

Deirdre Boyd
Financial Conduct Authority
12 Endeavour Square
London
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By email: cp25-36@fca.org.uk

2 February 2026

Dear Deirdre,

RE: CP25/36: Client categorisation and conflicts of interest

UK Private Capital is the industry body and public policy advocate for the private equity (PE), venture capital (VC) and private credit ecosystem in the UK. With a membership of 600 firms, we represent UK-based private capital firms, as well as their professional advisers and a large base of UK and global investors. The private equity, venture capital and private credit industry has a vital role to play in driving national and regional growth. Currently over 13,000 companies, employing more than 2.5 million people, are backed by private capital investment in the UK.

We thank the FCA for its open engagement on this topic and welcome the opportunity to respond to CP25/36. We strongly support the FCA's objective of reforming the client categorisation framework to make it more effective, proportionate and better aligned with market realities and international comparators.

Private capital investment plays a critical role in supporting economic growth, productivity and the scaling of UK businesses across the real economy. It is therefore essential that the client categorisation regime operates in a way that enables capable and sophisticated investors to access private capital opportunities, while retaining appropriate safeguards for those who require retail protections. In that context, we consider that the proposals in CP25/36 represent a significant and welcome improvement on the current regime.

We strongly support the FCA's proposal to remove the mandatory quantitative criteria for elective professional client categorisation and to place greater emphasis on qualitative, outcomes-based assessments of capability. The existing quantitative tests are poorly calibrated for private capital markets, which are characterised by long-term and illiquid investments, and do not reliably identify whether a client has the expertise, knowledge and experience required to be treated as a professional client.

We also support the introduction of a wealth-based opt-up route in principle but consider that the proposed £10 million threshold is set at too high a level. By international standards, this risks limiting the usefulness of the alternative wealth assessment, reducing access to private capital investment by wealthy individuals and undermining the FCA's secondary objective to support the international competitiveness and growth of the UK economy. A lower and more

proportionate threshold of £5 million, combined with a clearer definition of investible assets, such as net assets excluding primary residence, pensions and insurance rights, would better achieve the FCA's stated objectives.

We consider that there is an important opportunity for the FCA to ensure that the revised framework works proportionately in the context of staff participation in incentive arrangements, such as carried interest and co-investment. This is common market practice, and often an explicit requirement of third-party investors, to align interests. There is a strong case for a clear route to continue to allow staff involved in the activities of a private capital firm to be treated as professional clients for the limited purpose of investing in, or participating in, the firm's own products, reflecting their own knowledge and exposure to the investment strategy and structures, and avoiding significant administration and unnecessary regulatory friction (see our responses to questions 2 and 3). This will ensure the UK remains consistent with other leading private capital jurisdictions such as the United States and will avoid the creation of regulatory obstacles to firms establishing or maintaining a UK office.

Across the proposals on qualitative assessment, informed consent, communications and periodic reassessment, we welcome the FCA's emphasis on flexibility, proportionality and reliance on existing safeguards, including the Consumer Duty.

To ensure the reforms deliver their intended benefits in practice, it is essential that they are implemented in a joined-up way across the wider regulatory framework. In particular, corresponding changes to MiFIR client categorisation will be necessary to avoid perpetuating legacy requirements or requiring firms from having to undertake two different opt-up assessments for the same client or investor (see our response to question 24). Similarly, any one-off re-categorisation exercise must be applied proportionately and consistently with existing FCA practice, focusing on situations where firms are providing new or ongoing services or offerings, and avoiding retrospective reassessment of investors (see our responses to questions 2, 3, 6, 13 and 25).

Subject to the specific comments and recommendations set out in this response, we consider that the proposals in CP25/36 strike a materially better balance between investor protection and market access than the current regime. They represent a positive step towards a more workable and competitive framework for private capital in the UK.

Chapter 3: Client categorisation

Quantitative assessment

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

Yes. UK Private Capital strongly agrees with the FCA's proposal to delete the mandatory quantitative criteria for opting retail clients up to professional status.

As the FCA recognises in CP25/36, the existing quantitative criteria were set some time ago and do not reliably assess whether an investor has the capability to be treated as a professional client. The tests were drafted with a view to investment in securities traded on trading venues. In the context of private capital (which involves investment in funds not traded on a trading venue), these criteria are particularly poorly calibrated. They are based on assumptions drawn

from liquid, frequently traded markets and do not reflect the nature of private capital investments, which are typically long-term and illiquid, with less frequent transaction activity.

