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FCA initiatives for retail, wealth and private banking—retail vs. professional categorisation, and conflicts

CLIENT BULLETIN

1. SPEED READ

The FCA has launched a bundle of far-reaching initiatives including a consultation on professional and retail categorisation rules and the conflicts regime, and a discussion paper seeking views on what else can be done to transform UK consumers from savers to investors. This is alongside a long-awaited policy statement with final rules on "consumer composite investments" (replacing PRIIPS) and a consultation paper on "target clarifications of the FCA rules" (the rules on targeted support are being published separately). This bulletin provides an overview of the "first" consultation paper.

2. CONSULTATION ON RETAIL VS. PROFESSIONAL CLIENT CATEGORISATION AND CONFLICTS

On December 8, 2025 the FCA published a consultation paper titled "Client categorisation and conflicts of interest", CP 25/36.[1]

- **Timing** – The consultation is open until February 2, 2026.
- **Next steps** –The FCA will publish a policy statement with final rules – the precise timeline is unclear but it may be fair to assume Q3 or Q4 2026.
- **Key themes** – The consultation focuses on two key areas: reforms to the client categorisation rules in COBS 3, and reforms to the conflicts regime in SYSC 10. The FCA has also taken the opportunity to make "tidy up" amends – e.g., paring back references to MiFID and related concepts, and fixing a technical issue the FCA had identified with the personal account dealing rules for non-MiFID firms.
- **Underlying drivers** – The FCA has launched the consultation paper with some fanfare: "*FCA sets out landmark package to boost UK investment culture*". The messaging is that these are meaningful initiatives to "*empower retail investment, reinforce wholesale markets and maintain the UK's position as a world-leading financial centre*".

This dovetails with two key themes in UK regulation at present:

- **A desire to reduce the burden of regulation** – as one paper said, "Getting regulation out of businesses' way",[2] although it is unlikely the FCA would put things in those terms. It refers more to a desire to reduce the regulatory burden, "streamlining" or "simplifying" the rules. It also refers in some cases to a desire to remove outdated rules and/or make a regime more proportionate.[3] These types of initiatives are broadly welcomed in the industry.
- **Change in attitude to risk**—A key point in an HM Treasury policy paper dated October 22, 2025 was the following goal: "Challenging and Shifting Excessive Risk Aversion in the System".

  "To deliver a regulatory system which is fit for the modern age, it is vital that regulatory frameworks and the actions of regulators strike the right balance on prioritising risk against inviting investment opportunities and innovative solutions which would contribute to wider economic growth." [4]

  From an FCA speech on November 25, 2025: "Rebalancing risk is one of the cornerstone of the FCA Strategy 2025 to 2030. Risk is not solely something to be mitigated but a necessary condition for encouraging investment and innovation." [5]

  A related point is the FCA referring to "regulation for growth." [6]

  Again, this theme is broadly welcomed in the industry.

[1] www.fca.org.uk/publication/consultation/cp25-36.pdf

[2] www.gov.uk/government/publications/a-new-approach-to-ensure-regulators-and-regulation-support-growth/regulation-action-plan-progress-update-and-next-steps#:~:text=Getting%20regulation%20out%20of%20businesses,savings%20for%20businesses%20every%20year

[3] See https://www.fca.org.uk/publication/correspondence/fca-letter-new-approach-support-growth.pdf and https://assets.publishing.service.gov.uk/media/686fb66e81dd8f70f5de3e01/Financial_Conduct_Authority__FCA__Secondary_International_Competitiveness_and_Growth_Objective_Report_2024_to_2025.pdf

[4] https://www.gov.uk/government/publications/a-new-approach-to-ensure-regulators-and-regulation-support-growth/regulation-action-plan-progress-update-and-next-steps#:~:text=To%20deliver%20a%20regulatory%20system,contribute%20to%20wider%20economic%20growth

See also https://www.gov.uk/government/publications/a-new-approach-to-ensure-regulators-and-regulation-support-growth/new-approach-to-ensure-regulators-and-regulation-support-growth-html

[5] https://www.fca.org.uk/news/speeches/chair-reflections-rebalancing-risk#:~:text=Rebalancing%20risk%20is%20one%20of,access%2C%20support%2C%20and%20innovation.

