

# REDEFINING PROFESSIONAL CLIENTS – THE EU RETAIL INVESTMENT STRATEGY PROPOSALS AND THE FCA'S PROPOSED NEW APPROACH TO CLIENT CATEGORISATION

Historically in Europe and the UK, private fund managers have operated within regulatory regimes that draw a clear distinction between retail and professional investors. As a result, retail investors have typically faced restricted access to non-standard or higher-risk fund and alternative products unless they qualify as professional investors under relatively stringent criteria. In addition, disclosure and suitability requirements for retail investors have been regarded as complex and overly prescriptive. The recent legislative proposals of the European Commission and the FCA's consultation seek to clarify and streamline the regulatory framework in a way that balances investor protection with better access to more complex investment strategies.

The Retail Investment Strategy ("**RIS**") is part of a broader effort by the European Commission and EU institutions to modernise and deepen EU capital markets by making investing easier, fairer, and more transparent for retail investors. It sits within the wider Savings and Investments Union initiative - a long-term drive to mobilise European savings and channel them into productive investments.

On 24 May 2023, the European Commission published initial proposals for wide-ranging changes to further the RIS, including targeted amendments to several key pieces of EU legislation relevant to private funds: the Markets in Financial Instruments Directive II ("**MiFID II**"), the Packaged Retail and Insurance-based Investment Products Regulation ("**PRIPs**"), and the Alternative Investment Fund Managers Directive ("**AIFMD**"). These proposed changes include: broadening the professional client categorisation test under MiFID II, improving and simplifying the readability of the Key Information Document ("**KID**") required under PRIPs and requiring managers to give more thought to costs charged to investors under AIFMD. Following review by the European Parliament and the Council of the European Union, a provisional political agreement was reached on 18 December 2025 (the "**RIS Proposals**"). With respect to professional and retail client categorisation in the UK, the Financial Conduct Authority ("**FCA**") is following a similar path and published a **consultation paper** on 8 December 2025 proposing amendments and certain simplifications to its rules. The FCA's proposals represent a significant reform of onshored EU-derived legislation.

This briefing focuses on key changes under the RIS Proposals and the FCA's consultation paper affecting private fund managers.

## AMENDMENTS TO AIFMD – PRESCRIPTIVE RULES ON COSTS

The RIS Proposals seek to clarify the difference between due and undue costs charged to investors in alternative investment funds and to introduce procedural obligations and regulatory oversight to enable managers to enforce these standards consistently.

Managers will need to identify and quantify all costs and charges borne by investors and assess them against product peer groupings and supervisory benchmarks, to be introduced nationally over four years from entry into force of the new rules.

Under the RIS Proposals, managers must also clearly document their process for determining that costs charged to investors are necessary, proportionate, consistent with fund documents, and competitive when benchmarked.

These changes, if implemented, would enable investors to compare fund cost profiles more easily across different investment strategies; however, it remains to be seen how bespoke products will be grouped for benchmarking and cost comparison. In practice, this may be challenging or unfeasible given the private nature of most funds subject to AIFMD.

## AMENDMENTS TO PRIIPS – REVISED REQUIREMENTS FOR KEY INFORMATION DOCUMENTS

The RIS Proposals seek to improve the Key Information Document (“KID”) required under PRIIPs, making information on funds and other financial products more useful and accessible to retail investors.

Under the RIS Proposals, the highly prescriptive KID requirements will be updated to make disclosures on costs, risks, and expected returns clearer and easier to compare, including a prominent ‘product at a glance’ section. All KIDs will also be required to be digitally accessible. If the RIS Proposals are adopted, the European Supervisory Authorities will publish updated KID templates in due course. It is difficult to assess whether these changes can meaningfully simplify KIDs until such templates are available.

## AMENDMENTS TO MiFID II – CLIENT CATEGORISATION

Many European and UK private fund managers are limited by their regulatory permissions to dealing with professional clients and eligible counterparties and are required to categorise their clients. The RIS Proposals adjust current EU client categorisation rules under MiFID II by lowering the threshold for a client to “opt up” from retail to professional status. In doing so, private fund managers will be permitted to offer their funds to a wider range of investors. This is expected to result in increased access to capital and a lighter compliance burden.