Measures such as transaction frequency, fixed portfolio size thresholds and narrow tests based on financial services employment are therefore not meaningful indicators of sophistication or understanding for private capital investors. In practice, they can exclude individuals who clearly have the relevant knowledge and experience, including senior executives and entrepreneurs with substantial experience in the real economy, and experienced high-net-worth investors.

We agree with the FCA that the purpose of the opt-up assessment should be to determine whether a person has the capability to be treated as a professional client and understands the consequences of losing retail protections. A qualitative, experience-based assessment is better suited to achieving this outcome. It allows firms to make holistic judgements about a person's knowledge, expertise, experience and ability to understand and bear the risks associated with private capital investments, while operating within a robust and well-governed framework.

UK Private Capital therefore welcomes the deletion of the mandatory quantitative criteria as a necessary and proportionate reform, and one that is consistent with the FCA's stated objective of improving the effectiveness of the client categorisation regime.

Categorisation of clients with investable assets above £10 million

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?

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?

UK Private Capital agrees that, for certain persons, wealth can be a relevant indicator when considering a client's capacity to bear loss and their ability to participate in more illiquid investments. We therefore support the introduction of a wealth-based alternative route in principle.

However, we consider that the proposed £10 million threshold is too high and risks limiting the effectiveness of a wealth-based assessment.

International competition

Private capital investment plays a critical role in supporting economic growth, job creation and the scaling of UK businesses, particularly in sectors aligned with the Government's Industrial Strategy. Ensuring that capable investors who want to invest in private capital are not unnecessarily excluded from such opportunities is therefore directly relevant to the Government's mission to increase investment and growth in the UK economy. It is also highly relevant to the FCA's secondary objective. Thresholds that are set at an uncompetitive level risk diverting capital and investment activity away from the UK to other jurisdictions.

By way of international comparison, jurisdictions competing directly with the UK for private capital investment apply materially lower and more flexible thresholds. In the United States, individuals may qualify as accredited investors if they have net worth of at least \$1 million, excluding primary residence, or annual income of \$200,000 (or \$300,000 with a spouse or partner). In Switzerland, individuals may be treated as professional clients if they qualify as high-net-worth individuals with financial assets of at least CHF 2 million, or CHF 500,000 where

they can demonstrate sufficient financial knowledge and experience. Against this background, albeit still higher than in several competitor jurisdictions, a UK wealth-based threshold of £5 million would be more proportionate and more consistent with international practice, particularly if combined with an income-based alternative.

We also note that the proposed FCA rules on opting up clients set the bar far higher than the existing FSMA 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001 (PCIS Order). The latter allows a firm to classify an individual as high net worth for the purposes of investment in venture capital and private equity funds which primarily invest in the shares or debentures of unlisted companies where they meet the "high net worth" test. This test is set at annual income of £100,000 or more or net assets of £250,000 or more.

Investment vehicles

We also query whether, as drafted, the wealth-based route may be too narrow in scope. It may inadvertently exclude investment vehicles commonly used by wealthy individuals to hold and deploy capital. In some cases, the "client" will be a newly established investment vehicle set up specifically to make an investment. As a new vehicle, it may hold little or no assets at the point of investment, even where the owner has substantial wealth. In such circumstances, the vehicle itself would not satisfy the test, notwithstanding the financial capacity and sophistication of the underlying investor. This outcome does not appear to reflect the FCA's policy intention. It would be helpful if the FCA could allow a vehicle controlled by a high-net-worth investor to meet the test.

Net designated investments and/or cash

We recognise the challenge of drafting an appropriate definition of "wealth". We would like to emphasise the importance of clarity in the application of any wealth-based route. In particular, the draft reference to "a client's portfolio of net designated investments and/or cash" may be difficult to apply consistently. For example, although it is described as a wealth assessment, it is largely determined by reference to investments in financial products and may omit other common forms of investments (e.g. direct holdings in real estate other than a person's primary residence). In addition, the use of the term "designated investments", as defined by reference to the Regulated Activities Order, would not capture investments held through UK partnership structures. There are well-established precedents in the high-net-worth individual investor statement under the PCIS Order and Financial Promotion Rules, which define net assets by reference to clear exclusions (including primary residence, pensions and insurance rights) and we encourage the FCA to build on these established examples.