[6] As above

3. KEY ELEMENTS OF FCA PROPOSAL ON RETAIL VS. PROFESSIONAL CATEGORISATION RULES

Three initial high-level points to note:

- The intention is to unlock greater opportunities for wealthy investors and encourage more investment into the capital markets, driving growth. This also reflects growing calls in the UK and elsewhere for clients of wealth managers and private banks to get access or easier access to "alts" or alternative investments—e.g., infrastructure funds, private credit and private equity etc. This is on the basis that these types of clients have the experience and resources to understand and bear the risks associated with more complex investments.
- The FCA indicates that the threshold before a retail client can be opted up to professional client status will remain "high".
- A tick box approach is not sufficient. Firms must implement rigorous processes and controls to ensure compliance.

The key elements of the FCA's proposal are set out below, although these may change as a result of the consultation. There is therefore a good argument to be made that requiring firms to redo the opt up categorisation process for existing clients is too risk adverse, and inconsistent with the FCA's new approach to balancing risk and regulatory burden. The argument may be made, in the responses to the consultation, that the FCA should apply a grandfathering approach instead.

	HIGH-LEVEL SUMMARY	EXPLANATION
OVERALL REGIME	Partial rewrite, some effort to simplify	• At present, the rules represent a mix of provisions inherited from the EU via MiFID, together with Non-MiFID requirements. They are therefore complex and multi-faceted. • Although not a complete rewrite, the FCA has made a number of changes with the intention of making the rules easier to follow and paring back redundant terms (e.g., the MiFID concept of a tied agent).
ALTERNATIVE WEALTH ASSESSMENT	New test to opt up to professional status – GBP10m in investable assets NB: In this case, no qualitative test applies	• At present, a firm can only opt up a client after doing a qualitative assessment of its expertise, experience and knowledge, and finding it is are capable of making its own investment decisions and understanding the risks. • This assessment will no longer be necessary if the client has investable assets of GBP10m or more. • The upshot—this is a new test, separately applied, to enable a client to, in theory, be opted up to professional client status. NB: Informed consent is still required, client safeguards still apply, the request to opt up must still come from the client, and the consumer duty obligations and obligation to act in the client's best interests must still be met. Even so, this proposed change will be welcomed by firms with UHNW clients.
QUANTITATIVE TEST	Removed	• At present, a firm can only opt up a client if it meets two of three quantitative tests that relate to size of portfolio, working in financial services and recent trading history. • These are being removed. NB: (a) In practice, a firm will still need to consider the client's capacity to bear losses when considering an opt up, other than where the client has more than GBP10m. (b) The local authority carve out is retained.

	HIGH-LEVEL SUMMARY	EXPLANATION

QUALITATIVE TEST	Enhanced	• The FCA has largely rewritten the rules to "clarify" its expectations.
		• They now include a list of "Relevant Factors" the firm must take into account when doing a qualitative assessment.
		• An assessment must be outcomes-based, with a firm bringing its judgement to bear.
		• Firms cannot rely solely on a representation from a client, nor on any representation or information that is manifestly inaccurate, deficient or out of date.
		• Firms are prohibited from inviting clients to undertake a self-assessment of the "Relevant Factors".
		• Firms must request sufficient information from a client to make the relevant assessment.
		• "Relevant Factors"—The FCA believes these are, in substance, consistent with the intent of the current regime but has tried to provide more flexibility and incorporate industry feedback.
		  • **Occupational experience**—Remains relevant. But the FCA appears to accept that clients can gain expertise, knowledge and experience in other sectors. Conversely, just because a person has worked in financial services does not automatically mean they have the capability of a professional client.
		  • **Trading history**—Remains relevant. But the FCA accepts it may be too limited a concept, e.g., a buy-to-hold strategy might be an indicator of an expert investor just as much as frequent trading.
		  • **Wealth**—The FCA has pivoted away from minimum thresholds and instead asked firms to take into consideration a client's financial capacity, risk tolerance, and understanding of and capacity to bear loss.
		  • **Knowledge, understanding and ability to assess risk**—Remains core to a qualitative assessment process. It must include concepts such as the benefits of risk diversification and the complexity and increased risk that can arise due to leverage.
		  • The FCA considers that a personal investment history involving mainly speculative high-risk or leveraged products or crypto assets will not necessarily indicate professional capability.
		  • **Client objective**—Why the client asks to opt out of retail client protections, as well as the client's understanding of the implications of doing so – this is/remains relevant.
		  • **Holistic approach**—The firm must consider any adverse information reasonably available to it, e.g., characteristics of vulnerability, inconsistent or implausible information provided by the client, answers to questions suggesting the client does not have sufficient knowledge or understanding, etc. Information such as a failure to settle margin calls on a timely basis should also be reflected on.
		  • A client need not be strong across all factors, but if there is a weakness in one, it should be compensated by being proportionately stronger in others.
		
