approach would apply in a consistent manner across firms carrying out investment activities.
- **Targeted** – Our proposals will enhance our ability to provide targeted firm engagement and consider how to best deploy our resources.
- **Regulators' Code** – Our proposals are carried out in a way that supports firms to comply and grow through our consideration of their feedback via this CP and refining our proposals where necessary. Our CP, CBA, draft instrument, accompanying annexes, public communications and communications with firms are provided in a simple, straightforward, transparent and clear way to help firms meet their responsibilities.

Annex 4

Table of changes to conflicts of interest rules

Source of provision	Proposed Handbook Reference	Subject matter	Policy change/ other comment
SYSC 10 – Conflicts of interest			
SYSC 10.1.-5G	Not applicable	Application to funeral plan distribution	Deleted as provision will become redundant based on proposed changes to general application. No policy change intended.
SYSC 10.1.-4G	Not applicable	Application to insurance intermediaries	Deleted as provision will become redundant based on proposed changes to general application. No policy change intended.
SYSC 10.1.-3R	Not applicable	Application to insurance intermediaries – insurance-based investment products	Deleted as provision will become redundant based on proposed changes to general application. No policy change intended.
SYSC 10.1.-2G	Not applicable	Application to a common platform firm	Deleted as provision will become redundant based on proposed changes to general application. No policy change intended.
SYSC 10.1.-1G	Not applicable	Application to a MiFID optional exemption firm and to a third country firm.	Deleted as provision will become redundant based on proposed changes to general application. No policy change intended.
SYSC 10.1.1R	SYSC 10.1.1R	General application	Amended to incorporate all in-scope firms.
SYSC 10.1.1AR	SYSC 10.1.1R(2)	Application – AIFMs	Transferred to general application provision. No policy change intended.
SYSC 10.1.2G	SYSC 10.1.2G	Guidance – Requirements only apply if a service is provided	Amended to include SYSC 10.1.18G. No policy change intended.
SYSC 10.1.2AR	Not applicable	SRD requirements	Deleted as provision will become redundant based on proposed changes to general application. No policy change intended.

Source of provision	Proposed Handbook Reference	Subject matter	Policy change/ other comment
Not applicable	SYSC 10.1.2BG	Proportionality	New provision. No policy change intended, will replace other proportionality provisions and guidance modifying application to different types of firms. See Chapter 4 for further discussion.
SYSC 10.1.3R	SYSC 10.1.3R	Identifying conflicts	Amended to incorporate SYSC 10.1.23R requirements for different types of firms. No policy change intended.
SYSC 10.1.4R	SYSC 10.1.4R	Types of conflicts	Amended to incorporate requirements for different types of firms, including SYSC 10.1.4BR, SYSC 10.1.4CR, SYSC 10.1A.2R(3), SYSC 3.3.6R, SYSC 3.3.7R, Article 30 of AIFMD Level 2 Regulation. No policy change intended.
SYSC 10.1.4AG	Not applicable	Types of conflicts – application to other firms	Deleted as provision will be redundant based on proposed changes to application. No policy change intended.
SYSC 10.1.4BR	SYSC 10.1.4R	Types of conflicts – insurance distribution and funeral plan distribution	Incorporated into general provision on types of conflicts. No policy change intended
SYSC 10.1.4CR	SYSC 10.1.4R	Types of conflicts – insurance distribution and funeral plan distribution	Incorporated into general provision on types of conflicts. No policy change intended.
SYSC 10.1.5G	SYSC 10.1.5G	Types of conflicts – guidance	No change.
SYSC 10.1.6R	SYSC 10.1.6R	Record of conflicts	Amended to incorporate SYSC 10.1.6AAR. No policy change intended.

Source of provision	Proposed Handbook Reference	Subject matter	Policy change/ other comment
SYSC 10.1.6AG	Not applicable	Record of conflicts – application to other firms	Deleted as provision will be redundant based on proposed changes. No policy change intended but see Chapter 4 for discussion of changes to application.
SYSC 10.1.6AAR	SYSC 10.1.6R(3)	Record of conflicts – reporting to senior management	Transferred to general record keeping rule. No policy change intended.
SYSC 10.1.6BG	Not applicable	Record of conflicts – application to other firms	Deleted as provision will be redundant based on proposed changes. No policy change intended but see Chapter 4 for discussion of changes to application.
SYSC 10.1.7R	SYSC 10.1.7R	Managing conflicts	Amended to incorporate requirements for different types of firms, including SYSC 10.1.8R(1), SYSC 10.1.19R, SYSC 10.1.22R, SYSC 10.1.25R, SYSC 3.3.8R, SYSC 3.3.13R(1). No policy change intended, but some requirements will be extended to all firms. See Chapter 4 for further discussion.
Not applicable	SYSC 10.1.7R(5)	Managing conflicts	Added reference to SYSC 19F requirements for insurance distribution activities. No policy change intended.
SYSC 10.1.7AR	SYSC 10.1.2BG	Proportionality for insurance distribution activities	Incorporated into the proposed general proportionality provision. No policy change intended.
Not applicable	SYSC 10.1.7AG	Managing conflicts - guidance	New provision. No policy change intended, will replace SYSC 10.1.9G and SYSC 10.1.9AR.

Source of provision	Proposed Handbook Reference	Subject matter	Policy change/ other comment
SYSC 10.1.8R	SYSC 10.1.8R	Disclosure of conflicts	Amended to incorporate requirements for different types of firms, including SYSC 10.1.21R, SYSC 10.1.26R, SYSC 10.1A.6R(2), SYSC 3.3.13R(2), SYSC 3.3.14R(2), articles 34 and 36 of AIFMD Level 2 Regulation. 10.1.8(3) has been deleted as it will be redundant based on proposed changes. No policy change intended.
SYSC 10.1.8R(1)	SYSC 10.1.7R(4)	Disclosure of conflicts	Transferred to managing conflicts provision. No policy change intended.
SYSC 10.1.9G	SYSC 10.1.7AG	Disclosure of conflicts – guidance	Incorporated into new guidance provision. No policy change intended.
SYSC 10.1.9AR	SYSC 10.1.7AG	Disclosure of conflicts – measure of last resort	Incorporated into new guidance provision. No policy change intended.
SYSC 10.1.10R	SYSC 10.1.10R	Conflicts policy	Amended to incorporate SYSC 10.1.11R(1) and requirements for different types of firms. No policy change intended.
SYSC 10.1.11R	No change	Contents of policy	Amended to incorporate requirements for different types of firms. No policy change intended, but requirement for a gifts and benefits policy has been extended to all firms. See Chapter 4 for further discussion. SYSC 10.1.11R(3) will also be amended and extended to all firms. As this provision extends no specific requirements for any firms, this is not expected to change firms' obligations.
SYSC 10.1.11R(1)	SYSC 10.1.10R(3)	Contents of policy	Transferred to conflicts policy provision. No policy change intended.

Source of provision	Proposed Handbook Reference	Subject matter	Policy change/ other comment
SYSC 10.1.11R(4)	SYSC 10.1.11R(3)	Conflicts policy – other measures	Incorporated into SYSC 10.1.11R(3). No policy change intended.
SYSC 10.1.11R(5)	SYSC 10.1.2BG	Proportionality	Incorporated into proposed general proportionality provision. No policy change intended.
SYSC 10.1.11AG	Not applicable	Contents of policy – application	Deleted as provision will be redundant based on proposed changes. No policy change intended but see Chapter 4 for discussion of changes to application.
SYSC 10.1.11AAR	SYSC 10.1.11AAR	Conflicts policy – Annual review	Amended to remove differentiation between different types of firms. No policy change intended.
SYSC 10.1.11ABR	Not applicable	Application to insurance distribution activities	Deleted as provision will be redundant based on proposed changes.
SYSC 10.1.11BG	Not applicable	Application to other firms	Deleted as provision will be redundant based on proposed changes. No policy change intended but see Chapter 4 for discussion of changes to application.
SYSC 10.1.12G	Not applicable	Application to certain activities – special attention	Deleted as these activities are sufficiently covered by the general requirements in SYSC 10.1.3R and SYSC 10.1.4R, and do not require specific emphasis. No policy change intended.
SYSC 10.1.16R	Not applicable	Application of conflicts of interest rules to non-common platform firms when producing investment research or non-independent research	Deleted as these activities will be covered by the proposed changes to application. No policy change intended.

Source of provision	Proposed Handbook Reference	Subject matter	Policy change/ other comment
SYSC 10.1.17R	SYSC 10.1.3R	Additional requirements for a management company	Transferred to the general identifying conflicts provision. No policy change intended.
SYSC 10.1.18G	SYSC 10.1.2G(3)	References to client – UCITS	Transferred to general guidance on definition of clients. No policy change intended.
SYSC 10.1.19R	SYSC 10.1.7R	Structure and organisation of a management company	Transferred to the general managing conflicts provision. No policy change intended, but this has been extended to all firms. See Chapter 4 for further discussion.
SYSC 10.1.20R	Not applicable	Avoidance of conflicts of interest for a management company	Deleted as Principle 6 and other requirements create analogous obligations on firms. No policy change intended.
SYSC 10.1.21R	SYSC 10.1.8R(6)	Disclosure of conflicts of interest for a management company	Transferred to general disclosure provision. No policy change intended.
SYSC 10.1.22R	SYSC 10.1.7R(6)	Requirement for approval – collective portfolio management investment firm	Transferred to general managing conflicts provision. No policy change intended.
SYSC 10.1.23R	SYSC 10.1.3R	Additional requirements for an AIFM – identifying conflicts	Transferred to general identifying conflicts provision. No policy change intended.
SYSC 10.1.24R	Not applicable	Managing conflicts – AIFMs	Deleted as Principle 6 and other requirements create analogous obligations on firms. No policy change intended.
SYSC 10.1.25R	SYSC 10.1.7R(2)	Managing conflict – AIFMs	Transferred to general managing conflicts provision. No policy change intended, but requirement has been extended to all firms. See Chapter 4 for further discussion.

Source of provision	Proposed Handbook Reference	Subject matter	Policy change/ other comment
SYSC 10.1.26R	SYSC 10.1.8R(5)	Disclosure of conflicts – AIFMs	Incorporated into general disclosure provision. No policy change intended.
SYSC 10.1.27R	SYSC 10.1.27R	Subordinate measures for alternative investment fund managers	No change.
SYSC 10.1A – Insurance-based investment products – Conflicts of interest			
SYSC 10.1A.1G	Not applicable	Application	Deleted as provision will be redundant based on proposals. No policy change intended.
SYSC 10.1A.2R	SYSC 10.1.3R	Identifying conflicts	Incorporated into general identifying conflicts provision. No policy change intended.
SYSC 10.1A.2R(3)	SYSC 10.1.4R	Types of conflicts	Incorporated into general types of conflicts provision. No policy change intended.
SYSC 10.1A.3R	SYSC 10.1.10R	Conflicts policy	Incorporated into general conflicts policy provision. No policy change intended.
SYSC 10.1A.4R	SYSC 10.1.10R(3)	Conflicts policy	Incorporated into general conflicts policy provision. No policy change intended.
SYSC 10.1A.5R	SYSC 10.1.11R	Contents of policy	Incorporated in general contents of policy provision. No policy change intended.
SYSC 10.1A.6R(1)	SYSC 10.1.7AG	Over-reliance on disclosure of conflicts	Incorporated into new guidance provision. No policy change intended.
SYSC 10.1A.6R(2)	SYSC 10.1.8R	Disclosure of conflicts	Incorporated into general disclosure provision. No policy change intended.
SYSC 10.1A.7R	SYSC 10.1.11AAR	Conflicts policy – annual review	Incorporated into general conflicts policy annual review provision. No policy change intended.
SYSC 10.1A.8R	SYSC 10.1.6R	Record keeping	Incorporated into general record keeping provision. No policy change intended.