Under the new framework, more retail investors would be able to opt up, provided they meet at least two of the criteria in the middle column below. The FCA's proposals, which similarly widen the criteria for professional clients, are set out in the right-hand column below.

<b>Current Position under MiFID II and the FCA Handbook</b> Client meets at least two of the following criteria:	<b>RIS Proposal – EU investors</b> Client meets at least two of the following criteria:	<b>FCA Proposals – UK investors</b>
Carrying out 10 transactions per quarter over the previous four quarters.	Carrying out either: <ul style="list-style-type: none"> <li>■ 15 significant transactions over the past three years, <b>or</b></li> <li>■ 30 transactions over the previous year, <b>or</b></li> <li>■ 10 transactions over €30,000 in unlisted companies over the past five years</li> </ul>	Replace the quantitative test in COBS 3.5.3R(2) and derived from MiFID II (for all clients except local authorities) with an enhanced qualitative assessment, such that managers will need to: <ul style="list-style-type: none"> <li>■ assess clients' expertise, experience, and knowledge in a robust, holistic manner; and</li> <li>■ take into account a set of "relevant factors" including clients' professional experience (focusing more on individuals' understanding of investment risk, rather than prescriptive employment history within sectors), trading history, financial resilience, and understanding of risk and objectives for opting out of retail client protections.</li> </ul>
Having a financial instrument portfolio size exceeding <b>€500,000</b> at the time of making the investment.	Having a financial instrument portfolio size exceeding <b>€250,000</b> on average over the past three years.	
Working in a professional position in the financial sector for at least one year.	Working in a professional position in the financial sector for at least one year <b>or</b> providing proof of education or training in these activities and an ability to evaluate risk.	

Despite the RIS Proposals specifying that clients must meet two of the criteria in the second column of the table above for opt-up eligibility, there is an important limitation - the training and education criterion (which can be relied upon if an individual has not worked in a professional position in the financial sector for at least a year) may not be combined with the financial portfolio criterion. This means that if relying on the training and education criterion, individuals must also be able to demonstrate that they have carried out 15, 30 or 10 transactions over the corresponding time periods at the relevant values to be able to opt-up to professional status. In practice, this means the changes under the RIS Proposals are particularly relevant to individuals working in the financial sector but may not extend to other retail investors.

Separately, in addition to the qualitative assessment set out in the table above, the FCA has proposed to introduce a new, alternative "wealth-only" assessment for certain high net worth individuals, which would allow managers to categorise certain individuals as elective professional clients where the individual has investable assets (meaning a portfolio of designated investments and/or cash) of at least £10 million and provides informed consent. In this case, the enhanced qualitative test set out in the table above will not apply.

In addition, whilst the FCA has not proposed to introduce a requirement for periodic review of client categorisation, it has proposed to clarify the obligation to reassess a client's categorisation as an elective professional investor if managers become aware, or should reasonably suspect, that a client no longer meets the threshold of a professional

client. The FCA has specified that this may be the case for example if the manager has had no interaction with an individual investor for two years or more, so could not reasonably assume their circumstances remain unchanged.

The FCA has also proposed to simplify the per se professional client list by adopting a broader definition whereby any entity authorised or regulated in any country to operate in financial markets may be treated as a per se professional client, including special purpose vehicles controlled by such entities.

### NEXT STEPS AND TIMING

The RIS Proposals are expected to be finalised and published in early 2026. As they will take the form of a directive, Member States will have to transpose the new rules within 24 months of publication in the EU's Official Journal, with application required within 30 months. The exception is the PRIIPs amendments, which will apply 18 months after publication. On this basis, the RIS Proposals would apply from the end of 2028 at the earliest, and the PRIIPs amendments from the end of 2027. Managers should monitor the final text once published, assess the impact and plan for implementation.

The FCA consultation closed on 2 February 2026, and the final position and information on the implementation timeline is awaited later in 2026. If adopted, the FCA's proposals would considerably relax and clarify the current client categorisation regime for FCA-authorised firms, enabling them to deal with more individual investors and potentially widening access to alternative investment products.

## FOR MORE INFORMATION

If you would like more information about the topics raised in this briefing, please speak to your regular contact at Weil or to the authors listed below.



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