Consumer Duty Policy Team
Financial Conduct Authority
12 Endeavour Square
London
E20 1JN

By email: cp26-23@fca.org.uk

18 September 2026

Dear Consumer Duty Policy Team,

RE: CP26/23: Consumer Duty – scope and proportionality

UK Private Capital is the industry body and public policy advocate for the private capital ecosystem in the UK. With a membership of 600 firms, we represent UK-based private capital firms, as well as professional advisers and a large base of UK and global investors. In our terms, private capital includes private equity, venture capital and direct lending funds within private credit, all of which make long-term investments to grow businesses and support economic growth. Our members invested £25bn into the UK economy in 2025, with the industry now backing 13,000 UK businesses, 90% of which are SMEs. These companies together employ 2.5m people and contribute 7% to UK GDP.

We welcome the opportunity to respond to this consultation outlining proposals to address concerns about the application of the Duty to firms primarily engaged in wholesale activity.

We very much welcome the FCA's efforts to clarify the scope and approach to proportionality that firms are expected to take in relation to the Duty and also the opportunity to engage with the regulator in relation to these matters as part of the UK competitiveness agenda. We were pleased to see the FCA's Mansion House commitment last year to look again at the Duty's application to wholesale firms, including the recognition that the framework should distinguish between different types of activity and that protections should be proportionate to clients' sophistication and risk appetite.

The current proposals are a positive step, although in our view there is scope to go further. Our concern is that the proposals still place too much emphasis on tweaking the application of the Duty, rather than providing simple and clear boundaries for wholesale firms. Getting those boundaries right would reduce unnecessary complexity and make the UK a more attractive place from which to conduct international business. The FCA has been critical of the industry for overcomplicating application of the rules to wholesale firms. We invite the FCA to simplify the rules further, to give firms certainty about when they can disapply the rules.

We have identified in the body of our response below a number of areas where further clarification could result in a cleaner and clearer application of the Duty, allowing firms to reduce unnecessary compliance burdens and the regulator to focus its supervisory efforts on businesses where the Duty is likely to deliver meaningful benefits for retail consumer outcomes. In particular, we highlight below:

- concerns as to the clarity of the territorial scope of the Duty;
- a request for confirmation that specific structures frequently used in a private capital context are clearly outside the scope of the Duty (including carried interest and team co-investment arrangements);
- a request for greater clarity as to the application of the Duty to sponsors whose products may be used by an end-distributor to create one or more retail "wrapper" structures for products otherwise intended for a wholesale investor base; and
- a suggestion that the regulator adopt more formal, within Handbook, negative scope guidance modelled on that included by the FCA in PERG 16 in the context of the definition of an AIF, which firms have found very helpful in practice.

We would be delighted to engage with the FCA on these suggestions and on any other matters relating to the proposed amendments to the scope of the Duty and the application of proportionality, and we look forward to further discussions.

The scope of the Duty: firms with customers outside the UK

Question 1: How could we avoid additional costs for firms where sectoral rules have a different territorial scope to the Duty in the future?

We strongly welcome the FCA's proposals to limit the territorial scope of the Duty to retail market business carried on for customers who are usually resident in the UK. Whilst we acknowledge that certain other sectoral regimes may have a different territorial scope, in practice we do not consider that this territorial limitation is likely to give rise to significant additional costs for firms affected as the boundary between UK and non-UK business for the purposes of the Duty will be clearly set and easy to identify for firms.

Question 2: Do you agree with our proposal to limit the Duty's territorial scope in relation to the usual residence of retail customers? Do you have any comments on our approach to defining the usual residence of retail customers?

We consider that the proposed requirement for a product or service to be sold "exclusively" to non-UK customers in order to benefit from the exclusion will be difficult to implement at an operational level and, in practice, may undermine the benefit of the proposed changes. For example, a number of our members manage funds (whether directly as an alternative investment fund manager (AIFM) or on a delegated investment management or investment advisory basis) which are marketed on a cross-border basis, potentially including a small number of UK-resident investors alongside a much larger base of non-UK investors. We consider that it would be disproportionate to bring a fund within the scope of the regime, for example due to a single isolated UK investor. Accordingly, we consider that it would be more practical to frame the exclusion by reference to whether a product or service is actively distributed to retail customers *in the UK*, thereby focusing on the UK nexus of the product or service, rather than on having exclusively non-UK investors. For the avoidance of doubt, this should distinguish between products intentionally manufactured or structured for distribution to UK retail investors and circumstances where a UK firm is only contributing to a broader product or arrangement that is not intended for distribution to UK retail investors. The involvement of the UK firm should not, of itself, bring the latter within scope.