Annual income

Notably, individuals can also qualify as high-net-worth investors under the tests in the PCIS Order and Financial Promotion Rules, and in competitor jurisdictions, pursuant to an annual income limb. This recognises that net assets are not necessarily the only means of measuring a person's capacity to invest and whether they can bear loss. As such, we would encourage the FCA to consider including an income-based alternative at a level of £250,000 per annum, alongside a net asset threshold of £5 million.

Point of assessment

To ensure the regime operates proportionately in practice, it is important that any wealth- or income-based assessment applies at the point of investment only. Private capital investments are typically long-term and illiquid, and investors cannot readily exit their positions if their

wealth fluctuates or subsequently falls below a specified threshold and recategorisation is required. Any requirement to do so could have adverse consequences for investors, for example, divesting an illiquid investment could be challenging. For instance, it might not be permitted under the fund's terms. Even if redemption is legally possible, it may well mean the investor receives a considerably smaller return than had they held the investment to maturity as intended. Moreover, ongoing reassessment against a wealth or income threshold would therefore be impractical and could create unnecessary regulatory and operational complexity. This issue is closely linked to the FCA's proposals on periodic reassessment (Question 13) and potential impacts on firms' permissions (Question 26) and should be addressed explicitly in the final rules.

Relevant factors

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?

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?

UK Private Capital supports the FCA's proposal to adopt a flexible, principles-based framework of Relevant Factors for qualitative assessments. That flexibility is essential to allowing firms to undertake a proper, holistic assessment of a prospective client's or investor's expertise, knowledge and experience.

A rigid or overly prescriptive assessment framework would risk being ill-suited to capturing the forms of experience and sophistication that are most relevant in a private capital context. The ability for firms to assess people holistically, taking account of a range of relevant factors rather than applying fixed criteria, is therefore critical to ensuring the regime is both effective and proportionate.

Staff participation

This flexibility is also important in the context of employee and staff participation in co-investment and incentive arrangements. As set out in the [our response to CP24/24](#) (in particular question 28), it is common market practice, and often an explicit requirement of third-party investors, for staff working for the private capital firm to invest in or participate in the firm's own products in order to align interests.

In this context, we consider there is a strong case for a specific criterion that allows staff working for a private capital firm to be treated as professional clients for the purpose of investing in, or participating in, the firm's own products. Such individuals typically have direct and ongoing exposure to the relevant investment strategy, portfolio and risk profile through their roles, and it is disproportionate to require firms to apply the full client opt-up process as if staff participating in incentive and co-investment arrangements were external investors.

Providing a clear route for staff to be treated as professional clients for these limited purposes would significantly reduce administration and remove unnecessary regulatory friction, better reflect market practice, and support alignment of interests, without undermining investor protection. We also note that the EU Commission is considering reforms that would explicitly exempt investment by staff of an AIFM, which further supports the case for a proportionate and competitive approach in the UK.

Financial resilience

We also agree that financial resilience should be assessed as part of the qualitative framework but emphasise that this assessment must be made at the point of investment, particularly given that a private capital firm does not typically provide any service (ongoing or otherwise) to any investor.

Requiring firms to revisit financial resilience assessments on an ongoing basis would be impractical and potentially have detrimental customer outcomes. For example, if an investor were to be re-categorised as a retail client and become ineligible to hold an investment in a professional-only product they may be forced to divest their interest at an inopportune moment (notwithstanding that when they invested, they were appropriately categorised as a professional client). The risk is even more pronounced in respect of the many private capital funds which are closed-ended, and investors cannot readily adjust or exit their positions, and this may be prohibited under the terms of the fund.

Role-based experience

We suggest a drafting refinement to ensure the Relevant Factors framework operates as intended. In particular, the FCA should consider extending the wording of COBS 3.5.10R(2)(a), which refers to a person's professional experience arising from an occupation in the financial services sector or another relevant sector. Relevant professional experience may also arise from the nature of a client's role, even where that role is not within financial services or a "relevant sector". For example, senior operational, executive or ownership roles in portfolio companies or other businesses can provide deep and highly relevant experience for private capital investing. The rules should make clear that such role-based experience can be considered as part of the qualitative assessment.

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

Yes. UK Private Capital agrees that financial resilience should be assessed on an outcomes-based basis, without the imposition of minimum financial thresholds.

Consistent with the points made in response to Questions 2 and 3, we consider that assessments of financial resilience should be made at the point of investment. Requiring firms to revisit financial resilience on an ongoing basis would be impractical and would not enhance investor protection and could compromise good outcomes.