Source of provision	Proposed Handbook Reference	Subject matter	Policy change/ other comment
SYSC 3.3 – Insurers carrying on insurance distribution activities			
SYSC 3.3.1R	SYSC 10.1.1R	Application	Transferred to general application provision. No policy change intended.
SYSC 3.3.5R	SYSC 10.1.3R	Identifying conflicts	Incorporated into general types of conflicts provision. No policy change intended.
SYSC 3.3.6R	SYSC 10.1.4R	Types of conflicts	Incorporated into general types of conflicts provision. No policy change intended.
SYSC 3.3.7R	SYSC 10.1.4R	Types of conflicts	Incorporated into general types of conflicts provision. No policy change intended.
SYSC 3.3.8R	SYSC 10.1.7R	Managing conflicts	Incorporated into general managing conflicts provision. No policy change intended.
SYSC 3.3.9R	SYSC 10.1.2BG	Proportionality	Incorporated into proposed general proportionality provision. No policy change intended.
SYSC 3.3.10R	SYSC 10.1.10R	Conflicts policy	Incorporated into general conflicts policy provision. No policy change intended.
SYSC 3.3.11R	SYSC 10.1.10R	Conflicts policy	Incorporated into general conflicts policy provision. No policy change intended.
SYSC 3.3.12R	SYSC 10.1.11R	Contents of policy	Incorporated in general contents of policy provision. No policy change intended.
SYSC 3.3.13R(1)	SYSC 10.1.7R	Managing conflicts	Incorporated into general managing conflicts provision. No policy change intended.
SYSC 3.3.13R(2)	SYSC 10.1.8R	Disclosure of conflicts	Incorporated into general disclosure provision. No policy change intended.
SYSC 3.3.14R(1)	SYSC 10.1.7AG	Overreliance on disclosure of conflicts	Incorporated into new guidance provision. No policy change intended.
SYSC 3.3.14R(2)	SYSC 10.1.8R	Disclosure of conflicts	Incorporated into general disclosure provision. No policy change intended.

Source of provision	Proposed Handbook Reference	Subject matter	Policy change/ other comment
SYSC 3.3.15R	SYSC 10.1.11AAR	Conflicts policy – annual review	Incorporated into conflicts policy annual review provision. No policy change intended.
SYSC 3.3.16R	SYSC 10.1.6R	Record keeping	Incorporated into general record keeping provision. No policy change intended.
AIFMD Level 2 Regulation			
Article 30	SYSC 10.1.4R	Types of conflicts	Incorporated into general types of conflicts provision. No policy change intended.
Article 31	SYSC 10.1.10R	Conflicts policy	Incorporated into general conflicts policy provision. No policy change intended.
Article 33	SYSC 10.1.11R	Contents of policy	Incorporated into general contents of policy provision. No policy change intended.
Article 34	SYSC 10.1.8R(4)	Disclosure of conflicts	Transferred to general disclosure provision. No policy change intended.
Article 35	SYSC 10.1.6R	Record keeping	Incorporated into general record keeping provision. No policy change intended.
Article 36	SYSC 10.1.8R(5)	Disclosure of conflicts	Transferred to general disclosure provision. No policy change intended.

Annex 5

Abbreviations used in this paper

Abbreviation	Description
AIF	Alternative Investment Funds
AIFM	Alternative Investment Fund Manager
AIFMD	Alternative Investment Fund Managers Directive
Article 3 firms	MiFID optional exemption firm
BFSA	Berne Financial Services Agreement
CBA	Cost Benefit Analysis
CFD	Contract for Difference
CIS	Collective Investment Schemes
COBS	Conduct of Business sourcebook
CP	Consultation Paper
ECP	Eligible counterparty
ESMA	European Services and Markets Authority
EU	European Union
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act
IDD	Insurance Distribution Directive
LGPS	Local Government Pension Scheme
LRRA	Legislative and Regulatory Reform Act 2006
MiFID	Markets in Financial Instruments Directive
MiFID Org Reg	Markets in Financial Instruments Directive Organisational Regulation

Abbreviation	Description
MiFIR	Markets in Financial Instruments Regulation
PISCES	The Private Intermittent Securities and Capital Exchange System
POATRs	The Public Offers and Admissions to Trading Regulations 2024
PS	Policy Statement
SICGO	Secondary International Competitiveness and Growth Objective
SPVs	Special Purpose Vehicles
SYSC	The Senior Management Arrangements, Systems and Controls sourcebook
TTCA	Title Transfer Collateral Arrangement
UCITS	Undertakings for Collective Investment in Transferable Securities
UK	United Kingdom
The Treasury	His Majesty's Treasury

Appendix 1

Draft Handbook text

SIMPLIFYING THE CONFLICTS OF INTEREST INSTRUMENT 2026

Powers exercised

A. The Financial Conduct Authority ("the FCA") makes this instrument in the exercise of the powers and related provisions in or under:

(1) the following sections of the Financial Services and Markets Act 2000 ("the Act"):

(a) section 137A (The FCA's general rules);
(b) section 137T (General supplementary powers);
(c) section 139A (Power of the FCA to give guidance);
(d) section 247 (Trust scheme rules); and
(e) section 261I (Contractual scheme rules);

(2) regulation 6 (FCA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228); and

(3) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA's Handbook.

B. The rule-making powers listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on [*date*].

Amendments to the FCA Handbook

D. The Senior Management Arrangements, Systems and Controls sourcebook (SYSC) is amended in accordance with the Annex to this instrument.

Notes

E. In the annexes to this instrument, the notes (indicated by "*Editor's note*:") are included for the convenience of readers, but do not form part of the legislative text.

Citation

F. This instrument may be cited as the Simplifying the Conflicts of Interest Instrument 2026.

By order of the Board
[*date*]

Annex

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

1 Application and purpose

1.1A Application

1.1A.1 G The application of this sourcebook is summarised at a high level in the following table. The detailed application is cut back in SYSC 1 Annex 1 1 and in the text of each chapter.

Type of firm	Applicable chapters
Insurer, *UK ISPV*	Chapters 2, 3, 10 (for *insurers* only in respect of *insurance distribution activities*), 12 to 18, 19F.2, 21, 22, 23, 24, 25, 26, 27, 28, 28A
…	…

Firms that *SYSC* 19D applies to should also refer to the Remuneration part of the *PRA Rulebook*.

…

1 Annex 1 Detailed application of SYSC

…

1 Annex 1 Part 2

Part 2	Application of the common platform requirements (SYSC 4 to 10)	
	Who?	
…		
2.6B	R	Subject to *SYSC* 1 Annex 1 2.6CR, the *common platform requirements* do not apply to a *full-scope UK AIFM* of an *unauthorised AIF* except for:

		…	
		(4)	*SYSC* 6.1.4-AAG;
		…	
		(6)	*SYSC* 7.1.7BAG; and
		(7)	~~*SYSC* 10.1.1 R and *SYSC* 10.1.22 R to *SYSC* 10.1.26 R; and~~ [deleted]
		…	
…			
	What?		
…			
2.9	G	~~The application of the provisions on the conflicts of interest in *SYSC* 10 is set out in *SYSC* 10.1. 4G to *SYSC* 10.1.1AR and *SYSC* 10.2.1R~~ [deleted]	
…			

1 Annex
1 Part 3

Part 3	**Tables summarising the application of the common platform requirements to different types of firm**		
…			
Common platform firm			
3.2	G	For a *common platform firm*:	
		(1)	*SYSC* 4 to ~~*SYSC* 10~~ *SYSC* 9 apply in accordance with Column A in Table A below.
		…	
3.2-ZA	G	A *common platform firm* that is a *MIFIDPRU investment firm* should read *SYSC* 4 to ~~*SYSC* 10~~ *SYSC* 9 together with *MIFIDPRU* 7. While *MIFIDPRU investment firms* are not in scope of the requirements in *SYSC* 4.3A.8R and *SYSC* 7.1.18R regarding nomination and risk committees, certain *MIFIDPRU investment firms* are required by *MIFIDPRU*	

		7.3.1R and *MIFIDPRU* 7.3.5R to establish nomination and risk committees.		
…				
Management company				
3.2A	G	For a *management company*, the *common platform requirements* in *SYSC* 4 to ~~*SYSC* 10~~ *SYSC* 9 apply in accordance with Column A+ in Table A below.		
Full-scope UK AIFM of an authorised AIF				
3.2B	R	For a *full-scope UK AIFM* of an *authorised AIF*, the *common platform requirements* in *SYSC* 4 to ~~*SYSC* 10~~ *SYSC* 9 apply in accordance with Column A++ in Table A below.		
MiFID optional exemption firm and a third country firm				
3.2C	R	For a *MiFID optional exemption firm* and a *third country firm*:		
		(1)	*SYSC* 4 to ~~*SYSC* 10~~ *SYSC* 9 apply as *rules* or as *guidance* in accordance with Table B below in the following way:	
			(a)	where a *rule* is shown modified as 'Guidance', it should be read as *guidance* (as if "should" appeared in that *rule* instead of "must"); and
			(b)	the provision should be applied in a proportionate manner, taking into account the nature, scale and complexity of the *firm's* business.
		…		
…				
Other firms				
…				
3.3	R	For all other *firms*:		
		(1)	*SYSC* 4 to ~~*SYSC* 10~~ *SYSC* 9 apply as *rules* or as *guidance* in accordance with Column B in Table A below in the following way:	
			(a)	where a *rule* is shown modified in Column B as 'Guidance', it should be read as *guidance* (as if

				"should" appeared in that *rule* instead of "must"); and
			(b)	the provision should be applied in a proportionate manner, taking into account the nature, scale and complexity of the *firm's* business.
		(2)	[deleted]	
…				

Table A: Application of the common platform requirements in SYSC 4 to ~~SYSC 10~~ SYSC 9

1 Annex
1 Table
A

…

The table pertaining to SYSC 10 in SYSC 1 Annex 1 Table A is deleted in its entirety. The deleted text is not shown.

Table B: Application of the common platform requirements in SYSC 4 to ~~10~~ SYSC 9 to MiFID optional exemption firms and third country firms

1 Annex
1 Table
B

…

The table pertaining to SYSC 10 in SYSC 1 Annex 1 Table B is deleted in its entirety. The deleted text is not shown.

…

10 Conflicts of interest

10.1 Application

~~Application to funeral plan distribution~~

10.1.-5 G ~~This section applies to a *firm* carrying on *funeral plan distribution* in accordance with the tables in Part 3 of *SYSC* 1 Annex 1.~~ [deleted]

~~Application to insurance intermediaries~~

10.1.-4 G ~~(1) Subject to *SYSC* 10.1.-3R, this section applies to a *firm* carrying on *insurance distribution activities* in accordance with the tables in Part 3 of *SYSC* 1 Annex 1. Certain *rules* are disapplied where the *firm* is subject to the provisions in *SYSC* 10.1A (see *SYSC* 10.1. 3R).~~ [deleted]

~~(2) Where a provision in this section applies to an *insurance intermediary*, it applies in relation to the carrying on of *insurance distribution activities*.~~

10.1.-3 R ~~The *rules* and *guidance* in the table below do not apply to a *firm* when carrying on *insurance distribution* in relation to *insurance-based investment products* where the *rules* in *SYSC* 10.1A apply instead.~~ [deleted]

~~Subject~~	~~Rule or guidance~~
~~Types of conflict~~	~~*SYSC* 10.1.4R, *SYSC* 10.1.4AG, *SYSC* 10.1.4BR, *SYSC* 10.1.4CR(1), (2) and (5) and *SYSC* 10.1.5G.~~
~~Record of conflicts~~	~~*SYSC* 10.1.6R, *SYSC* 10.1.6AG, *SYSC* 10.1.6AAR and *SYSC* 10.1.6BG~~
~~Disclosure of conflicts~~	~~*SYSC* 10.1.8R(1)(b), (2)(b) to (2)(d) and *SYSC* 10.1.9AR~~
~~Conflicts policy~~	~~*SYSC* 10.1.10R~~
~~Contents of policy~~	~~*SYSC* 10.1.11R, *SYSC* 10.1.11AG, *SYSC* 10.1.11AAR and *SYSC* 10.1.11BG~~

~~Application to a common platform firm~~

10.1.-2 G ~~For a *common platform firm*:~~ [deleted]

~~(1) [deleted]~~

~~(2) the *rules* and *guidance* in the table below apply:~~

~~Subject~~	~~Applicable rule or guidance~~
~~Application~~	~~*SYSC* 10.1. 4R, *SYSC* 10.1. 3R~~
~~General application~~	~~*SYSC* 10.1.1R~~
~~Requirements only apply if a~~	~~*SYSC* 10.1.2G~~

~~service is provided~~	
~~Identifying conflicts~~	~~*SYSC* 10.1.3R~~
~~Types of conflicts~~	~~*SYSC* 10.1.4R, *SYSC* 10.1.5G~~
~~Records of conflicts~~	~~*SYSC* 10.1.6R, *SYSC* 10.1.6AAR~~
~~Managing conflicts~~	~~*SYSC* 10.1.7R~~
~~Disclosure of conflicts~~	~~*SYSC* 10.1.8R, *SYSC* 10.1.9G, *SYSC* 10.1.9AR~~
~~Conflicts policy~~	~~*SYSC* 10.1.10R, *SYSC* 10.1.12G~~
~~Contents of policy~~	~~*SYSC* 10.1.11R, *SYSC* 10.1.11AAR, *SYSC* 10.1.11ABR~~

~~(3) *SYSC* 10.1.7AR (Proportionality – insurance distribution activities), *SYSC* 10.1.8R (Disclosure of conflicts) and *SYSC* 10.1.11ABR (Contents of policy) also apply in relation to the carrying on of *insurance distribution activities*.~~

~~Application to a MiFID optional exemption firm and to a third-country firm~~

10.1.-1 G ~~For a *MiFID optional exemption firm* and a *third country firm*, the rules and guidance in this chapter apply to them as if they were *rules* or as *guidance* in accordance with *SYSC* 1 Annex 1 3.2CR(1).~~ [deleted]

General application

10.1.1 R (1) This section applies to a *firm* which provides services to its *clients* in the course of carrying on *regulated activities* or *ancillary activities* or providing *ancillary services* ~~(but only where the *ancillary services* constitute *MiFID business*)~~.