In addition, for the same reasons, we consider that UK-based service providers and suppliers to non-UK AIFMs of non-UK AIFs should be expressly confirmed as falling outside the scope of the Duty where a non-UK AIFM manages a non-UK AIF and delegates the provision of services, including, but not limited to, delegated portfolio management and investment advice.

Question 3: Are there other requirements we should consider to avoid the risk that products or services intended only for sale outside the UK, and so not subject to the Duty, are sold to customers usually resident in the UK?

As noted in Question 2 above, we consider that framing the test by reference to whether a product or service is actively distributed to retail customers *in the UK*, rather than by reference to whether it has exclusively non-UK investors, would be more practical and would prevent this concern from arising.

Question 4: Do you agree with our proposals to continue to apply the Duty to some business where customers are usually resident outside of the UK?

As noted in Question 2 above, we do not consider that looking exclusively at the usual residence of investors is the most practical way to apply the territorial test.

Question 5: Are there any other consumers, products or services where the Duty should still apply outside the UK?

As noted in Question 2 above, we consider that framing the test by reference to whether a product or service is actively distributed to retail customers *in the UK* would be a more effective way of drawing the boundary between UK and non-UK business for the purposes of the territoriality test. If the test were amended in this way, it would not be necessary to consider whether there are any other consumers, products or services where the Duty should still apply outside the UK as the UK perimeter for these purposes would be clearly defined.

Question 6: Do you have any comments on our proposed changes to the 'Application outside the UK' section of Chapter 2 of the non-Handbook guidance?

In addition to the points raised above in response to Question 1 and Question 2, we invite the FCA to confirm the following points:

- that each firm in a distribution chain should be assessed by reference to its own activities (for example, a distributor selling only outside the UK to non-UK customers should not be brought into scope merely because another, unconnected, distributor in the same chain sells the same underlying product to a UK-resident investor);
- should the FCA proceed with the "usually resident" concept (notwithstanding our comments above), clarification as to whether this refers to physical location, tax or legal residency or some other test (for example, if an otherwise non-UK resident person nevertheless has a right of abode in the UK and owns a property here, how is it to be determined at what threshold of spending time in the UK that person becomes a UK usually resident person?). Clearly, these are concepts which have been extensively developed and considered in a personal tax and other legal contexts – is the intention to cross-refer to those, to develop a standalone regulatory test, or to allow firms flexibility to adopt a proportionate approach?; and
- whether any residual "whole of product" or "whole of firm" obligations would apply in respect of non-UK customers even where the territorial exclusion otherwise applies.

The scope of the Duty: activities subject to the Duty

Question 7: Do you have any comments on the proposed application provisions and whether they will help with understanding the scope of the Duty?

In general, we very strongly welcome the FCA's efforts to ensure that the scope of the Duty is easier to identify for firms and the approach of including a new PRIN 3A chapter to assist with this assessment. However, we consider that the current draft proposals could go much further in providing a similarly clear statement of *negative scope* – business activities that are not intended to be captured by the Duty.

This distinction matters significantly to our members because their experience to date has been that, in the absence of clear negative scope guidance, firms have adopted a cautious approach to Duty compliance. This has included applying board reporting, monitoring and governance processes to business that has no meaningful connection to genuine retail outcomes. Put another way, firms have had to comply with the Duty in relation to business that presents little or no risk of adverse outcomes for retail customers and therefore falls outside the core concerns that the Duty was designed to address.

Accordingly, we ask the FCA to consider supplementing the proposed PRIN 3A framework with an express statement identifying categories of business that fall outside the Duty by virtue of their nature. For example, confirmation that carried interest or team-member co-investment offerings for individuals working within sponsors are outside the scope of the Duty would materially reduce the potential compliance burden on our members without, in our view, impinging in any way on the outcomes the Duty seeks to achieve. Such arrangements are designed in part to create the type of alignment sought by the FCA through its approach to the remuneration aspects of UK AIFMD, among other regulations. In requesting this guidance, we note in particular how valuable many of our member firms and their advisers have found the FCA's approach in Chapter 16 of PERG, which includes clear negative-scope guidance on the definition of an AIF.