An outcomes-based approach, applied at the point of investment and focused on loss-bearing capacity and understanding of illiquidity, is therefore the most appropriate and effective way to assess financial resilience in the private capital context.

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. UK Private Capital strongly supports the FCA's proposal to retain flexibility to opt clients up either on a product-specific basis or more generally in relation to all products and services.

Local authorities and Local Government Pension Schemes

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

UK Private Capital considers the FCA should categorise the boards of local government pension funds (administering authorities) as per se professional clients. The current requirement to consider whether local authorities are professional clients was established in response to the need to implement MiFID II. We do not think this approach should be retained moving forward, particularly in the context of further LGPS pooling.

Changes proposed in the Pension Schemes Bill will transfer most investment activity within the LGPS to six pools, each of which will be required to be FCA authorised and regulated.

However, in its response to its [‘Fit for the Future’ consultation](#), the Ministry of Housing, Communities and Local Government lists the continued role of administering authorities (in England and Wales) as: the setting of investment objectives, strategic asset allocation, and the monitoring tactical asset allocation, investment manager selection, stock selection, investment stewardship, and cashflow management.

We agree with this position and strongly support administering authorities having an active role in investment decision making moving forward. This is essential to ensure schemes can retain the regional investment focus they have had historically, which undoubtedly positively impacts regional growth throughout the UK. If, for any reason, an administering authority were deemed to be a retail client, we are concerned this may impact its ability to receive information on, and fully consider, private capital investment opportunities, notwithstanding that it may be the relevant pool that is ultimately responsible for investment decisions. We also note that LGPS funds, much like trustees of other pension schemes, take investment advice as standard, and so we are of the view that the same level of regulatory status is appropriate.

Finally, there is no pooling or proposed changes to the role of LGPS funds in Scotland. There is therefore a strong argument for enabling those funds to regain the pre-MiFID II position, as per se professional clients.

Informed consent

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?

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?

UK Private Capital agrees with the FCA’s proposal to require informed consent where a client opts out of retail protections and is treated as a professional client. It is appropriate that clients clearly understand the consequences of professional client categorisation, including the loss of retail protections which would otherwise have been afforded to them, depending on the service concerned.

We also support the FCA’s approach of relying on existing safeguards, including the Consumer Duty, the client’s best interests rule and the requirement for communications to be fair, clear and not misleading, rather than introducing extensive new bespoke disclosure requirements. In the private capital context, investors who are being considered as professional clients are typically experienced and sophisticated, and existing frameworks provide an appropriate and proportionate basis for ensuring informed consent. Overly prescriptive disclosure requirements would risk adding friction without delivering meaningful additional protection. There should be

a presumption that senior staff at a private capital firm do not require additional protections under the Consumer Duty in order to invest in their own firm's funds.

Communication with client prior to categorisation

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

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 an elective professional?

Yes. UK Private Capital strongly agrees with the FCA's proposal to allow firms to initiate discussions with clients about opting out of retail protections, where the firm has a reasonable basis for believing that the client may meet the professional client threshold. This flexibility is important in practice to enable informed and appropriate engagement with prospective clients before a formal opt-up decision is made.

Taken together, the proposals should allow firms to engage appropriately with clients about opting out of retail protections, while maintaining clear boundaries around financial promotions and preserving investor protection.

Other safeguards

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?

Periodic reassessment

Yes. UK Private Capital strongly agrees with the FCA's proposal not to require periodic reassessment of all elective professional clients, while retaining a requirement to reassess where a firm is providing an ongoing discretionary management, investment advisory or execution-only service to a client and has reason to believe that such a client no longer meets the conditions for professional client categorisation.

Mandatory periodic reassessment would add material cost and operational burden for firms, while delivering limited additional investor protection in the context of private capital investments, which are often closed-ended, and typically long-term and illiquid in nature.

Assessments for such products should therefore be made at the point of investment. This approach appropriately targets intervention to situations where it is meaningful (i.e. prior to any investment decision), rather than imposing blanket ongoing obligations.

Withdrawing consent

We also agree that an elective professional client should be able to withdraw their consent to be treated as a professional client at any time. However, it is essential that any such withdrawal operates prospectively only. Where a person has invested in a closed-ended private capital fund, there is typically no ability to divest or unwind that investment.