(2) This section ~~also~~ applies to a ~~*UK UCITS management company*~~. *full-scope UK AIFM* in relation to:

(a) an *authorised AIF*; and

(b) an *unauthorised AIF* which is managed from an establishment in the *UK*.

(3) This section applies to a *third country firm*.

(4) This section applies to an *insurer* only in respect of its *insurance distribution activities*.

(5) This section does not apply to a *managing agent*, *UK ISPV* or the *Society*.

~~[**Note:** The provisions in *SYSC* 10.1 also implement articles 27 and 28 of the *IDD*, articles 74(1) and 88 of *CRD* and as applied under the discretion in the third paragraph of article 95(2) of the *UK CRR*, *BCD* article 22 and *BCD* Annex V paragraph 1]~~

10.1.1A ~~R~~ ~~This section also applies to:~~ [deleted]

~~(1) a *full-scope UK AIFM* of:~~

~~(a) a *UK AIF*; and~~

~~(b) [deleted]~~

~~(c) a *non-UK AIF*; and~~

~~(2) [deleted]~~

~~Requirements only apply if a service is provided~~

10.1.2 G (1) ~~The requirements in this section only apply where a service is provided by a *firm*.~~ The status of the *client* to whom the service is provided (as a *retail client*, *professional client* or *eligible counterparty*) is irrelevant for this purpose.

(2) ~~For the avoidance of doubt, a reference to "service" in this section includes all *insurance distribution activities*.~~ [deleted]

(3) For a *UK UCITS management company*, references to *client* in *SYSC* 10.1.4R and in the other *rules* in this section should be construed as referring to any *UCITS scheme* managed by that *firm* or which it intends to manage, and with or for the benefit of which the relevant activity is to be carried on.

~~SRD requirements~~

10.1.2A R ~~The requirements in this section apply to an *SRD asset manager* with regard to its engagement activities covered by the *SRD*.~~ [deleted]

~~[**Note:** article 3g(3) of *SRD*]~~

Proportionality

10.1.2B G *Firms* should apply the requirements in this chapter in a manner that is proportionate to the nature, scale and complexity of their business and the

nature and range of services provided to *clients*, without prejudice to compliance with specific requirements set out in this chapter.

Identifying conflicts

10.1.3 R A *firm* must take all appropriate steps to identify and to prevent or manage conflicts of interest between:

(1) the *firm*, including its managers, employees and *appointed representatives* (or where applicable, *tied agents*), or any *person* directly or indirectly linked to them by *control*, and a *client* of the *firm*; ~~or~~

(2) one *client* of the *firm* and another *client*; and

(3) where the *firm* is a *full-scope UK AIFM*:

(a) the *AIFM*, including its managers, employees or any *person* directly or indirectly linked to the *AIFM* by control, and an *AIF* managed by the *AIFM* or the investors in that *AIF*;

(b) an *AIF* managed by the *firm* or the investors in that *AIF*, and another *AIF* managed by the *firm* or the investors in that other *AIF*;

(c) an *AIF* or the investors in that *AIF*, and another *client* of the *AIFM*;

(d) an *AIF* or the investors in that *AIF*, and a *UK UCITS* managed by the *AIFM* or the *unitholders* in that UCITS; or

(e) an *AIF* managed by the *firm* (or the investors in that *AIF*) and another *client* of the *firm*,

that arise or may arise in the course of the *firm* ~~providing any service~~ conducting activities referred to in *SYSC* 10.1.1R including those caused by the receipt of inducements from third parties or by the *firm's* own remuneration and other incentive structures.

~~[**Note:** article 23(1) of *MiFID* and articles 27 and 28(1) of the *IDD*]~~

Types of conflicts

10.1.4 R For the purposes of identifying the types of conflict of interest that arise, or may arise, in the course of providing a service and whose existence may damage the interests of a *client*, a *firm* must take into account, as a minimum, whether the *firm* or a *relevant person*, or a *person* directly or indirectly linked by *control* to the *firm*:

(1) is likely to make a financial gain, or avoid a financial loss, ~~at the expense of the~~ to the potential detriment of the *client* and, in relation to a *full-scope UK AIFM*, an *AIF* or its investors;

(2) has an interest in the outcome of a service provided to the *client* or of a transaction carried out on behalf of the *client*, which is distinct from the *client's* interest in that outcome;

(2A) in the case of a *management company* providing *collective portfolio management* services for a *UCITS scheme*, (2) also applies where the service is provided to, or the transaction is carried out on behalf of, a *client* other than the *UCITS scheme*;

(2B) in the case of a *full-scope UK AIFM*, (2) also applies where the service or activity is provided to an *AIF*, the investors of an *AIF* or another *client*, and to a transaction which is carried out on behalf of an *AIF* or another *client*;

(3) has a financial or other incentive to favour the interest of another *client* or group of *clients* over the interests of the *client*;

(4) carries on the same business as the *client*; or in the case of a *management company* or a *full-scope UK AIFM*, carries on the same activities for the *UCITS scheme* or *AIF* and for another *UCITS scheme*, *AIF* or *client* or *clients* which are not *UCITS schemes* or *AIFs*;

(5) ~~(except in the case of a *common platform firm or MiFID optional exemption firm*) receives or will receive from a *person* other than the *client* an inducement in relation to a service provided to the *client*, in the form of monies, goods or services, other than the standard commission or fee for that service; or~~ [deleted]

(6) ~~(in the case of a *common platform firm or a MiFID optional exemption firm*)~~ receives or will receive from a *person* other than the *client* an inducement in relation to a service provided to the *client*, in the form of monetary or non-monetary benefits or services~~.~~;

(7) for a *full-scope UK AIFM*, (6) also applies to an inducement which the *AIFM* receives or will receive from a *person* other than the *AIF* or its investors in relation to collective portfolio management activities provided to the *AIF*; or

(8) in the case of *insurance distribution activity*, is substantially involved in the management or development of *contracts of insurance*, in particular where such a person has an influence on the pricing of those *contracts of insurance* or their distribution costs.

The conflict of interest may result from the *firm* or *person* providing a service referred to in *SYSC* 10.1.1R or engaging in any other activity or, in the case of a *management company*, whether as a result of providing *collective portfolio management* services or otherwise.

~~[**Note:** article 17(1) of the *UCITS implementing Directive*]~~

10.1.4A G ~~Other *firms* (except *common platform firms*, *MiFID optional exemption firms*, *third country firms*, *UCITS management companies* and *insurance intermediaries*) should take account of the *rule* on the types of conflicts (see *SYSC* 10.1.4R) in accordance with *SYSC* 1 Annex 1 3.3R.~~ [deleted]

10.1.4B R ~~For the purposes of identifying the types of conflict of interest that arise, or may arise, in the course of carrying on *insurance distribution activities* or funeral plan distributions *funeral plan distributions* and whose existence may damage the interests of a *client* ("A"), a *firm* must assess whether:~~ [deleted]

~~(1) the *firm* or a *relevant person*, or a *person* directly or indirectly linked by *control* to the *firm*; or~~

~~(2) (in the case of conflicts between A and another *client*) the other *client*,~~

~~has an interest in the outcome of the *insurance distribution activities* or *funeral plan distribution*, which meets the following criteria:~~

~~(3) it is distinct from A's interest in the outcome of the *insurance distribution activities* or *funeral plan distributions*; and~~

~~(4) it has the potential to influence the outcome of the activities to the detriment of A.~~

10.1.4C R ~~For the purpose of carrying out the assessment in *SYSC* 10.1.4BR, a *firm* must take into account, as a minimum, whether the *firm* or a *relevant person*, or a *person* directly or indirectly linked by *control* to the *firm*:~~ [deleted]

~~(1) is likely to make a financial gain, or avoid a financial loss, at the expense of the *client*;~~

~~(2) has a financial or other incentive to favour the interest of another *client* or group of *clients* over the interest of the *client*;~~

~~(3) carries on the same business as the *client*;~~

~~(4) receives or will receive from a *person* other than the *client* an inducement in relation to a service provided to the *client*, in the form of monies, goods or services, other than the standard commission or fee for that service; or~~

~~(5) is substantially involved in the management or development of *policies*, in particular where such a *person* has an influence on the pricing of those policies or their distribution costs.~~

10.1.5 G The circumstances which should be treated as giving rise to a conflict of interest cover cases where there is a conflict between the interests of the *firm* or certain *persons* connected to the *firm* or the *firm's group* and the duty the *firm* owes to a *client*; or between the differing interests of two or more of its *clients*, to whom the *firm* owes in each case a duty. It is not enough that the

firm may gain a benefit if there is not also a possible disadvantage to a *client*, or that one *client* to whom the *firm* owes a duty may make a gain or avoid a loss without there being a concomitant possible loss to another such *client*.

Record of conflicts

10.1.6 R (1) A *firm* must keep and regularly update a record of the kinds of service or activity carried out by or on behalf of that *firm* in which a conflict of interest entailing a material risk of damage~~, or for a *common platform firm or a MiFID optional exemption firm*, a risk of damage,~~ to the interests of one or more *clients* may arise or has arisen ~~or, in the case of an ongoing service or activity, may arise~~.

(2) For a *full-scope UK AIFM*, the duty in (1) also applies to conflicts of interest entailing a material risk of damage to the interests of an *AIF* or its investors.

(3) A *firm* must ensure that its *senior management* receives on a frequent basis, and at least annually, written reports on all situations referred to in paragraph (1) and, where relevant, paragraph (2).

~~[**Note:** article 20(1) of the *UCITS implementing Directive*]~~

10.1.6A G ~~Other *firms* (other than *common platform firms*, *MiFID optional exemption firms*, *third country firms* and *insurance intermediaries*) should also take account of the *rule* on records of conflicts (see *SYSC* 10.1.6 R) in accordance with *SYSC* 1 Annex 1 3.3R).~~ [deleted]

10.1.6A A R ~~A *firm* must ensure that its *senior management* receives on a frequent basis, and at least annually, written reports on all situations referred to in *SYSC* 10.1.6R.~~ [deleted]

10.1.6B G ~~Where *SYSC* 10.1.6AAR applies as *guidance* to a *firm* in accordance with *SYSC* 1 Annex 1.3.3R, a *firm* should read *SYSC* 10.1.6AAR as if "should" appeared in that rule instead of "must".~~ [deleted]

Managing conflicts

10.1.7 R (1) A *firm* must be structured and organised to minimise the risk of a *client's* interests being prejudiced by conflicts of interest.

(2) A *firm* must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps to prevent conflicts of interest as defined in *SYSC* 10.1.3R from adversely affecting the interests of its *clients* (including, in the case of a *full-scope UK AIFM*, investors). This includes segregating, within its own operating environment, tasks and responsibilities which may be regarded as incompatible with each other, or which may generate systematic conflicts of interest.

(3) If arrangements made by a *firm* under this *rule* are not sufficient to ensure, with reasonable confidence, that risks of damage to the

interests of a *client* will be prevented, the *firm* must clearly disclose the general nature or sources of conflicts of interest, or both, to the *client* before undertaking business for the *client* in accordance with *SYSC* 10.1.8R(2). This paragraph does not apply to a *full-scope UK AIFM* or a *UCITS management company* (see *SYSC* 10.1.8R(4), (5) and (6)).

(4) In relation to *insurance distribution activities*, a *firm* must also comply with *SYSC* 19F (Remuneration), which provides that disclosure is not permitted as a remedy for conflicts relating to remuneration practices.

(5) A *collective portfolio management investment firm* which manages investments other than for an *AIF* or *UCITS* which it manages must obtain approval from its *client* before it invests all or part of the *client's* portfolio in *units* or *shares* of an *AIF* or *UCITS* it manages.

~~[**Note:** article 16(3) of *MiFID* and article 27 of the *IDD*]~~

10.1.7-A G While disclosure of specific conflicts of interest is required by *SYSC* 10.1.7R(4), over-reliance on disclosure without adequate consideration of how conflicts may appropriately be managed is not permitted. Disclosure should be treated as a measure of last resort to be used only where the effective organisational and administrative arrangements are not sufficient to ensure, with reasonable confidence, that risks of damage to *client* interests will be prevented.