In addition, we consider that investment vehicles, including but not limited to investment trusts, whose units, shares and/or securities are listed on a regulated market and/or the Alternative Investment Market of the London Stock Exchange should be exempted from the scope of the Duty. As listed entities, they are already subject to an extensive parallel disclosure regime; an exemption would avoid unnecessary duplication between regulatory regimes designed to achieve similar objectives in relation to consumer protection and transparency of disclosure, while recognising the enhanced liquidity and objective price-discovery mechanism inherent in such a listing.

Question 8: Do you have any comments on the proposed approach to defining 'retail market business'?

We broadly welcome the FCA's approach here, subject to our comments in response to Question 7 above.

Question 9: Do you have any comments on our proposed changes to the 'product' definition?

We broadly welcome the FCA's approach here, subject to our comments in response to Question 7 above.

Question 10: Do you agree with the changes we are proposing to clarify the scope and obligations for firms in a distribution chain?

We support the FCA's proposal to clarify which firms fall within the retail distribution chain, in particular the confirmation that, where an independent third party wraps a non-retail product for retail distribution, the underlying wholesale firm should not automatically be brought within the retail distribution chain as a result.

This point is of considerable practical importance for our members, particularly in relation to LTAFs and "retail wrapper" structures that increasingly draw on underlying private capital funds. We invite the FCA to confirm in guidance that a wholesale fund manager's provision of fund documentation, factsheets or other standard information for use by an independent retail wrapper provider or distributor would not bring the wholesale fund manager within the retail distribution chain. This should include where that information is relied upon by the retail wrapper provider in preparing its own retail-facing marketing materials.

We consider the same principle should apply to listed investment companies, other than VCTs. Where an independent intermediary or platform makes shares in a listed investment company available to retail investors, that should not of itself bring the investment company or its manager within the retail distribution chain where they do not otherwise have a relevant role in relation to those retail customers.

We ask the FCA to consider these points alongside our comments on "material influence" and negative scope in the remainder of this response, as these issues are closely related in practice: a firm's provision of standard fund information to an independent distributor, without more, should not by itself constitute either "material influence" over retail outcomes or a decision-making role bringing it into the distribution chain. Similarly, we refer to our comments in Question 2 above on clarifying the scope of the Duty in relation to delegated portfolio managers and advisers.

Question 11: Do you agree with our proposed approach to clarifying application where a firm is subject to the Duty but doesn't have a role in relation to one or more of the four Duty outcomes?

We think it would be cleaner to include negative scope clarification that the Duty does not apply to firms where none of the four Duty outcomes will be relevant as it is difficult to see what benefit would be obtained by subjecting a firm to the Duty if it does not have a role in relation to any Duty outcome. This could be included as part of the guidance we envisaged in our response to Question 7 above.

Question 12: Do you agree with our proposals for updating our rules on material influence?

We welcome the FCA's recognition that the current "material influence" concept has caused challenges for firms determining whether or not they are within scope of the Duty. As such, we also welcome the move towards an assessment based on a firm's actual role and the extent of its nexus with retail customers.

However, we consider that the proposed approach still leaves room for uncertainty. In particular, the definition of "provide support" rather than "make decisions" affecting one of the four outcomes remains unclear, as does the concept of complying with Principle 12 and the cross-cutting rules only "in respect of its own activities".

We also consider that greater distinction needs to be drawn between determining whether a firm is within scope of the Duty to begin with and how a firm that is within scope applies proportionately. Our recommendations in relation to negative scope clarification above would go some way to addressing this distinction.

Question 13: Do you have any comments on our proposed approach to classifying which firms are manufacturers for the purposes of the Duty?

In general, we very much welcome the proposal to remove the concept of "co-manufacturing" and replace it with primary and secondary manufacturers and clarified rules on the allocation of responsibilities between firms that work together to manufacture a product or service. In fact, we consider this to be one of the clearest and most helpful parts of the proposed changes.

Nevertheless, the proposals retain a degree of subjectivity in the proportionate application of the Duty. In particular, firms will still be required to make subjective judgements, as noted in our response to Question 12 above. For example, wholesale product manufacturers may continue to face a meaningful compliance burden in relation to otherwise wholesale products where a retail distributor creates a retail "wrapper" for the product. Additional clarification would therefore be helpful, including examples of when a fund manager should clearly be treated only as a secondary manufacturer and how secondary manufacturers might comply with the Duty in practice.

Question 14: Should we consider making similar changes to the rules in DISC and PROD?

We recommend a coordinated approach such that relevant suites of FCA Rules use consistent terminology.