Any requirement to re-categorise a client following a withdrawal of consent must therefore be applied in a practical and proportionate way, recognising that re-categorisation cannot have retrospective effect and should apply only for the purposes of future product offerings or services. This would be consistent with the FCA's approach to appropriateness and suitability assessments and is reflected in draft Handbook guidance at COBS 3.5.9AG (see our response to Question 25). The framework must acknowledge the realities of closed-ended funds, illiquid investments and the global private capital market, to avoid creating legal, regulatory or operational uncertainty for firms and investors.

We consider the FCA's proposed approach to periodic reassessment, combined with clear recognition of the prospective nature of any change in categorisation, strikes an appropriate balance between investor protection and practicalities.

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. Subject to the comments and recommendations set out in this response, UK Private Capital considers that the FCA's proposals represent a significant improvement on the current client categorisation regime for both firms and clients.

In particular, the shift away from rigid and poorly calibrated quantitative criteria towards a more flexible, qualitative and outcomes-based framework is better aligned with the characteristics of private capital investments. The proposals should reduce unnecessary barriers for capable and sophisticated investors, while retaining appropriate safeguards to protect those clients who require retail protections.

Provided that the framework is implemented in a proportionate and practical manner, and that the detailed points raised in this response are addressed, we consider that the proposals strike a much improved and more effective balance between investor protection and market access than the current regime. However, to ensure the reforms deliver their intended benefits in practice, it is essential that corresponding changes to MiFIR are also implemented to avoid perpetuating legacy requirements or requiring firms having to undertake two different opt-up assessments for the same client or investor (see our response to question 24).

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. UK Private Capital agrees with the FCA's proposed approach to rely on existing client safeguarding and governance rules, including the client's best interests rule, the requirement for communications to be fair, clear and not misleading, relevant SYSC provisions and the Consumer Duty, rather than introducing additional bespoke safeguards specifically for the elective professional categorisation process.

In our view, the current framework already provides robust and appropriate protections for clients. Introducing additional layers of safeguards risks recreating complexity, rigidity and unnecessary restrictions of the kind that these reforms are intended to remove, without delivering commensurate investor protection benefits. We consider that reliance on the existing safeguarding framework, including the Consumer Duty, is sufficient to support the elective professional categorisation regime in a proportionate and effective manner.

Per se categorisation

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?

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. UK Private Capital supports the FCA's proposals to simplify the per se professional client categories, including the removal of the prescriptive list of entity types in COBS 3.5.2R(1), and to expressly include special purpose vehicles (SPVs) within the scope of per se professional clients.

However, we have a few points of clarification.

Per se professional criteria

We would encourage the FCA to ensure greater consistency in the terminology used in COBS 3.5.2.R. As drafted, the rule uses terms such as "entity", "undertaking" and "company" interchangeably across different sub-paragraphs. This may be confusing in practice and could be read as implying that only body corporates are eligible for categorisation as a per se professional client in certain circumstances. In our view, the regime should be agnostic as to legal structure, so that any vehicle (including body corporates, partnerships and trusts) can qualify where the criteria are met.

SPV definition

While we support the inclusion of SPVs, we consider the proposed definition in Annex A (Amendments to the Glossary of definitions) is too restrictive. It refers to an SPV as a body corporate. While many SPVs are body corporates, this is not universally the case, and SPVs can be established using other legal forms, including partnerships and other vehicles. We therefore recommend removing the reference to "body corporate" from the proposed definition to ensure commonly used structures are not inadvertently excluded.

In addition, the proposed definition requires the SPV to be connected with the carrying on of "regulated activities" or "ancillary activities". These are UK-specific concepts and are not consistent with the broader, more neutral references elsewhere in COBS to entities that are "authorised or regulated... in the UK or a third country" (e.g. in COBS 3.5.2R(1)).

It also appears to be limited to SPVs within (UK) financial services regulated groups. This means that were a third country authorised firm under COBS 3.5.2R(1), or a large undertaking under COBS 3.5.2R(2), to establish an SPV for the purposes of deploying capital or making an investment, that SPV would not be eligible. We recommend these restrictions are removed in the final rules.

Personal holding vehicles and SPVs

It would be helpful for the FCA to clarify how client categorisation is intended to operate where a per se or elective professional client invests via a personal holding vehicle or SPV. It should be made clear whether such vehicles are intended automatically to qualify as professional clients, or whether a look-through approach applies. Providing explicit clarity on this point would reduce uncertainty for firms and support consistent application of the new framework.