~~Proportionality – insurance distribution activities~~

10.1.7A R ~~Where a *firm* carries on *insurance distribution activities*, the arrangements in *SYSC* 10.1.7R must be proportionate to the activities performed, the *policies* sold and the type of *insurance distributor* the *firm* is or uses.~~ [deleted]

~~[**Note:** article 27 of the *IDD*]~~

Disclosure of conflicts

10.1.8 R (1) ~~If arrangements made by a *firm* under *SYSC* 10.1.7R are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a *client* will be prevented, the *firm* must clearly disclose the following to the *client* before undertaking business for the *client*:~~ [deleted]

~~(a) the general nature or sources of conflicts of interest, or both; and~~

~~(b) the steps taken to mitigate those risks.~~

(2) ~~The~~ Except for a *management company* or a *full-scope UK AIFM*, the disclosure in *SYSC* 10.1.7R(4) must:

(a) be made in a *durable medium*;

(b) clearly state that the organisational and administrative arrangements established by the *firm* to prevent or manage that conflict are not sufficient to ensure, with reasonable confidence, that the risks of damage to the interests of the *client* will be prevented;

(c) include specific description of the conflicts of interest that arise in the provision of services, taking into account the nature of the *client* to whom the disclosure is being made;

(d) explain the risks to the *client* that arise as a result of the conflicts of interest; ~~and~~

(da) disclose the steps taken to mitigate those risks; and

(e) include sufficient detail, taking into account the nature of the *client*, to enable that *client* to take an informed decision with respect to the service in the context of which the conflict of interest arises.

(3) ~~This *rule* does not apply to the extent that *SYSC* 10.1.21 R applies.~~ [deleted]

(4) Where a *full-scope UK AIFM's* arrangements under *SYSC* 10.1.7R are not sufficient to ensure, with reasonable confidence, that risks of damage to the *fund* or investors in the *fund* are prevented, the *firm* must promptly inform its senior personnel or other competent internal body in order to take any necessary decision or action to ensure the *firm* acts in the best interests of the *fund* or investors in the *fund*.

(5) (a) A *full-scope UK AIFM* must disclose the following information to the *AIF's* investors:

(i) if arrangements made by a *firm* under *SYSC* 10.1.7R are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of investors in the *AIF* will be prevented, the general nature or sources of conflicts of interest, or both; and

(ii) its assessment of whether its operating conditions may involve any other material conflicts of interest.

(b) The disclosures in (a) must be made:

(i) in a *durable medium*; or

(ii) by means of a website, provided that:

(A) the investor has been notified of the address of the website and the place on the website where the information may be accessed;

(B) the investor has consented to the provision of information by such means;

(C) the information is up to date; and

(D) the information is accessible continuously by means of that website for such period of time as the investor may reasonably need to inspect it.

(6) Where a *management company's* arrangements under *SYSC* 10.1.7R are not sufficient to ensure, with reasonable confidence, that risks of damage will be prevented, the *firm* must:

(a) promptly inform *senior personnel* or other competent internal body in order for them to take any necessary decision to ensure that, in all cases, the *firm* acts in the best interests of the *UCITS scheme* and of its *unitholders*; and

(b) report situations referred to in this paragraph to the *unitholders* of the *UCITS scheme* it manages by any appropriate *durable medium* and give reasons for its decision.

~~[**Note:** 23(2) and (3) of *MiFID* and article 28(2) and (3) of the *IDD*]~~

…

10.1.9 G ~~*Firms* should aim to identify and manage the conflicts of interest arising in relation to their various business lines and their *group's* activities under a comprehensive *conflicts of interest policy*. In particular, the disclosure of conflicts of interest by a *firm* should not exempt it from the obligation to maintain and operate the effective organisational and administrative arrangements under *SYSC* 10.1.7R. While disclosure of specific conflicts of interest is required by *SYSC* 10.1.8R, an over-reliance on disclosure without adequate consideration as to how conflicts may appropriately be managed is not permitted.~~ [deleted]

10.1.9A R ~~A *firm* must treat disclosure of conflicts pursuant to *SYSC* 10.1.8R as a measure of last resort to be used only where the effective organisational and administrative arrangements established by the *firm* to prevent or manage its conflicts of interest in accordance with *SYSC* 10.1.3R and *SYSC* 10.1.7R are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the *client* will be prevented.~~ [deleted]

Conflicts policy

10.1.10 R (1) A *firm* must establish, implement and maintain an effective *conflicts of interest policy* that is set out in writing and is appropriate to the size and organisation of the *firm* and the nature, scale and complexity of its business.

(2) Where the *firm* is a member of a *group*, the policy must also take into account any circumstances, of which the *firm* is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the *group*.

(3) The *conflicts of interest policy* must:

(a) identify, by reference to the specific *services* and activities carried out by or on behalf of the *firm*, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more *clients* (including, where relevant, investors);

(b) specify procedures to be followed and measures to be adopted by a *firm* in order to prevent or manage such conflicts; and

(c) where the *firm* is a *full-scope UK AIFM* or *UK UCITS management company*, include circumstances arising from the *firm's* use of delegates, sub-delegates, *external valuers* or counterparties.

~~[**Note:** article 18(1) of the *UCITS implementing Directive*]~~

Contents of policy

10.1.11 R (1) ~~The *conflicts of interest policy* must include the following content:~~ [deleted]

~~(a) it must identify in accordance with *SYSC* 10.1.3R, *SYSC* 10.1.4R, *SYSC* 10.1.4BR and *SYSC* 10.1.4CR (as applicable), by reference to the specific services and activities carried out by or on behalf of the *firm*, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage, or for a *common platform firm or a MiFID optional exemption firm* a risk of damage, to the interests of one or more *clients*; and~~

~~(b) it must specify procedures to be followed and measures to be adopted by a *firm* in order to manage, or for a *common platform firm* or *MiFID optional exemption firm* to prevent or manage, such conflicts.~~

(2) The procedures and measures provided for in ~~paragraph (1)(b)~~ *SYSC* 10.1.10R(3)(b) must:

(a) be designed to ensure that *relevant persons* engaged in different business activities involving a conflict of interest of the kind specified in *SYSC* 10.1.10R(3)(a) carry on those activities at a level of independence appropriate to the size and activities of the *firm* and of the *group* to which either of them respectively belongs, and to the materiality of the risk of damage to the interests of *clients* (including, where relevant, investors);

(aa) ~~(for an *insurance intermediary* or a *firm* carrying on *funeral plan distribution*)~~ for *firms* conducting *insurance distribution activities* or *funeral plan distribution*, be designed to ensure that ~~the *insurance distribution activities* or *funeral plan distribution*~~ such activities are carried out in accordance with the best interests of the *client* and are not biased due to conflicting interests ~~of the *insurance intermediary*, the *firm* carrying on *funeral plan distribution* or another *client*~~; and

(b) include, for a *firm*, where appropriate, the following, and for a *management company*, a *UK AIFM* or a *residual CIS operator*, such of the following as are necessary and appropriate for the ~~*management company*~~ *firm* to ensure the requisite degree of independence:

(i) effective procedures to prevent or control the exchange of information between *relevant persons* engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more *clients*;

(ii) the separate supervision of *relevant persons* whose principal functions involve carrying out activities on behalf of, or providing services to, *clients* whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the *firm*;

(iii) the removal of any direct link between the remuneration of *relevant persons* principally engaged in one activity and the remuneration of, or revenues generated by, different *relevant persons* principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

(iv) measures to prevent or limit any *person* from exercising inappropriate influence over the way in which a *relevant person* carries out services or activities;

(v) measures to prevent or control the simultaneous or sequential involvement of a *relevant person* in

separate services or activities where such involvement may impair the proper management of conflicts of interest; and

(vi) ~~(for *insurance intermediaries* or *firms* carrying on *funeral plan distribution*)~~ a gifts and benefits policy which determines clearly under which conditions gifts and benefits can be accepted or granted and which steps are to be taken when accepting and granting gifts and benefits.

(3) ~~If the adoption or the practice of one or more of those measures and procedures does not ensure the requisite level of independence, a *management company* must adopt such alternative or additional~~ A *firm* should adopt any other measures and procedures as are necessary and appropriate for the purposes of ~~paragraph (1)(b)~~ *SYSC* 10.1.10R(3)(b).

(4) ~~If one or more of the measures and procedures in paragraph (2) is not appropriate for the purposes of paragraph (2)(aa), an *insurance intermediary* or a *firm* carrying on *funeral plan distribution* must adopt such alternative measures and procedures as are necessary and appropriate.~~ [deleted]

(5) ~~The procedures and measures provided for in paragraph (1)(b) must be appropriate to the size and activities of an *insurance intermediary* or a *firm* carrying on *funeral plan distribution*, the *group* to which it may belong and to the risk of damage to the interests of the *client*.~~ [deleted]

~~[**Note:** articles 18(2), 19(1) and 19(2) of the *UCITS implementing Directive*]~~

10.1.11A G ~~Other *firms (except common platform firms*, *UCITS management companies*, *MiFID optional exemption firms*, *third-country firms*, *insurance intermediaries* and *firms* carrying on *funeral plan distribution*) should take account of the *rules* relating to *conflicts of interest policies* (see *SYSC* 10.1.10R and *SYSC* 10.1.11R) in accordance with *SYSC* 1 Annex 1 3.3R.~~ [deleted]

10.1.11AA R A *firm* must assess and periodically review, on at least an annual basis, the *conflicts of interest policy* established in accordance with *SYSC* 10.1.10R and *SYSC* 10.1.11R ~~(or for a *common platform firm* or *MiFID optional exemption firm*, *SYSC* 10.1.8R, *SYSC* 10.1.9AR to *SYSC* 10.1.11R)~~ and ~~should~~ must take all appropriate measures to address any deficiencies (such as over reliance on disclosure of conflicts of interest).

10.1.11AB R ~~A *common platform firm* and a *MiFID optional exemption firm*, in relation to its *insurance distribution activities*, must:~~ [deleted]

~~(1) take into account the factors set out in *SYSC* 10.1.4BR(4) and *SYSC* 10.1.4CR(5) when complying with *SYSC* 10.1.4R; and~~

(2) include the measure set out in *SYSC* 10.1.11R(2)(b)(vi) in the list of measures to be adopted, where necessary, when complying with *SYSC* 10.1.11R(2).

Contents of policy

10.1.11 G B A *firm* (other than a *common platform firm*, an *insurance intermediary* and a *firm* carrying on *funeral plan distribution*) should read *SYSC* 10.1.11AAR as if "should" appeared in that rule instead of "must". [deleted]

10.1.12 G In drawing up a *conflicts of interest policy* which identifies circumstances which constitute or may give rise to a conflict of interest, a *firm* should pay special attention to the activities of investment research and advice, proprietary trading, portfolio management and corporate finance business, including underwriting or selling in an offering of securities and advising on mergers and acquisitions. In particular, such special attention is appropriate where the *firm* or a *person* directly or indirectly linked by *control* to the *firm* performs a combination of two or more of those activities. [deleted]

…

Application of conflicts of interest rules to non-common platform firms when producing investment research or non-independent research

10.1.16 R The *rules* relating to: [deleted]

(1) types of conflict (see *SYSC* 10.1.4 R);

(2) records of conflicts (see *SYSC* 10.1.6 R); and

(3) *conflicts of interest policies* (see *SYSC* 10.1.10 R and *SYSC* 10.1.11 R);

also apply to a *firm* which is not a *common platform firm* when it produces, or arranges for the production of, *investment research* that is intended or likely to be subsequently disseminated to *clients* of the *firm* or to the public, and when it produces or disseminates *non-independent research*, in accordance with *COBS* 12.2.