		NB: It will still be permissible for a client to opt out in relation to certain types of products only, e.g., private equity funds. But it will not be mandatory for firms to have to offer this flexibility – and the FCA seems to believe some will not.

	HIGH-LEVEL SUMMARY	EXPLANATION

SAFEGUARDS	Tightened	The FCA states that it has observed poor practice in how pockets of the market categorise retail clients as professional for the opt up process.
		
		Informed consent
		
		• The FCA will expressly require this, considering it an essential safeguard. A signature will be required (but helpfully, it need not be "wet").
		• Whether consent is "informed" or not will be a question of fact, but the FCA rules will specify it is not "informed" unless certain requirements are met: (a) the client is given sufficient information about the protections it is are opting out of and sufficient time to consider the implications; (b) at the time it is asked to give consent, the client is given a clear and prominent warning.
		• Firms must be able to demonstrate that the process for obtaining informed consent is effective in enabling clients to understand the protections being given up, e.g., by considering the consumer duty requirements when designing the content, format and delivery mechanisms of the disclosures and warnings, and by conducting appropriate testing and monitoring.
		
		Discussing an opt up with clients
		
		• Firms will be allowed to provide a client with information about the option to opt up where it would contribute to the client's ability to make an informed decision as to whether this would be right for it. A firm may only initiate this if it has a reasonable basis to believe the client is likely to meet the conditions to be treated as a professional.
		• Any practices intended to incentivise, induce or pressure clients into opting out of retail protections are prohibited.
		
		NB: There will be some complexity here for firms that can only deal with clients if they agree to opt up—firms will have to navigate this carefully.
		
		• Communications must be balanced and likely to be understood by the average member of the group to which they are directed (or who may access them).
		• The FCA has clarified its view that, until and unless a client is opted up to professional client status, a firm must afford it retail protections. This is the case even where the firm does not have retail permissions.
		
		No mandatory periodic review
		
		• Periodic reviews will not be mandatory.
		• But:
		  • a firm will be subject to an express obligation to reassess categorisation if it becomes aware or should reasonably suspect the client no longer meets the tests.
		  • if a firm has no interaction with an opted up client for two years or more, it cannot reasonably assume the client's circumstances are unchanged.
		
		The regime will state that it is reasonable for a firm to ask a client to keep the firm informed about changes to its circumstances, and for the firm to rely on this, as long as this expectation has been communicated to the client.

	HIGH-LEVEL SUMMARY	EXPLANATION
SAFEGUARDS (CONTINUED)	Tightened	**Withdrawing consent** • The client cannot be prohibited from withdrawing consent at a later stage. • Firms must make clients aware that they can withdraw consent. • Firms must respond promptly to any such communication. NB: Again, there will be some complexity here for firms that can only deal with clients if they agree to opt up, given that they will be prohibited from putting pressure on firms to agree to opt up. This will again have to be navigated by careful comms. **Policies, procedures and records** • The FCA views these as an essential safeguard in ensuring client protection. • It proposes to clarify that records to support a client categorisation must include records which explain the basis for the categorisation and how any opt up assessment was done. • E.g., information obtained from the client, any verification the firm made, and the firm's justification/reasoning.

TRANSITIONAL PROVISIONS	Firms will need to apply the new categorisation regime to new and existing clients, subject to a transitional period.
	No grandfathering will apply in respect of existing clients previously opted up.
		• Firms will need to review the categorisation of all existing opted up professional clients, against the new regime, within a year of it coming into force.
		• In other words, there is no grandfathering of an existing client opted up in the past. The new regime must be complied with across the board, subject to a transitional period to give firms additional time to redo the categorisation process with existing clients.
		• Firms will have to decide whether they are comfortable with the terms and context of any previously obtained consent.
		  • The FCA considers that many firms are likely to have to obtain a new consent.
		  • Firms that previously used a tick box will need to refresh the consent.
		• Firms will have to decide whether they need to ask for new/more information to conduct the opt up process—the FCA will leave this up to them.
		• Firms conducting Non-MiFID business with clients categorised under a threshold in COBS 3.5.2R(3) (a)–(d) or COBS 3.6.4R for Non-MiFID business will need to review these categorisations, again subject to a transitional period.
		• Firms do not need to notify clients of a refreshed categorisation if the firm decides the client can stay a professional.