Question 15: Do you have any comments on how the new approach to classifying manufacturers should apply to existing products and services?

We recommend that manufacturers should be permitted to apply the existing rules on a grandfathered basis to existing products or (at their choice) elect to apply the new regime. This will deliver the most practical and proportionate outcome, in our view.

Question 16: Do you have any comments about our proposed approach under the Duty to outsourcing arrangements in relation to the manufacture of a product or service?

In general, we welcome the FCA's approach here, with the caveat that some express guidance should be included as to how this regime is intended to interact with the SYSC 8 outsourcing rules, particularly in the context of delegated portfolio management and investment advisory arrangements.

Question 17: Do you agree with our proposed exclusions for activities that fall out of scope of the Duty? Should we make any changes to them, either to broaden them or to limit their availability for certain activities (and, if so, why)?

The CP identifies certain wholesale activities (for example, depositary services, custody, transfer agency and clearing) as potentially being clarified as falling outside the scope of the Duty. We welcome this negative scope clarification. However, for the reasons articulated in our response to Question 7 above, we do not consider that these examples adequately capture all the principal areas of uncertainty for the private capital sector. We invite the FCA to use this consultation as an opportunity to consider, and provide clear treatment for, structures and arrangements that are specific to, or particularly prevalent in, the private capital sector, including:

- co-investment arrangements, under which investors (who may include both institutional investors and, in some cases, individuals connected with the manager or the fund) invest alongside a fund directly into a portfolio company (for example, to align the interests of the manager's staff and fund investors);
- carried interest arrangements, under which members of a fund manager's team receive a share of the fund's profits, generally structured through a separate carried interest vehicle; and

- employee and executive participation arrangements, under which employees or executives of the manager or of portfolio companies participate directly or indirectly in the economics of the fund or a portfolio company investment.

These arrangements have generally and properly been treated as falling outside the scope of comparable regimes, including AIFMD (and please note our comments above on how helpful members have found the equivalent negative scope guidance in PERG 16), reflecting their fundamentally different character from retail product distribution. We consider that clearer confirmation of their exclusion from the intended scope of the Duty would be of significant practical value to our members and would remove a current source of uncertainty that does not, in our view, reflect any genuine retail consumer protection concern. Similarly, where one institutional product is 'wrapped' into a retail product it would be helpful to receive clarification that the underlying institutional product is not within the direct scope of the Duty even where the wrapper vehicle is.

Question 18: Are there any other activities where we should consider exclusions on a similar basis?

Please see our responses to Questions 7 and 17 above.

Question 19: Do you have any comments on our proposed changes to Chapters 2 and 6 of the non-Handbook guidance?

We welcome these changes; however, we do not consider that they go far enough and would welcome a more express suite of negative scope exclusions (ideally as Handbook guidance rather than non-Handbook guidance, following the model adopted by the regulator in PERG 16 in relation to the definition of an AIF) for the reasons discussed in our response to Questions 7 and 17 above.

Proportionate application of the Duty

Question 20: Do you agree with our proposals to clarify firms' roles and responsibilities across the distribution chain? If not, please explain why, and any other options we should consider.

Please see our comments in response to Question 10 above. We very much welcome the proposed clarification but believe that it could go further, as articulated in our response to Question 10 above.

Question 21: Do you agree with our proposals to better reflect how firms' support for consumers in vulnerable circumstances will differ depending on their role in distribution chains? If not, please explain why, and any other options we should consider.

We welcome the FCA's proposals here as a pragmatic solution that, rightly, focuses on avoiding detriment for consumers in vulnerable circumstances whilst acknowledging the differing roles and levels of responsibility for ensuring those outcomes between firms in different positions within the distribution chain. However, we note our comments above in relation to negative scope and firms that offer otherwise wholesale products in respect of which a single distributor then creates a retail "wrapper" structure.

Question 22: Do you agree with our proposals to better reflect a reasonable approach to information gathering and sharing to monitor outcomes under the Duty? If not, please explain why, and any other options we should consider.