Additional requirements for a management company

10.1.17 R A *UK UCITS management company*, when identifying the types of conflict of interests for the purposes of *SYSC* 10.1.4 R, must take into account: [deleted]

(1) the interests of the *firm*, including those deriving from its belonging to a *group* or from the performance of services and activities, the interests of the *clients* and the duty of the *firm* towards the *UCITS scheme* it manages; and

~~(2) where it manages two or more *UCITS schemes*, the interests of all of them.~~

~~[**Note:** article 17(2) of the *UCITS implementing Directive*]~~

10.1.18 G ~~For a *UK UCITS management company*, references to client in *SYSC* 10.1.4 R and in the other *rules* in this section should be construed as referring to any *UCITS scheme* managed by that *firm* or which it intends to manage, and with or for the benefit of which the relevant activity is to be carried on.~~ [deleted]

~~Structure and organisation of a management company~~

10.1.19 R ~~A *UK UCITS management company* must be structured and organised in such a way as to minimise the risk of a *UCITS scheme's* or *client's* interests being prejudiced by conflicts of interest between the *UK UCITS management company* and its *clients*, between two of its *clients*, between one of its *clients* and a *UCITS scheme*, or between two such *schemes*.~~ [deleted]

~~[**Note:** articles 12(1)(b) and 14(1)(d) of the *UCITS Directive*]~~

~~Avoidance of conflicts of interest for a management company~~

10.1.20 R ~~A *UK UCITS management company* must try to avoid conflicts of interest and, when they cannot be avoided, ensure that the *UCITS schemes* it manages are fairly treated.~~ [deleted]

~~[**Note:** articles 12(1)(b) and 14(1)(d) of the *UCITS Directive*]~~

~~Disclosure of conflicts of interest for a management company~~

10.1.21 R ~~(1) Where the organisational or administrative arrangements made by a *UK UCITS management company* for the management of conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the *UCITS scheme* it manages or of its *Unitholders* will be prevented, the *senior personnel* or other competent internal body of the *firm* must be promptly informed in order for them to take any necessary decision to ensure that in all cases the *firm* acts in the best interests of the *scheme* and of its *Unitholders*.~~ [deleted]

~~(2) A *UK UCITS management company* must report situations referred to in (1) to the *Unitholders* of the *UCITS scheme* it manages by any appropriate *durable medium* and give reasons for its decision.~~

~~[**Note:** articles 20(2) and 20(3) of the *UCITS implementing Directive*]~~

~~Collective portfolio management investment firms~~

10.1.22 R ~~A *collective portfolio management investment firm* which manages investments other than for an *AIF* or *UCITS* for which it has been appointed~~

~~as manager, must obtain approval from its *client* before it invests all or part of the *client's* portfolio in *units* or *shares* of an *AIF* or *UCITS* it manages.~~ [deleted]

~~[**Note**: article 12(2)(a) of the *UCITS Directive* and article 12(2)(a) of *AIFMD*]~~

~~Additional requirements for an AIFM~~

10.1.23 R ~~An *AIFM* must take all reasonable steps to identify conflicts of interest that arise, in the course of managing *AIFs*, between:~~ [deleted]

~~(1) the *AIFM*, including its managers, *employees* or any person directly or indirectly linked to the *AIFM* by *control*, and an *AIF* managed by the *AIFM* or the investors in that *AIF*; or~~

~~(2) an *AIF* or the investors in that *AIF*, and another *AIF* or the investors in that *AIF*; or~~

~~(3) an *AIF* or the investors in that *AIF*, and another *client* of the *AIFM*; or~~

~~(4) an *AIF* or the investors in that *AIF*, and a *UCITS* managed by the *AIFM* or the investors in that *UCITS*; or~~

~~(5) two *clients* of the *AIFM*.~~

~~[**Note**: article 14(1) first paragraph of *AIFMD*]~~

10.1.24 R ~~An *AIFM* must take all reasonable steps to avoid conflicts of interest and, when they cannot be avoided, manage, monitor and (where applicable) disclose those conflicts of interest in order to prevent them from adversely affecting the interests of the *AIFs* and their investors, and to ensure that the *AIFs* it manages are fairly treated.~~ [deleted]

~~[**Note**: article 12(1)d of *AIFMD*]~~

10.1.25 R ~~An *AIFM* must:~~ [deleted]

~~(1) maintain and operate effective organisational and administrative arrangements, with a view to taking all reasonable steps designed to identify, prevent, manage and monitor conflicts of interest in order to prevent them from adversely affecting the interests of the *AIFs* and their investors;~~

~~(2) segregate, within its own operating environment, tasks and responsibilities which may be regarded as incompatible with each other or which may potentially generate systematic conflicts of interest; and~~

~~(3) assess whether its operating conditions may involve any other material conflicts of interest and disclose them to the *AIF's* investors.~~

~~[**Note**: article 14(1) second and third paragraphs of *AIFMD*]~~

10.1.26 R ~~If the organisational arrangements made by the *AIFM* to identify, prevent, manage and monitor conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to investors' interests will be prevented, the *AIFM* must:~~ [deleted]

~~(1) clearly disclose the general nature or sources of conflicts of interest to the investors before undertaking business on their behalf; and~~

~~(2) develop appropriate policies and procedures.~~

~~[**Note**: article 14(2) of *AIFMD*]~~

Subordinate measures for alternative investment fund managers

10.1.27 G Articles 30 to 37 of the *AIFMD level 2 regulation* provide detailed rules supplementing the provisions of article 14 of *AIFMD*.

SYSC 10.1A is deleted in its entirety. The deleted text is not shown but the section is marked '[deleted]' as shown below.

10.1A ~~Insurance-based investment products – Conflicts of interest~~ [deleted]

Insert the following new transitional provisions, SYSC TP 13, after SYSC TP 12 (Updates to the dual-regulated firms Remuneration Code transitional provision). The text is all new and is not underlined.

TP 13 Conflicts of interest (full-scope UK AIFMs)

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provisions: coming into force
1	The amendments made to *SYSC* 10 (by the Simplifying the Conflicts of Interest and Categorisation	R	The amendments made to *SYSC* 10 do not apply to a *full-scope UK AIFM*.	From [*Editor's note*: insert the commencement date of this instrument] until the date on which the revocation of articles 30 to 36 of	[*Editor's note*: insert the commencement date of this instrument]

	Rules Instrument 2026)			the *AIFMD level 2 regulation* takes effect	
2	The amendments made to *SYSC* 10 (by the Simplifying the Conflicts of Interest and Categorisation Rules Instrument 2026)	R	A *full-scope UK AIFM* is not subject to the amendments made by the Simplifying the Conflicts of Interest and Categorisation Rules Instrument 2026 to *SYSC* 10 until the date on which the revocation of articles 30 to 36 of the *AIFMD level 2 regulation* takes effect. Until that date, *SYSC* 10 applies to a *full-scope UK AIFM* as it had effect immediately before [*Editor's note*: insert the commencement date of this instrument], and articles 30 to 36 of the *AIFMD level 2 regulation* continue to apply.	From [*Editor's note*: insert the commencement date of this instrument] until the date on which the revocation of articles 30 to 36 of the *AIFMD level 2 regulation* takes effect	[*Editor's note*: insert the commencement date of this instrument]

CLIENT CATEGORISATION INSTRUMENT 202X

Powers exercised

A. The Financial Conduct Authority ("the FCA") makes this instrument in the exercise of the following powers and related provisions in or under:

(1) the following sections of the Financial Services and Markets Act 2000 ("the Act"), including as applied by paragraph 3 of Schedule 6 to the Payment Services Regulations 2017 (SI 2017/752) ("the PSRs") and paragraph 2A of Schedule 3 to the Electronic Money Regulations 2011 (SI 2011/99) ("the EMRs"):

(a) section 137A (The FCA's general rules);
(b) section 137R (Financial promotion rules);
(c) section 137T (General supplementary powers); and
(d) section 139A (Power of the FCA to give guidance);

(2) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA's Handbook.

B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on [*date*].

Amendments to the Handbook

D. The Glossary of definitions is amended in accordance with Annex A to this instrument.

E. The Conduct of Business sourcebook (COBS) is amended in accordance with Annex B to this instrument.

Notes

F. In the Annexes to this instrument, the notes (indicated by "**Note:**") are included for the convenience of readers, but do not form part of the legislative text.

Citation

G. This instrument may be cited as the Client Categorisation Instrument 202X.

By order of the Board
[*date*]

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless stated otherwise.

Insert the following new definition in the appropriate alphabetical position. The text is all new and is not underlined.

investable assets	a *client's* portfolio of net *designated investments* and/or cash.

Amend the following definition as shown.

special purpose vehicle	(1)	(other than in *COBS* 3) a *body corporate*, explicitly established for the purpose of securitising assets, whose sole purpose (either generally or when acting in a particular capacity) is to carry out one or more of the following functions: (a) issuing *designated investments*, other than *life policies*; (b) redeeming or terminating or repurchasing (whether with a view to re-issue or to cancellation) an issue (in whole or part) of *designated investments*, other than *life policies*; (c) entering into transactions or terminating transactions involving *designated investments* in connection with the *issue*, redemption, termination or re-purchase of designated investments, other than *life policies*~~;~~.
	(2)	(in *COBS* 3) a *body corporate* that is established or managed by one or more *persons* who are or include a *per se professional client* for a specific purpose connected with the carrying on of *regulated activities* or *ancillary activities*.

Annex B

Amendments to the Conduct of Business Sourcebook (COBS)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless stated otherwise.

3 Client categorisation

3.1 Application

Scope

…

3.1.3 R The sections in this chapter on general notifications (*COBS* 3.3) ~~and policies, procedures and records (*COBS* 3.8)~~ do not apply in relation to a *firm* that is neither:

(1) conducting *designated investment business*; nor

(2) in the case of *MiFID or equivalent third country business* providing an *ancillary service* that does not constitute *designated investment business*.

~~Mixed business~~

3.1.4 R ~~If a *firm* conducts business for a *client* involving both:~~

~~(1) *MiFID or equivalent third country business*; and~~

~~(2) other *regulated activities* subject to this chapter;~~

~~it must categorise that *client* for such business in accordance with the provisions in this chapter that apply to *MiFID or equivalent third country business*.~~ [deleted]

3.1.5 G ~~(1) For example, the requirement concerning mixed business will apply if a *MiFID investment firm* or *third country investment firm* advises a *client* on whether to invest in a *scheme* or a *life policy*. This is because the former is within the scope of *MiFID* and the latter is not. In such a case, the *MiFID client* categorisation requirements prevail.~~

~~(2) The requirement does not apply where the *MiFID or equivalent third country business* is provided separately from the other *regulated activities*. Where this is the case, in accordance with *Principle* 7 (communications with clients) the basis on which the different activities will be performed, including any differences in the categorisations that apply, should be made clear to the *client*.~~ [deleted]

3.2 Clients

General definition

3.2.1 R …

(4) A client of an *appointed representative* ~~or, if applicable, a *tied agent*~~ is a "client" of the *firm* for whom that *appointed representative*~~, or *tied agent*~~, acts or intends to act in the course of business for which that *firm* has accepted responsibility under the *Act* ~~or *MiFID*~~ (see ~~sections~~ section 39 ~~and 39A~~ of the *Act*).

~~[**Note:** article 4(1)(9) of *MiFID*]~~

3.2.2 G (1) A *corporate finance contact* or a *venture capital contact* is not a *client* under the first limb of the general definition. This is because a *firm* does not provide a service to such a contact. However, it will be a *client* under the third limb of the general definition for the purposes of the *financial promotion rules* if the *firm communicates* or *approves* a *financial promotion* that is or is likely to be *communicated* to such a contact.

(2) ~~*Communicating* or *approving* a *financial promotion* that is or is likely to be *communicated* to such a contact is not *MiFID or equivalent third country business*. In such circumstances, the "non-MiFID" *client* categorisations are relevant and, in categorising *elective professional clients*, the "quantitative test" will not need to be satisfied.~~ [deleted]

Who is the client?

3.2.3 R …

(4) ~~In relation to business that is neither *MiFID or equivalent third country business*, if a *firm* provides services to a fund that does not have separate legal personality, that fund will be the *firm's client*~~ If a *firm* provides services to a *fund*, the *fund* is the *firm's client* in relation to those services rather than the underlying *participants* or investors (as applicable), even if the *fund* does not have separate legal personality.

…

3.3 General notifications

…

3.3.1B R The information in *COBS* 3.3.1AR(2) must be provided to a *client* prior to the provision of services.

~~[**Note:** paragraph 2 of section I of annex II to *MiFID*]~~

3.3.2 G ~~This chapter requires a *firm* to allow a *client* to request re-categorisation as a *client* that benefits from a higher degree of protection (see *COBS* 3.7.1 R). A *firm* must therefore notify a *client* that is categorised as a *professional client* or an *eligible counterparty* of its right to request a different categorisation whether or not the *firm* will agree to such requests. However, a *firm* need only notify a *client* of a right to request a different categorisation involving a lower level of protection if it is prepared to consider such requests.~~ [deleted]

3.3.3 R A *firm* must notify a *client* that is categorised as a *professional client* or an *eligible counterparty* of its right under *FCA rules* to request re-categorisation as a *client* that benefits from a higher degree of protection.

3.3.4 G A *firm* is not required to continue to do business with a *client* that is re-categorised as a *client* that benefits from a higher degree of protection if the *firm* would not normally do business with *clients* in that category.

3.4 Retail clients

3.4.1 R A *retail client* is a *client* who is not a *professional client* or an *eligible counterparty*.

~~[**Note:** article 4(1)(11) of *MiFID*]~~

…

3.5 Professional clients

3.5.1 R A *professional client* is a *client* that is either a *per se professional client* or an *elective professional client*.