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?

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

Large undertakings and trustees other than pension trustees

Yes. UK Private Capital supports the FCA's proposals to remove the distinctions in thresholds for categorising large undertakings and trustees (other than pension trustees) between MiFID and non-MiFID business. These distinctions add complexity to the client categorisation framework without delivering clear investor protection benefits and can be difficult to justify in practice, particularly for firms operating across both MiFID and non-MiFID activities.

We are supportive of efforts to simplify and rationalise these criteria and consider that a more consistent approach across regimes will improve clarity and reduce unnecessary operational burden for firms. Where firms currently categorise clients under the criteria proposed to be removed, we do not consider that their removal will create material challenges, provided that firms retain the ability to treat such clients as professional where appropriate and until there is a provision of a new product or service (i.e. no retrospective effect) under the revised framework.

Pension trustees

UK Private Capital also agrees that pension trustees should continue to be treated as per se professional clients for non-MiFID business. Pension trustees typically operate with a high level of governance, expertise and professional advice, and their treatment as professional clients is well established and appropriate. Retaining this position provides continuity and avoids introducing unnecessary disruption or re-categorisation.

Policy, procedures and record keeping

Question 21: Do you agree with our proposals to clarify the record keeping requirements for 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 those firms clearer?

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

Yes. UK Private Capital supports the FCA's proposals to clarify the record keeping requirements for client categorisation and related provisions.

Greater clarity on record keeping expectations will assist firms in demonstrating compliance with the client categorisation framework and reduce uncertainty around supervisory expectations.

We also agree that removing the disapplication of COBS 3.8 for firms not carrying out designated investment business, and clarifying COBS 3.2.3R(4), should make the regulatory framework easier to understand and navigate. Provided that these changes are clarificatory in

nature and do not introduce additional substantive obligations, they represent a sensible and proportionate improvement.

Monitoring and evaluation

We note the FCA's intention to monitor the effectiveness of client categorisation reforms through supervisory activity and the possible collation of client categorisation data via a regulatory return. We recognise the importance of monitoring outcomes and support the FCA's role as a data-led regulator.

However, the introduction of a new regulatory return would represent a material additional obligation for firms. We therefore consider it important that any data collection is tightly targeted, proportionate and clearly linked to defined supervisory objectives. There should be a very high bar for introducing an ongoing, universal return, given the volume of data firms already provide across multiple regimes.

If the FCA considers that periodic collection of client categorisation data is necessary to support monitoring, we would encourage a more targeted approach, for example focussing on higher-risk firms, using time-limited or thematic data requests, or drawing on existing supervisory engagement and complaints data, before introducing a standing return application to all firms. This would help ensure effective monitoring while avoiding unnecessary operational burden and support the quality and efficiency of FCA supervision.

Client classification beyond the Handbook

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

Other regimes

It is essential for the FCA and HM Treasury to ensure that the proposed changes to client categorisation are accompanied by corresponding changes across related regulatory regimes, particularly MiFIR, but also other legislation that cross-refers to existing client categorisation concepts.

Without appropriate alignment, there is a risk that private capital firms remain subject to legacy MiFIR-derived obligations that continue to assume retail-style market and liquid trading activities. This would undermine the practical benefits of the proposed reforms and could perpetuate inconsistencies across categorisation requirements, increasing complexity rather than reducing it.

In addition to MiFIR, a number of other legislative frameworks cross-refer, directly or indirectly, to the existing client categorisation (often by reference to MiFIR concepts). These include for example, AIFMR, the UK PRIIPs Regulation (to the extent it continues to apply at the time the changes take effect), and the Public Offers and Admissions to Trading Regulations 2024. This underlines the importance of ensuring that reforms to client categorisation are implemented across the wider regulatory framework.

Ensuring consistency across the Handbook and MiFIR is therefore necessary to deliver meaningful improvements for private capital firms. It is also relevant to the FCA's secondary objective to support the international competitiveness and growth of the UK economy, as misaligned or duplicative requirements risk placing UK-based private capital firms at a competitive disadvantage relative to other types of UK firm and comparable firms in other

jurisdictions. We are keen to support the FCA and HM Treasury in ensuring delivery of a consistent regime.

