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Dear Deirdre Boyd,

The high-level comments of the European Venues & Intermediaries Association [["EVIA"](#)<sup>1</sup>] together with selected responses to the consultation paper are set out below.

Clearly as wholesale markets intermediaries our scope in respect of client is restricted to institutional clients, so much of this review which is concerned with individuals remains out of scope for us. In this respect a simpler "wholesale or retail" approach has been our longstanding preference in order to get on with business without classifying and categorising market segments within and between wholesale firms between ECP and PC on the required frequent basis. As it stands the conjoined "per-se" and "elective" Professional Client classification acts as an obfuscation for both opting-up entities together with international banks opting-down.

Allied to this we urge the FCA to take a more categoric approach to the disapplication of the Consumer Duty to wholesale markets.

One area of particular interest would be for a fast-track route for Local Authorities and similar entities to opt into the wholesale markets.

## Answers to Questions

### Elective professional 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, No, No view]*

*If yes or no, please explain your answer.*

Yes.

Member firms only accept professional clients or ECPs as customers in the wholesale markets. The FCA approach as proposed should make that application more straightforward.

We note that the majority of elective professional customers are in fact local authorities.

### Categorisation of clients with investable assets above £10 million

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<sup>1</sup> [EVIA - Policy and Regulatory Affairs](#)

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

Yes.

*If yes or no, please explain your answer.*

Member firms only accept professional clients or ECPs as customers in the wholesale markets. The FCA approach as proposed should make that application more straightforward.

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

[Yes, No, No view]

No view.

*If yes or no, please explain your answer.*

N/a

### 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? [Yes, No, No view]

Yes.

*If yes or no, please explain your answer.*

From a wholesale markets perspective, we would suppose that the 'Relevant Factors' as set out would only apply to Natural Persons as individuals and not to 'per se clients' or their equivalents (firms and institutional clients who would never reasonably be considered to default to retail). Perhaps this could be made clearer.

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

No view.

*If yes or no, please explain your answer.*

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The Handbook guidance cited solely considers Natural Persons as individuals.

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

Yes.

*If yes or no, please explain your answer.*

We agree with the points set out in paragraph 3.50

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

Yes.

*If yes or no, please explain your answer.*

This maintains the current approach. We agree with the points set out in paragraph 3.56.

## 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? [Yes, No, No view]

Yes.

*If yes or no, please explain your answer.*

We concur that member firms have established and effective processes for assessing the capability of local authorities and LGPS and no change is warranted currently. The proposed measures in the Pensions Bill likely simplify procedures on account of the scale of the outcomes and therefore are unlikely to require any commensurate changes.

## 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? [Yes, No, No view]

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Yes.

*If yes or no, please explain your answer.*

From a wholesale markets perspective, we would suppose that the 'informed consent' as set out would only apply to Natural Persons as individuals and not to 'per se clients' or their equivalents (firms and institutional clients who would never reasonably be considered to default to retail).. Perhaps this could be made clearer.

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

No view.

*If yes or no, please explain your answer.*

### Communication with clients prior to categorisation

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

No.

*If yes or no, please explain your answer.*

The measures set out should be applicable to Natural Persons as individuals but not to 'per se clients' or their equivalents (firms and institutional clients who would never reasonably be considered to default to retail). Clearly most wholesale firms do not admit retail clients so any such recourse to such a base assumption could not be logical.

**Question 12:** *Will our proposals for change, taken together, allow firms to have appropriate engagement with clients about opting out, without communicating financial promotions about specific professional-only products before a firm has met the conditions for categorising a client as elective professional? [Yes, No, No view]*

No.

*If yes or no, please explain your answer.*

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We would suppose the measures set out should solely be applicable to Natural Persons as individuals but not to firms and institutional clients who would never reasonably be considered to default to opt-out. Clearly most wholesale firms do not admit retail clients so any such recourse to such a base assumption could not be logical.

## 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? [Yes, No, No view]*

Yes.

*If yes or no, please explain your answer.*

This appears sensible.

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

No / No view

*If yes or no, please explain your answer.*

We assume “consumers” to be codified as retail clients under the consumer duty and therefore separate from per se clients or their equivalents in wholesale markets.

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

No view

*If yes or no, please explain your answer.*

## Per se categorisation

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

Yes.

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

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

Yes.

*If yes or no, please explain your answer.*

**Question 18:** Do you agree with our proposals to remove the distinctions in thresholds for categorising large undertakings and trustees other than pension trustees for MiFID and non-MiFID business? [Yes, No, No view]

Yes.

*If yes or no, please explain your answer.*

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

Yes.

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

No.

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

Yes.

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

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

Yes.

If yes or no, please explain your answer.

Whilst we support greater clarity across all expectations on systems, controls, policies, procedures and records; it's likely that these can be supplied in the Handbook as Guidance rather than the Rules proposed. Evidently use cases within and across firms are all different, with guidance to principles making for a more applicable approach than a wider rules-based approach. For instance the application of a rule may result in a great deal of no-value-added duplication of records whereas firms should be able to apply their judgement.

### Policy, procedures and record keeping

#### Application

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

No view

If yes or no, please explain your answer.

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

Yes.

If yes or no, please explain your answer.

This adds clarity and simplifies for the underlying investors or participants in a fund.

### Client classification beyond the Handbook

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

No view [None of the categories are relevant to IDB or Trading venue customers: Qualified investor definition in POATRs; Professional investor definition in AIFMD; Qualifying individual definition in PISCES]

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Please explain your answer.

[None of the categories are relevant to IDB or Trading venue customers: Qualified investor definition in POATRs; Professional investor definition in AIFMD; Qualifying individual definition in PISCES]

### 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 resetting how firms differentiate between retail and professional clients? [Yes, No, No view]

No.

If yes or no, please explain your answer.

The proposed approach by the FCA is broadbrush and burdensome. Clearly firms are best placed to consider the extent to which any one-off re-categorisation of existing elective professional clients should be undertaken adequately and considered in relation to the existing review process.

More pointedly, for wholesale firms who cannot accept retail clients this would not be a re-categorisation but a possible termination, the scope for which is already catered for in ongoing business conduct.

Where the majority of existing elective professional clients are local authorities or similar institutions and pensions, we fail to the value or the range of outcomes in a Panglossian one-off re-categorisation project.

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

No.

If yes or no, please explain your answer.

A consequential variance of a firm's part 4A permissions appears highly unlikely in the case of wholesale market firms with no retail customers.

## Chapter 4: Conflicts of interest – feedback and proposals

### Proposed SYSC 10 rules & Terminology changes

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

Yes.

*If yes or no, please explain your answer.*

Whilst all the proposed changes are very minor, they collectively make sense, the harmonisation is both helpful and will aid the semantic automation of the Handbook in due course.

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

Yes.

*If yes or no, please explain your answer.*

All the proposed changes to the conflicts of interest rules are very minor and we would urge the FCA to further consider the reduction of burdens imposed by these rules where firms are operating in entirely wholesale markets without retail clients.

## Personal account dealing rules

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

No view

*If not, what alternative would you suggest?*

N/a

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

No view

*If yes or no, please explain your answer.*

N/a

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

None.

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