~~[**Note:** article 4(1)(10) of *MiFID*]~~

Per se professional clients

3.5.2 R Each of the following is a *per se professional client* unless and to the extent it is an *eligible counterparty* or is given a different categorisation under this chapter:

(1) an entity required to be authorised or regulated to operate in the financial markets~~. The following list includes all authorised entities carrying out the characteristic activities of the entities mentioned~~, whether authorised in the *UK* or a third country~~:~~;

~~(a) a *credit institution*;~~

~~(b) an *investment firm*;~~

~~(c) any other authorised or regulated financial institution;~~

~~(d) an insurance company;~~

~~(e) a collective investment scheme or the management company of such a scheme;~~

~~(f) a pension fund or the management company of a pension fund;~~

~~(g) a commodity or commodity derivatives dealer;~~

~~(h) a local;~~

~~(i) any other institutional investor;~~

(2) ~~in relation to *MiFID or equivalent third country business*~~ a large undertaking meeting two of the following size requirements on a company basis:

(a) balance sheet total of ~~EUR~~ £20,000,000;

(b) net turnover of ~~EUR~~ £40,000,000;

(c) own funds of ~~EUR~~ £2,000,000;

(3) in relation to business that is not *MiFID or equivalent third country business* ~~a large undertaking meeting any of the following conditions:~~,

~~(a) a *body corporate* (including a *limited liability partnership*) which has (or any of whose *holding companies* or *subsidiaries* has) (or has had at any time during the previous two years) called up share capital or net assets of at least £5 million (or its equivalent in any other currency at the relevant time);~~

~~(b) an undertaking that meets (or any of whose *holding companies* or *subsidiaries* meets) two of the following tests:~~

~~(i) a balance sheet total of EUR 12,500,000;~~

~~(ii) a net turnover of EUR 25,000,000;~~

~~(iii) an average number of employees during the year of 250;~~

~~(c) a *partnership* or unincorporated association which has (or has had at any time during the previous two years) net assets of at least £5 million (or its equivalent in any other currency at the relevant time) and calculated in the case of a limited *partnership* without deducting loans owing to any of the *partners*;~~

~~(d) a trustee of a trust (other than an *occupational pension scheme*, *SSAS*, *personal pension scheme* or *stakeholder*~~

~~*pension scheme*) which has (or has had at any time during the previous two years) assets of at least £10 million (or its equivalent in any other currency at the relevant time) calculated by aggregating the value of the cash and *designated investments* forming part of the trust's assets, but before deducting its liabilities;~~

~~(c)~~ a trustee of an *occupational pension scheme* or *SSAS*, or a trustee or *operator* of a *personal pension scheme* or *stakeholder pension scheme* where the scheme has (or has had at any time during the previous two years):

(a) ~~(i)~~ at least 50 members; and

(b) ~~(ii)~~ assets under management of at least £10 ~~million~~,000,000 (or its equivalent in any other currency at the relevant time);

(4) a national or regional government, including a public body that manages public debt at national or regional level, a central bank, an international or supranational institution (such as the World Bank, the IMF, the ECB, the EIB) or another similar international organisation;

(5) another institutional investor whose main activity is to invest in *financial instruments* (in relation to the *firm's MiFID or equivalent third country business*) or *designated investments* (in relation to the *firm's* other business)~~.~~, ~~This includes entities dedicated to the securitisation of assets or other financing transactions.~~ a *special purpose vehicle* or an entity dedicated to the securitisation of assets or other financing transactions.

~~[**Note:** first paragraph of section I of annex II to *MiFID*]~~

…

Elective professional clients

3.5.3 R A *firm* may treat a *client* other than a local public authority or municipality as an *elective professional client* if ~~it complies with (1) and (3) and, where applicable, (2)~~ all of the conditions below are satisfied:

(1) either:

(a) the *firm* undertakes an adequate assessment of the expertise, experience and knowledge of the *client* that gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the *client* is capable of making ~~his~~ their own investment decisions and understanding the risks involved (the "qualitative ~~test~~ assessment"); or

(b) the *firm* verifies that the *client* has *investable assets* of at least £10,000,000;

(2) ~~in relation to *MiFID or equivalent third country business* in the course of that assessment, at least two of the following criteria are satisfied:~~ [deleted]

~~(a) the *client* has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters;~~

~~(b) the size of the *client*'s *financial instrument* portfolio, defined as including cash deposits and *financial instruments*, exceeds EUR 500,000;~~

~~(c) the *client* works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged;~~

~~(the "quantitative test"); and~~

(2A) the *client* has explicitly requested to be treated as an *elective professional client*;

(3) ~~the following procedure is followed:~~ [deleted]

~~(a) the *client* must state in writing to the *firm* that it wishes to be treated as a *professional client* either generally or in respect of a particular service or transaction or type of transaction or product;~~

~~(b) the *firm* must give the *client* a clear written warning of the protections and investor compensation rights the *client* may lose; and~~

~~(c) the *client* must state in writing, in a separate document from the contract, that it is aware of the consequences of losing such protections.~~

~~[**Note:** first, second, third and fifth paragraphs of section II.1 and first paragraph of section II.2 of annex II to *MiFID*]~~

(4) the *firm* must ensure the categorisation of the *client* as an *elective professional client* is compatible with the *firm's* obligations under the *client*'s *best interests rule* and the Consumer Duty (*Principle* 12 and *PRIN* 2A), as applicable; and

(5) the *firm* must obtain informed consent from the *client* and make a record of signed confirmation from the *client* that they consent to being treated as an *elective professional client*, either generally or in

respect of a particular service, transaction, product, or type of service.

3.5.3-A R For the purposes of *COBS* 3.5.3R(5), consent will not be informed where the *firm* has failed to comply with *COBS* 3.5.18R and *COBS* 3.5.19R.

3.5.3-B R Where a *firm* interacts with a *client* that is not a *per se professional client* or an *eligible counterparty*, it must treat the *client* as a *retail client* until such time as the *client* has been categorised as an *elective professional client* in accordance with *COBS* 3.5.3R.

3.5.3A G (1) As a result of *COBS* 3.5.3BR and *COBS* 3.5.3ER a *firm* should always assess a local public authority or municipality against a "quantitative test" to treat it as an *elective professional client*~~, regardless of whether the *firm* intends to conduct business involving *MiFID or equivalent third country business* or other *regulated activities* subject to *COBS* 3~~.

(2) The "quantitative test" that a *firm* should use depends on the application of *COBS* 3.5.3BR (which applies for *UK clients*) and *COBS* 3.5.3ER (which applies for non-*UK clients*).

Local public authority or municipality

3.5.3B R (1) A *firm* may treat a *UK* local public authority or municipality as an *elective professional client* if ~~it complies with *COBS* 3.5.3R(1) and *COBS* 3.5.3R(3) and, in addition, paragraph (2) of this *rule*.~~ all the conditions below are satisfied:

(a) the *firm* undertakes an adequate assessment of the expertise, experience and knowledge of the *person* authorised to carry out transactions on behalf of the *client* that gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the *person* acting on behalf of the *client* is capable of making their own investment decisions and understanding the risks involved (the "qualitative test");

(b) the *firm* follows the below procedure:

(i) the *client* must state in writing to the *firm* that it wishes to be treated as a *professional client* either generally or in respect of a particular service or transaction or type of transaction or product;

(ii) the *firm* must give the *client* a clear written warning of the protections and investor compensation rights the *client* may lose; and

(iii) the *client* must state in writing, in a separate document from the contract, that it is aware of the consequences of losing such protections; and

(c) the *firm* complies with (2).

(2) In the course of the assessment under ~~*COBS* 3.5.3R(1)~~ *COBS* 3.5.3BR(1)(a) the criterion in (a) below is satisfied as well as one of the criteria in (b) below (the "quantitative test"):

(a) the size of the *client's financial instrument* portfolio defined as including cash deposits and *financial instruments*, exceeds £10,000,000; and

(b) either:

(i) the *client* has carried out transactions, in significant size, on the relevant market at an average frequency of ten per quarter over the previous four quarters; or

(ii) the *person* authorised to carry out transactions on behalf of the *client* works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the provision of services envisaged; or

(iii) the *client* is an 'administering authority' of the Local Government Pension Scheme within the meaning of the version of Schedule 3 of The Local Government Pension Scheme Regulations 2013 or, (in relation to Scotland) within the meaning of the version of Schedule 3 of The Local Government Pension Scheme (Scotland) Regulations 2014 in force at 1 January 2018, and is acting in that capacity.

3.5.3C R (1) This *rule* applies where a *firm* is subjecting a *UK* local public authority or municipality to the tests and is following the procedure required as a result of *COBS* 3.5.3BR in respect of the *firm's* business carried on in relation to that *person's*:

(a) business in the course of or connected to its administration of a *pension scheme*; and

(b) other business as a local public authority or municipality.

(2) A *firm* must apply the qualitative and quantitative tests required as a result of *COBS* 3.5.3BR separately and independently in relation to the *client's* business under (1)(a) and (1)(b).

(3) A *firm* must follow the procedure in ~~*COBS* 3.5.3R(3)~~ *COBS* 3.5.3BR(1)(b) required as a result of *COBS* 3.5.3BR separately and independently in relation to the *client's* business under (1)(a) and (1)(b).

…

3.5.3E R (1) A *firm* may treat a non-*UK* local public authority or municipality as an *elective professional client* if it complies with ~~*COBS* 3.5.3R(1)~~ *COBS* 3.5.3BR(1)(a) and ~~*COBS* 3.5.3R(3)~~ *COBS* 3.5.3BR(1)(b) and, in addition, ~~applies the "quantitative test" that is applied in relation to *MiFID or equivalent third country business* under *COBS* 3.5.3R(2).~~ in the course of that assessment, at least 2 of the following criteria are satisfied (the "quantitative test"):

(a) the *client* has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters;

(b) the size of the *client's financial instrument* portfolio, defined as including cash deposits and *financial instruments*, exceeds £500,000; and

(c) the *person* authorised to carry out transactions on behalf of the *client* works or has worked in the financial sector for at least 1 year in a professional position, which requires knowledge of the transactions or services envisaged.

…

Additional requirements

3.5.4 R If the *client* is ~~an entity~~ a *person* other than a natural person, the qualitative test should be performed in relation to the ~~*person*~~ *person(s)* authorised to carry out transactions on its behalf.

~~[**Note:** fourth paragraph of section II.1 of annex II to *MiFID*]~~

3.5.5 G ~~The fitness test applied to managers and directors of relevant *firms* is an example of the assessment of expertise and knowledge involved in the qualitative test.~~ [deleted]

~~[**Note:** fourth paragraph of section II.1 of annex II to *MiFID*]~~

3.5.6 R ~~Before deciding to accept a request for re-categorisation as an *elective professional client* a *firm* must take all reasonable steps to ensure that the *client* requesting to be treated as an *elective professional client* satisfies the qualitative test and, where applicable, the relevant quantitative test.~~ [deleted]

~~[**Note:** second paragraph of section II.2 of annex II to *MiFID*]~~

3.5.7 G An *elective professional client* should not be presumed to possess market knowledge and experience comparable to a *per se professional client.*

~~[**Note:** second paragraph of section II.1 of annex II to *MiFID*]~~

3.5.8 G ~~*Professional clients* are responsible for keeping the *firm* informed about any change that could affect their current categorisation.~~ In the *FCA*'s view, it is reasonable for a *firm* to rely on a *professional client* to keep the *firm* informed about changes to their circumstances, as long as the *firm* has clearly communicated that expectation to the *client*.

~~[**Note:** fourth paragraph of section II.2 of annex II to *MiFID*]~~

3.5.9 R (1) If a *firm* becomes aware, or has a reasonable basis for suspecting, that the conditions for treating a *client* ~~no longer fulfils the initial conditions that made it eligible for categorisation~~ as an *elective professional client* may no longer be met, the *firm* must ~~take the appropriate action~~ review its assessment and, if necessary, re-categorise the *client*.

(2) Where the ~~appropriate action involves re-categorising that client~~ *client* in (1) has been re-categorised as a *retail client*, the *firm* must notify that *client* of its new categorisation.

~~[**Note:** fourth paragraph of section II.2 of annex II to *MiFID*]~~

3.5.9A G Where a *firm* has had no interaction with an *elective professional client* for 2 years, the *firm* should re-assess the *client's* categorisation before carrying on any *regulated activity* on behalf of that *client*.

3.5.10 R (1) A *firm* must establish, implement and maintain a documented and robust process that ensures the assessment in *COBS* 3.5.3R(1)(a) is adequate, holistic and effective.