On a related note, while recognising this is primarily a matter for HM Treasury, we consider there would be merit in greater alignment of exemptions for professional clients across the financial promotions regime, including under the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 and the PCIS Order. A more consistent approach to the treatment of professional clients across these regimes would help reduce complexity and improve the overall coherence of the regulatory framework.

COBS 4

We also note that certain FCA financial promotion rules (including in COBS 4) apply even in respect of professional clients. While we recognise that this is not the primary focus of this consultation, we consider there may be merit in revisiting whether a more targeted exemption for professional clients would be appropriate. This issue was raised in our response to discussion chapter 4 of CP24/24 and remains relevant in the context of the proposed reforms.

We would welcome continued engagement with the FCA on how best to ensure that reforms to client categorisation are implemented in a coherent and joined-up way across the wider regulatory framework.

Transitional arrangements

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 resettling how firms differentiate between retail and professional clients?

No. UK Private Capital understands the FCA's objective in proposing a one-off re-categorisation exercise to support the transition to a revised client categorisation framework. In principle, a reset of categorisation where firms are providing new products or services may be appropriate.

However, for private capital, it is essential that any one-off re-categorisation requirement is applied in a proportionate and practical way that reflects the nature of closed-ended, illiquid fund structures and funds which are designed to be held as a long-term investment as well as existing FCA practice in other regulatory contexts.

Under the FCA's established approach to suitability and appropriateness, firms are generally required to assess clients at the point of providing a service, and to revisit those assessments where there is a material change in circumstances or where a new service is being provided. Firms are not expected to reassess clients where no service is being provided or where the relationship is static. We consider that a similar, trigger-based approach should apply in the context of any one-off re-categorisation exercise.

As set out in our responses to Questions 2, 3, 6 and 13, private capital are long-term, illiquid investments where investors commit capital at the outset and do not receive an ongoing investment service in the manner contemplated by retail or advisory business. Once an investor is admitted to a fund, there is generally no opportunity to divest, or doing so could be detrimental to the investor, and no new service or offering is provided to which a re-categorisation exercise could meaningfully attach.

In this context, requiring firms to re-categorise existing investors solely because of a change in the regulatory framework would add significant operational cost and complexity, without delivering meaningful investor protection benefits. Many private capital funds made available to professional clients are global funds. The UK would be a significant global outlier if it were to require that existing investors in global funds be reclassified due to a change in the UK regime.

We therefore recommend that any one-off re-categorisation requirement should apply only where a firm is providing a new or ongoing service or offering to the client after the implementation of the revised rules. Where an investor is already invested in a private capital fund and no new service is being provided or offer made, there should be no requirement to reassess or re-categorise that investor.

This approach is consistent with the FCA's broader emphasis in CP25/36 on proportionality, outcomes-based regulation and avoiding unnecessary reassessment, and would allow the revised client categorisation regime to be implemented without unnecessary disruption to private capital in the UK.

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?

UK Private Capital does not anticipate that the proposed changes to client categorisation should, in themselves, require private capital firms to vary their Part 4A permissions, provided the framework is implemented in a proportionate and practical manner.

Many private capital firms hold permissions to deal only with professional clients and structure their business models, systems and controls on that basis. A private capital firm's clients are typically limited to the fund that it manages and/or affiliates or third parties which manage such funds, rather than the investors in such funds. As a result, we consider that such firms could continue to provide their existing services even if investors in their funds were classified as retail clients.

UK Private Capital therefore considers that the proposals should not drive firms to seek changes to their Part 4A permissions.

Chapter 4: Conflicts of interest

Terminology changes

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

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?

We support the FCA's proposals to simplify and rationalise the conflicts of interest framework by broadly applying the same rules across relevant firms, subject to a clear and explicit proportionality principle.

We do not consider that the proposed changes in terminology will make a material difference to the operation of the rules in practice. We have, however, identified a small number of minor drafting points which the FCA may wish to consider:

- New SYSC 10.1.3R(3)(c) and (e) appear to be duplicative of one another.
- The cross-references in SYSC 10.1.7-AG and SYSC 10.1.8R(2) appear to refer to SYSC 10.1.7R(4) but should instead refer to SYSC 10.1.7R(3).

Subject to these minor points, UK Private Capital supports the proposed changes and considers that they represent a sensible simplification and refinement of the conflicts of interest framework.

We congratulate the FCA team on working through this complex area to deliver a simplification of the rules without changing their substance. 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 sincerely,



Tim Lewis
Chair, UK Private Capital Regulatory Committee