RULES ON PER SE PROFESSIONAL CLIENTS

The FCA is proposing some drafting changes to the regime on per se professional clients to make the rules clearer (COBS 3.5.2). Some key points:

- The list of different types of authorised/regulated entities has been removed in the draft new rules – although the FCA has asked for feedback in case there are unintended consequences or concerns.
- The FCA will amend the rule referring to institutional investors to expressly include SPVs. This change will be welcomed by firms.
- The FCA proposes to remove the complexity arising from the rules for MiFID vs. Non-MiFID firms. It proposes 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 (subject to a transitional period to give relevant firms time to implement new procedures).
- The FCA is removing the distinctions between large undertakings which can elect to be treated as an ECP for the purpose of MiFID and Non-MiFID business.
- To simplify the rules, the FCA is removing the per se professional category for trustees (other than pension trustees) where the trust has assets over GBP10m.
- Again, the FCA has made various drafting changes to simplify and streamline.

4. KEY ELEMENTS OF FCA PROPOSALS ON CONFLICTS REGIME

- The intention is to rationalise and simplify the existing regime, to reduce the length and complexity of the rules, making them more clear, accessible and easy to use. In the main, this involves merging similar or duplicative provisions, and some rationalisation.
  - NB: This initiative is welcome and it is clear the new regime is an improvement. But the reality is that the rules remain dense and complex given the "alphabet soup" they refer to and the retention of different rules, guidance and exceptions for different types of firms and scenarios (AIFM, UCITS manager, UK AIFM, full-scope UK AIFM, authorised AIF, unauthorised AIF, third country firms etc).
- The intention is not to change the substantive obligations on firms, nor to require changes to systems and processes.
- However, the following new provision may provide "pause for thought" for vertically integrated groups—this rule previously only applied to UCITS managers: "*A firm must be structured and organised to minimise the risk of a client's interests being prejudiced by conflicts of interest*" (new SYSC 10.1.7(1)). A firm may take the view that this is broadly consistent with what the existing regime already requires for other types of firms (MiFID etc.), albeit expressed in a less blunt way. But firms may wish to sense check their analysis to ensure they are comfortable.
- The FCA has added guidance on proportionality, which is welcome. This confirms that the regime applies in a manner proportionate to the nature, scale and complexity of a firm's model (new SYSC 10.1.2B).
- Firms are expected to conduct a regular review of their policies – the FCA clarifies that firms should not be required to update a policy before its next scheduled review.
- No change to client documentation should be required.
- The FCA has included a table in the consultation, essentially as an audit trail – nine pages and 81 rows. It tracks how the new rules apply against the existing ones, and explains (rule by rule) what the FCA believes it has done. This will be a helpful tool for industry associations and larger firms who wish to dig into the detail.
- The FCA has made certain changes in terminology when streamlining the rules (e.g., where MiFID II may have used one phrase and AIFMD another). For example, "all reasonable steps" has been changed to "all appropriate steps". Given the "messaging" from the FCA, however, in our view, firms are entitled to assume this involves no substantive change.

5. RECOMMENDATIONS FOR FIRMS

In respect of the conflicts regime reforms, there is some detailed analysis to be done to validate the FCA's view that the changes are not substantive in nature. If that is right, then there should be little impact on firms in practice, but firms will need to familiarise themselves with the new rules when they are finalised.

In respect of the proposed changes to the client categorisation rules:

- Some firms may wish to respond to the consultation, or get involved in a response being made by one or more industry bodies. For example, the decision by the FCA not to provide grandfathering may be subject to "pushback".
- Some firms may wish to feed this industry development up to their senior stakeholders, to consider the potential impact on existing business plans and operating models, and whether the "upside" of a change in approach is worth exploring in more detail. It seems likely that some firms will be keen to do this.
- For firms already making extensive use of the opt up rules, the changes are likely to be welcome. They may wish to "get ahead" of developments, by beginning to consider how they would "operationalise" the new regime, and also consider what new client or product-related opportunities may be "unlocked" as a result.
- Firms using the opt up in any way going forward will need to ensure they are ready to meet FCA expectations in terms of systems and controls, and that their records are sufficient to evidence this. They should also ensure staff are appropriately trained on the requirements of the new regime and monitoring is in place.