(2) The process in (1) must be designed so as to ensure the *firm* requests, obtains and appropriately takes into account sufficient information from and about the *client* in relation to the following relevant factors, in light of any financial product or service the *firm* may offer, *distribute* or provide to the *client*, or any *financial promotion* it may *communicate* or *approve* for communication to them:

(a) the *client's* professional experience arising from an occupation in the financial services or another relevant sector and the extent to which it has enabled them to gain experience in financial products or services that are comparable, in form and complexity, to the financial products or services the *firm* may or intends to offer, distribute or provide;

(b) the *client's* personal trading and investment history and the extent to which it has contributed to them acquiring the requisite expertise, experience and knowledge, having regard to:

(i) the types of services and investments the *client* has used or invested in;

(ii) the nature and size of transactions in investments carried out by the *client*; and

(iii) the period during which the *client* has acquired experience of investing their own assets;

(c) the *client's* knowledge, understanding and ability to assess risk, having regard to:

(i) whether the *client* has knowledge and understanding of risk diversification and is able to assess a range of different investment strategies when considering how best to pursue their investment objectives;

(ii) whether the *client* clearly understands the protections they may lose as a result of being treated as an *elective professional client*; and

(iii) where relevant, whether the *client* has appropriate knowledge and understanding of the features of complex and high-risk investments or services, including in particular exposure to leveraged risk, *TTCAs*, volatility and margin requirements;

(d) the *client's* financial capacity, resources and risk tolerance, including the value of their *investable assets* and their understanding of and ability to bear potential losses;

(e) the *client's* stated objectives for requesting categorisation as an *elective professional client*; and

(f) any information reasonably available to the *firm* which is indicative that the *client* should not be treated as a *professional client* – for example, relevant characteristics of vulnerability, the *client's* trading history or their communications with the *firm*, in either case where suggestive of a lack of expertise.

(3) In carrying out its assessment of the factors in (2) the *firm* must:

(a) base its conclusions on its own judgement without placing undue weight on representations from the *client*;

(b) not invite the *client* to undertake a self-assessment of the factors in (2), such as via an online form with click through access; and

(c) not rely on information from or about the *client* that the *firm* reasonably should be aware is deficient, inaccurate or out of date.

3.5.11 R A *firm* must keep appropriate records of the process it has implemented in compliance with *COBS* 3.5.10R and be able to demonstrate to the *FCA* that it applies that process consistently in categorising its *clients*.

3.5.12 G (1) Where a *firm* has concluded the *client* can be properly categorised as an *elective professional client*, it should be able to demonstrate that its assessment was holistic and is based on information it has gathered on all relevant factors.

(2) Where the *client* has a potentially insufficient history of personal trading and investment, or of professional experience arising from an occupation in the financial services or other relevant sector, this does not necessarily preclude their categorisation as an *elective professional client* under *COBS* 3.5.3R(1)(a) provided such deficiencies are offset by stronger evidence of professional capability relating to the other factors listed in *COBS* 3.5.10R.

(3) Conversely, where the *client's* professional experience or personal trading and investment history clearly indicates professional capability, the *firm*'s obligation in *COBS* 3.5.10R may be satisfied by less detailed supporting evidence in relation to the remaining factors.

3.5.13 G (1) For the purpose of *COBS* 3.5.10R(2)(b), personal investment history that is predominantly in speculative illiquid *securities* or leveraged products will not generally be a strong indicator of professional expertise.

(2) Although a *firm's* assessment of expertise, experience and knowledge should not necessarily exclude a *client* trading predominantly in such *investments* from being treated as an *elective professional client*, the *firm* should satisfy itself that such *client* has strong expertise, experience and knowledge across all other relevant factors, and in particular has appropriate capacity to bear potential losses under *COBS* 3.5.10R(2)(d).

(3) A *firm's* assessment in *COBS* 3.5.10R(2)(b) should reflect that frequent small-size trades in speculative illiquid *securities* or leveraged products may be an indicator that a *client* lacks the capability to be treated as an *elective professional client*, unless they are consistently making profits.

3.5.14 G In undertaking the assessment in *COBS* 3.5.3R(1)(a), the *firm* need only assess the *client* in relation to the types of products or services it will, or may, provide the *client*, including, for example, where the *client* requests to be treated as an *elective professional client* only in relation to specific products or services.

3.5.15 R (1) Where a *client* has been categorised as an *elective professional client* only in respect of specific products or services, or specific types of products or services, the *firm* must not treat them as an

elective professional client for other products or services, or types of products or services, without assessing whether the qualitative assessment in *COBS* 3.5.3R(1)(a) is met in relation to the newly envisaged transactions.

(2) A *firm* may treat an existing *elective professional client* in (1) as an *elective professional client* for financial products or services of a kind not considered at the time of original assessment where the *firm* considers that the original assessment and (where relevant) the expertise, experience and knowledge acquired by the *client* since then provides a reasonable basis for this.

3.5.16 R When communicating with a *client* before the *client* has been categorised as an *elective professional client*:

(1) a *firm* may provide or make available to the *client* information on *elective professional client* categorisation where the *firm* has a reasonable basis for believing that one of the conditions in *COBS* 3.5.3R(1) will likely be met in respect of that *client*; and

(2) a *firm* must:

(a) ensure it complies with *COBS* 4.2.1R(1) and *COBS* 4.5A.3R (disregarding for this purpose the narrower application in *COBS* 4.5A.1R);

(b) not offer any incentive or inducement, or put any form of pressure on the *client* to request to be treated as an *elective professional client*;

(c) not communicate to the *client* a *financial promotion* on specific financial products or services that the *firm* only makes available to *professional clients*; and

(d) ensure any information provided in (1) presents the categorisation as an *elective professional client* as an option that will result in the loss of *retail client* protections rather than result in the *client* having an elevated status.

3.5.17 G *COBS* 3.5.16R(2)(c) does not prevent a *firm* from communicating more general information about financial products or services that the *firm* only makes available to *professional clients*.

3.5.18 R (1) A *firm* must provide a *client* who requests to be treated as an *elective professional client* with information about the intended benefit of each of the protections which will cease to apply to the *client* as an *elective professional client*.

(2) The *firm* must ensure the information in (1) is clearly set out and designed to promote engagement and understanding by the *client* of

the potential risks or drawbacks of categorisation as an *elective professional client*.

(3) The *firm* must allow the *client* sufficient time to consider the impact of being treated as an *elective professional client* and satisfy itself that the *client* understands the protections being given up before accepting confirmation from the *client* of their consent to being treated as an *elective professional client*.

3.5.19 R In addition to the information in *COBS* 3.5.18R, at the time of signing the confirmation in *COBS* 3.5.3R(5), the *firm* must provide the *client* with a clear and prominent warning that, in consenting to the categorisation as an *elective professional client*, the *client* is opting out of *retail client* protections.

3.6 Eligible counterparties

3.6.1 R (1) An *eligible counterparty* is a *client* that is either a *per se eligible counterparty* or an *elective eligible counterparty*.

(2) A *client* can only be an *eligible counterparty* in relation to *eligible counterparty business* (*PRIN* 1 Annex 1 R is an exception to this).

~~[**Note:** article 30(1) of *MiFID*]~~

Per se eligible counterparties

3.6.2 R …

~~[**Note:** first paragraph of article 30(2) and first paragraph of article 30(4) of *MiFID*]~~

3.6.3 G …

Elective eligible counterparties

3.6.4 R A *firm* may treat a *client* as an *elective eligible counterparty* ~~in relation to business other than *MiFID or equivalent third country business*~~ if:

(1) the *client* is an undertaking and:

(a) is a *per se professional client* (except for a *client* that is only a *per se professional client* because it is an institutional investor under *COBS* 3.5.2R(5)); and

~~(i) is a *body corporate* (including a *limited liability partnership*) which has (or any of whose *holding companies* or *subsidiaries* has) called up share capital of at least £10 million (or its equivalent in any other currency at the relevant time); or~~

~~(ii) meets the criteria in the *rule* on meeting two quantitative tests (*COBS* 3.5.2 R (3)(b)); and~~

(b) requests such categorisation; and

(2) the *firm* adheres to the procedure set out at *COBS* 3.6.4BR.

3.6.4A R ~~Provided that it adheres to the procedure set out at *COBS* 3.6.4BR, a *firm* may treat a *client* as an *elective eligible counterparty* in relation to *MiFID or equivalent third country business* if the *client*:~~ [deleted]

~~(1) is an undertaking;~~

~~(2) is a *per se professional client*, except for a *client* that is only a *per se professional client* because it is an institutional investor under *COBS* 3.5.2R(5); and~~

~~(3) requests such categorisation.~~

~~[**Note**: first paragraph of article 30(3) of *MiFID*]~~

3.6.4B R If a *client* requests to be treated as an *eligible counterparty*~~,~~ in accordance with *COBS* 3.6.4R ~~or *COBS* 3.6.4AR~~, the following procedure must be followed:

(1) the *firm* ~~shall~~ must provide the *client* with a clear written warning of the consequences for the *client* of such a request, including the protections they may lose; and

(2) the *client* must confirm in writing:

(a) the request to be treated as an *eligible counterparty* either generally or in respect of one or more services or a transaction or type of transaction or product; and

(b) that they are aware of the consequences of the protections they may lose as a result of the request.

3.6.5 G The categories of *elective eligible counterparties* include an equivalent undertaking that is not from ~~an~~ the *United Kingdom* provided the above conditions and requirements are satisfied.

3.6.6 R A *firm* may obtain a prospective counterparty's confirmation that it agrees to be treated as an *eligible counterparty* either in the form of a general agreement or in respect of each individual transaction.

~~[**Note:** second paragraph of article 30(3) of *MiFID*]~~

3.7 Providing clients with a higher level of protection

3.7.1 R (1) A *firm* must allow a *professional client* or an *eligible counterparty* to request re-categorisation as a *client* that benefits from a higher degree of protection.

(2) A *firm* that receives notification from a *client* that they withdraw consent to be treated as an *elective professional client* or otherwise wish to be treated as a *retail client* must re-categorise the *client* accordingly within 5 *days* and notify the *client* of its new categorisation.

~~[**Note:** second paragraph of article 30(2) of, and the second paragraph of section I of annex II to, *MiFID*]~~

3.7.2 G ~~It is the responsibility of a *professional client* or *eligible counterparty* to ask for a higher level of protection when it deems it is unable to properly assess or manage the risks involved.~~ [deleted]

~~[**Note:** third paragraph of section I and fourth paragraph of section II.2 of annex II to *MiFID*]~~

…

3.7.3B R …

(2) If an *eligible counterparty* makes the request in (1), but does not expressly request treatment as a *retail client*, the *firm* must treat that *eligible counterparty* as a *per se professional client*.

…

…

3.7.5 R (1) If~~, in relation to *MiFID or equivalent third country business*~~ a *per se professional client* requests treatment as a *retail client*, the *client* will be classified as a *retail client* if it enters into a written agreement with the *firm* to the effect that it will not be treated as a *professional client* or *eligible counterparty* for the purposes of the applicable conduct of business regime.

…

~~[**Note:** fourth paragraph of section I of annex II to *MiFID*]~~

3.7.6 ~~G~~ R ~~(1)~~ ~~In accordance with *Principle* 7 (communications with *clients*), if~~ If a *firm* at its own initiative re-categorises a *client* in accordance with this section, it ~~should~~ must notify that *client* of its new category under this section.

~~(2) If the *firm* already has an agreement with the *client*, it should also consider any contractual requirements concerning the amendment of that agreement.~~

3.7.6A G If the *firm* already has an agreement with the *client*, it should also consider any contractual requirements concerning the amendment of that agreement.

3.7.7 G The ways in which a *client* may be provided with additional protections under this section include re-categorisation:

(1) on a general basis; or

(2) on a trade by trade basis; or

(3) in respect of one or more specified *rules*; or

(4) in respect of one or more particular services or transactions; or

(5) in respect of one or more types of product or transaction.

~~[**Note:** second paragraph of article 30(2) of *MiFID*]~~

3.7.8 G Re-categorising a *client* as a *retail client* under this section does not necessarily mean it will become an *eligible complainant* under *DISP*.

3.8 Policies, procedures and records

Policies and procedures

3.8.1 R A *firm* must implement appropriate written internal policies and procedures to categorise its *clients*.

~~[**Note:** fourth paragraph of section II.2 of annex II to *MiFID*]~~

Records

3.8.2 R (1) A *firm* must make a contemporaneous record of ~~the form of each notice~~ any information or warning provided, each request received, and each agreement entered into, under this chapter. This record must be ~~made at the time that standard form is first used and~~ retained for the relevant period after the *firm* ceases to carry on business with ~~*clients* who were provided with that form~~ the *client*.