We support the FCA's proposed move towards a more flexible, risk-based approach that focuses on themes and trends rather than exhaustive data collection, and which does not require firms to gather data they do not otherwise use. We would, however, welcome additional guidance on how the FCA intends this proposal to apply to firms operating primarily in wholesale markets: for such firms, the practical difficulty is often not simply that they conduct little retail-facing business, but that little or no data on retail-customer outcomes exists. Again, this links back to our comments throughout this response on the need for greater clarity as to the negative scope of the Duty: for many wholesale fund structures, the issue is not merely whether firms can apply the Duty proportionately, but whether they are clearly outside its scope. In a purely wholesale context, any data-gathering exercise for these purposes may be disproportionately burdensome relative to its value, which is likely to be negligible given the absence of a retail nexus and, therefore, of data on retail outcomes. In our view, clarity on negative scope is central to ensuring that the amendments to the Duty improve the competitiveness of the UK regulatory system, consistent with the FCA's welcome aim of clarifying the scope and application of the Duty.

Question 23: Do you agree with our proposals to clarify our expectation that board or governing body reporting should be proportionate to the firm's circumstances, including its actual role in influencing retail customer outcomes? If not, please explain why, and any other options we should consider.

We very much welcome the proposed clarification of the way in which proportionality can be applied here. However, again, we consider that it is important to differentiate between firms that can apply these requirements proportionately and firms that need not apply them at all; greater clarity on negative scope would therefore be extremely helpful to the industry. If a firm genuinely has no influence, or only extremely marginal influence, on outcomes for UK retail consumers, it is hard to see how any reporting on this issue could be proportionate to its role. Our proposed enhanced guidance on negative scope would help to address this.

The Duty's interaction with other product governance and disclosure requirements for retail investment products

Question 24: Are there specific areas where further clarification would help firms avoid unnecessary duplication in practice? If so, what form of additional guidance can we give firms to improve the clarity of our expectations?

We welcome the FCA's proposals to provide clearer rules on initial and ongoing due diligence, reliance on other firms in the distribution chain, and confirmation that a firm is responsible for its own activities and is not expected to police the compliance of other firms, while still being expected to act on actual knowledge of potential harm.

That said, we consider that greater clarity in this area is needed and we invite the FCA to ensure that the final rules and guidance reflect the practical complexity of manufacture and distribution arrangements in the private capital sector, in particular:

- products that are not primarily aimed at the retail sector but which may, through one or more intermediaries, ultimately reach a small number of retail investors (for example, via an LTAF or a wrapper structure); and
- international distribution chains that include firms not subject to the Duty or to equivalent regulatory obligations, where a UK firm's ability to conduct meaningful due diligence on, or obtain assurances from, an overseas counterparty may be inherently limited.

Question 25: Do you consider that there are specific areas or activities where you consider we should disapply the PROD 3 product governance rules and rely instead on the standards set by the Duty? If so, what are these areas, and what would be the impact on firms' processes, costs and customer outcomes?

In general, we consider that the FCA should be clear as to which suite of duties particular business lines or fund structures are subject to in order to avoid unnecessary duplication by firms complying with multiple sets of FCA Rules. Failing that, we would welcome express guidance clearly signposted in both rulebooks as to the intended interaction between the regimes in practice.

Question 26: Do our proposed changes to the non-Handbook guidance provide sufficient clarity for firms? If not, what further clarification is needed to help firms reduce unnecessary duplication or uncertainty in practice?

As noted above, in particular in response to Question 7, we would welcome stronger and clearer guidance ideally within the Handbook (following the PERG 16 model used for the definition of an AIF) as to the circumstances in which the Duty does not apply. We consider that this would significantly reduce unnecessary compliance burden for firms and also permit the regulator to focus supervisory efforts where the Duty has the potential to have a real beneficial impact for retail consumers.

Technical clarifications

Question 27: Do you agree with our proposed approach to making the technical clarifications in this chapter?

Yes, subject to our specific comments above on greater clarification as to how the Duty applies to particular structures and, in particular, negative scope guidance.

Question 28: Do you agree with our proposal to clarify that the exclusion in relation to instruments where the minimum investment is £50,000 applies per investment and per end investor?

Yes, we welcome this proposal. It should also be made clear that this exclusion operates independently of the retail/professional client boundary, and that firms may rely on both the £50,000 minimum investment exclusion and professional client categorisation across different investors in the same product or arrangement.

Question 29: Are there any other minor or technical changes that would help improve the clarity or operation of the Duty?

Please see our comments above on negative scope and clarification of circumstances in which the Duty should not apply.

If you have any questions or there are points it would be helpful to discuss further, please contact Nick Chipperfield (nchipperfield@ukprivatecapital.co.uk) and Tom Taylor (ttaylor@ukprivatecapital.co.uk).

Yours faithfully,

Tim Lewis
Chair, UK Private Capital Regulatory Committee