(2) A *firm* must make a record in relation to each *client* of:

(a) the categorisation established for the *client* under this chapter, including sufficient information to support that categorisation;

(aa) where a *client* has been categorised as an *elective professional client*:

(i) the information obtained and relied on by the *firm* that supports that categorisation;

(ii) the *firm's* assessment (or reassessment, as applicable) of that information; and

(iii) the *firm's* rationale for its conclusion about the *client's* categorisation;

(b) evidence of despatch to the *client* of any information ~~notice~~ required to be provided under this chapter and if such ~~notice~~ information differs from the relevant standard ~~form~~ disclosure, a copy of the actual ~~notice~~ information provided; and

(c) a copy of any agreement entered into with the *client* under this chapter.

(2A) ~~This record~~ The records required under (1) and (2) must be made at the time of categorisation and should be retained for the relevant period after the *firm* ceases to carry on business with or for that *client*.

(3) The relevant periods are:

(a) indefinitely, in relation to a *pension transfer*, *pension conversion*, *pension opt-out* or *FSAVC*; and

(b) at least five years~~,~~ in any other case. ~~relation to a *life policy* or *pension contract*;~~

(c) ~~five years in relation to *MiFID or equivalent third country business*; and~~ [deleted]

(d) ~~three years in any other case.~~ [deleted]

~~[**Note:** article 16(6) of *MiFID*]~~

3.8.3 G If a *firm* provides the same ~~form of notice~~ standard disclosure to more than one *client*, it need not maintain a separate copy of it for each *client*, provided it keeps evidence of despatch of the ~~notice~~ disclosure to each *client*.

…

11 Dealing and managing

…

11.7 Personal account dealing

…

Disapplication of rule on personal account dealing

11.7.5 R This section does not apply to the following kinds of *personal transaction*:

…

(2) *personal transactions* in *units* or *shares* in ~~collective undertakings that comply with the conditions necessary to enjoy the rights conferred by the *UCITS Directive* or are subject to supervision under the law of an *EEA State* which requires an equivalent level of risk spreading in their assets~~ a *UCITS scheme*, a *non-UCITS retail scheme* or a *recognised scheme*, where the *relevant person* and any other *person* for whose account the transactions are effected, are not involved in the management of that ~~undertaking~~ *scheme*;

…

…

TP 1 Transitional Provisions relating to Client Categorisation

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
			~~Overview of transitional provisions for client categorisation~~		
1.1	*COBS* 3	G	• ~~*COBS* TP 1.2 contains default transitional categorisation provisions in relation to the existing *clients* of a *firm* on 1 November 2007. In many cases, they allow a *client* to be automatically provided with the nearest~~	~~From 1 November 2007 indefinitely~~	~~1 November 2007~~

			~~equivalent categorisation under *COBS* 3 to their previous categorisation.~~ • ~~*COBS* TP 1.3 explains how the transitional provisions for *client* categorisation relate to the requirement for a *firm* to act if it becomes aware that an *elective professional client* no longer satisfies the initial conditions for its categorisation.~~ • ~~The default provisions do not prevent a *firm* categorising such a *client* differently in accordance with *COBS* 3. *COBS* TP 1.4 provides guidance on how some of the procedural requirements in *COBS* 3 apply in some such cases.~~ • ~~*COBS* TP 1.5 contains transitional notification obligations, which apply if the default provisions do not allow that *client* to be provided with the nearest equivalent categorisation or a *firm* chooses not to take advantage of those provisions in relation to a *client*.~~ • ~~*COBS* TP 1.6 contains a transitional notification obligation that applies to a *firm* that, in relation to *MiFID or equivalent third country business*, takes advantage of the default transitional categorisation provisions to classify a *client* as a *per se professional client*.~~ • ~~*COBS* TP 1.9 contains transitional categorisation provisions in relation to *clients* of a *firm* that are~~		

			~~taken on between 1 November 2007 and 30 June 2008 in relation to business that is not *MiFID or equivalent third country business*.~~ [expired]		
			~~Categorisation of existing clients~~		
1.2	*COBS* 3	R	~~• An existing *client* that was correctly categorised as a *private customer* immediately before 1 November 2007 is a *retail client* unless and to the extent it is given a different categorisation by the *firm* under *COBS* 3.~~ ~~• An existing *client* that was correctly categorised as an *intermediate customer* immediately before 1 November 2007:~~ ~~• is an *elective professional client* if it was an expert *private customer* that had been re-classified as an *intermediate customer* on the basis of its experience and understanding; or~~ ~~• is otherwise a *per se professional client*;~~ ~~unless and to the extent it is given a different categorisation by the *firm* under *COBS* 3.~~ ~~• An existing *client* that was correctly categorised as a *market counterparty* immediately before 1 November 2007 is:~~ ~~• for *eligible counterparty business* that is not *MiFID or*~~	~~From 1 November 2007 to 2 January 2018~~	~~1 November 2007~~

			~~*equivalent third country business*~~, an ~~*eligible counterparty*~~; ~~and~~ • ~~otherwise, a *per se professional client*~~; ~~unless and to the extent it is given a different categorisation by the *firm* under *COBS* 3.~~ [expired]		
			[~~**Note:** Article 71(6) of, and third paragraph of section II.2 of Annex II to, Directive 2004/39/EC of the European Parliament and of the Council~~]		
1.3	*COBS* 3	G	~~Under *COBS* 3.5.9 R, if a *firm* becomes aware that a *client* no longer fulfils the initial conditions that made it eligible for categorisation as an *elective professional client*, the *investment firm* must take the appropriate action. In the case of a *client* that has been classified as an *elective professional client* under *COBS* TP 1.2R(2)(a), the initial conditions are those that applied to the *client's* initial categorisation as an *intermediate customer*.~~ [expired]	~~From 1 November 2007 to 2 January 2018~~	~~1 November 2007~~
			~~Former inter-professional business~~		
1.4	*COBS* 3	G	~~The requirement to provide notices under *COBS* 3.3.1 R only applies in relation to new *clients*. The requirement to obtain confirmation under *COBS* 3.6.4 R (2) only applies in relation to prospective counterparties. These obligations are therefore not relevant to the~~	~~From 1 November 2007 to 2 January 2018~~	~~1 November 2007~~

			~~extent that an existing *client* with whom a *firm* conducted *inter-professional business* before 1 November 2007 is categorised as an *eligible counterparty* under *COBS* 3 in relation to *eligible counterparty business*.~~ [expired]		
			~~Transitional notification obligations~~		
1.5	*COBS* 3	R	~~(1) If a *firm* does not categorise a *client* that was a *private customer* immediately before 1 November 2007 as a *retail client*, it must notify that *client* of its categorisation as a *professional client* or *eligible counterparty*, as appropriate, on or before that date, or if later, before conducting any further business to which *COBS* applies for that *client*.~~ ~~(2) If a *firm* does not categorise a *client* that was an *intermediate customer* immediately before 1 November 2007 as a *professional client*, it must notify that *client* of its categorisation as a *retail client* or *eligible counterparty*, as appropriate, on or before that date, or if later, before conducting any further business to which *COBS* applies for that *client*.~~ ~~(3) If a *firm* does not categorise a *client* that was a *market counterparty* immediately before 1 November 2007 as an *eligible counterparty*, it must notify that *client* of its categorisation as a *retail client* or *professional client* on or~~	~~From 1 November 2007 to 2 January 2018~~	~~1 November 2007~~

			before that date, or if later, before conducting any further business to which *COBS* applies for that *client*. [expired]		
			[**Note:** article 28(1) of the *MiFID implementing Directive*]		
1.6	*COBS* 3	R	If a *firm*, in relation to *MiFID or equivalent third country business*, categorises a *client* who would not otherwise have been a *professional client* as a *professional client* under *COBS* TP 1.2(2)(b) or (3)(b), it must inform that *client* about the relevant conditions for the categorisation of *clients*. This notification must be made on or before 1 November 2007, or if later, before conducting any further business to which *COBS* applies for that *client*. [expired]	From 1 November 2007 to 2 January 2018	1 November 2007
			[**Note:** article 71(6) of Directive 2004/39/EC of the European Parliament and of the Council]		
1.7		G	A notice to a *professional client* under *COBS* TP 1.6 should inform that *client*: • that they have been categorised as a *professional client*; and • of the main differences between the treatment of a *retail client* and a *professional client*. [expired]	From 1 November 2007 to 2 January 2018	1 November 2007
1.8		R	The record-keeping requirements under *COBS* 3.8.2 R apply in relation to any *client* categorisations or	From 1 November 2007 indefinitely	1 November 2007

			~~re-categorisations made under the transitional provisions for *COBS* 3.~~ [expired]		
			~~Categorisation of new clients before 30 June (business that is not MiFID or equivalent third country business)~~		
1.9	*COBS* 3	R	…		
			Transitional review and categorisation obligations		
1.10	*COBS* 3	R	(1) A *firm* must review the categorisation of all existing *elective professional clients* to determine whether each *client's* categorisation, in light of sufficient and up to date information about that *client*, satisfies all the relevant requirements under the updated *rules in COBS* 3.5 which come into force on [*Editor's note*: insert the date on which this instrument comes into force]. (2) In complying with (1), the *firm* must take particular care to satisfy itself that any *client's* consent to categorisation as an *elective professional client* that was previously obtained would meet the updated requirements for informed consent in *COBS* 3.5.	From [*Editor's note*: insert the date on which this instrument comes into force] to [*Editor's note*: insert the date 12 months after this instrument comes into force]	[*Editor's note*: insert the date on which this instrument comes into force]
1.11	*COBS* 3	R	Where a *firm's client* has been categorised as a *per se professional client*, in accordance with the *rules* in *COBS* 5.2.3R(3)(a), (b), (c), and (d) in force immediately before [*Editor's note*: insert the date on which this	From [*Editor's note*: insert the date on which this instrument comes into force] to	[*Editor's note*: insert the date on which this instrument comes into force]

			instrument comes into force], or as an *elective eligible counterparty* exclusively in respect of non-*MiFID or equivalent third country business*, the *firm* must review the categorisation of the *client* to determine whether that categorisation remains compliant with the updated *rules in COBS* 3.5 and *COBS* 3.6 (as applicable) which come into force on [*Editor's note*: insert the date on which this instrument comes into force], in light of sufficient and up to date information about that *client*.	[*Editor's note*: insert the date 12 months after this instrument comes into force]	
1.12	*COBS* 3	R	Where a *firm's* review in *COBS* TP 1.10 or *COBS* TP 1.11 leads it to conclude that its categorisation of a *client* in *COBS* TP 1.10 or *COBS* TP 1.11 satisfies the updated *rules* in *COBS* 3.5 or *COBS* 3.6 (as applicable), it must make a record of the basis for this conclusion, with reference to the requirements in the relevant updated *rules* in *COBS* 3.	From [*Editor's note*: insert the date on which this instrument comes into force] to [*Editor's note*: insert the date 12 months after this instrument comes into force]	[*Editor's note*: insert the date on which this instrument comes into force]
1.13	*COBS* 3	R	Where a *firm's* review in *COBS* TP 1.10 or *COBS* TP 1.11 concludes that a *client's* categorisation does not satisfy the relevant requirements under the updated *rules* in *COBS* 3.5 or *COBS* 3.6 (as applicable), the *firm* must undertake appropriate action to ensure that that *client* is categorised in accordance with the updated *rules* and make a record of this.	From [*Editor's note*: insert the date on which this instrument comes into force] to [*Editor's note*: insert the date 12 months after this instrument	[*Editor's note*: insert the date on which this instrument comes into force]

				comes into force]	
1.14	*COBS* 3	R	Where the *client* is re-categorised by the *firm* in compliance with *COBS* TP 1.13, the *firm* must notify the *client* of their new category.	From [*Editor's note*: insert the date on which this instrument comes into force] to [*Editor's note*: insert the date 12 months after this instrument comes into force]	[*Editor's note*: insert the date on which this instrument comes into force]
1.15	*COBS* 3	R	Where the *client* is re-categorised by the *firm* as a *retail client* in compliance with *COBS* TP 1.13 and where the *firm* does not do business with *retail clients*, it must inform the *client* that the *firm* is unable to continue to do business with them and provide the *client* with information on their options for closing any positions (where relevant).	From [*Editor's note*: insert the date on which this instrument comes into force] to [*Editor's note*: insert the date 12 months after this instrument comes into force]	[*Editor's note*: insert the date on which this instrument comes into force]
1.16	*COBS* 3	R	Where *COBS* TP 1.15 applies: (1) the *firm* must wind down the *client's* existing business with the *firm* in a manner consistent with the *firm*'s obligations to the *client* under with the *client's best interests rule*; and (2) the *firm* may continue to treat the *client* as a *professional client* during	[From [*Editor's note*: insert the date on which this instrument comes into force] indefinitely	[*Editor's note*: insert the date on which this instrument comes into force]

			the period of time reasonably necessary for the purposes of (1).		

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Pub ref: 2-008518

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