RETAIL INVESTMENT STRATEGY

CLIENT CATEGORISATION REGIME

AMAFI and FBF amendment proposals

Dans le contexte de la préparation de la réunion du Conseil du 13 octobre 2025 sur la Retail Investment Strategy, l'AMAFI et la FBF ont travaillé à des amendements communs sur le régime de catégorisation des clients issus de MiFID II.

Ceux-ci ont été adressés le 10 octobre dernier à la DGT et sont présentés ci-après.

In preparation for the Council meeting on 13 October 2025 regarding the Retail Investment Strategy, AMAFI and FBF worked together on joint amendments concerning the client categorisation regime under MiFID II.

These amendments were sent to the DGT on 10 October and are presented below.

AMENDMENT NO 1

(968a) Danish Presidency Proposal: *Annex I, fourth paragraph a*	*AMAFI-FBF Amendment*
- the client has carried out, in significant size, on the relevant market at least a) 15 transactions per year over the last three years, or b) 30 transactions over the previous year, or [PCY proposal from 4 July 2025] c) [5] transactions directly in unlisted companies over the previous year where each transaction amounts to at least EUR [100.000]. Monthly transactions in an investment plan are considered as only one transaction, unless they are of significant size,	- the client has carried out, in significant size, on the relevant market at least a) **10** ~~**15**~~ transactions per year over the last three years, or b) **20** ~~**30**~~ transactions over the previous year, or [PCY proposal from 4 July 2025] c) **[2] [5]** transactions ~~**directly in**~~ **either on (i)** unlisted companies**' financial instruments, (ii) collective investment undertakings whose investment strategy is to invest, directly or indirectly, in unlisted companies, (iii) financial instruments which according to MIFIR do not have a liquid market,** over the **[two]** previous year where each transaction amounts to at least EUR ~~**[100.000]**~~ **[50.000]**. **When assessing the number of transactions on the asset referred to in points (i) through (iii), indirect investments in such assets through unit-linked insurance should be taken into account.** **d) 4 transactions in collective investment undertakings over the past 2 years where each direct commitment to the fund amounts to at least EUR 100.000** Monthly transactions in an investment plan are considered as only one transaction, unless they are of significant size

Justification

In order to foster investment in the real economy and support the long-term financing of European major transitions highlighted in the Draghi report, it is essential not to hinder private investments in capital markets and to enable access to assets—such as private equity or corporate bonds—for investors who possess sufficient expertise.

However, the current transaction frequency criterion proves difficult to apply uniformly across asset classes, especially for such instruments, which are not frequently traded. For example, an investor who regularly invests in private equity funds typically conducts no more than two to three transactions per year and may not invest every year. According to experts, the threshold as it is would not be met by more than 5 or 6 people within the EU – it is only by decreasing these numbers significantly that item (c) would have an impact at all. Likewise, for significant transactions, it is important to take into

account investment via life insurance contracts, which are the predominant way to invest in certain Member States (please refer also to amendment No 6).

Concerning the new criteria d), while we support the idea of a frequency criteria adapted to business angels, it leaves out investments made by entrepreneurs and high net worth individuals in long-term equity funds. This is despite the obvious role these can play in supporting not only start-ups but also scale-ups, something that typical business angels can't do. As such, the Presidency proposal on its own could exacerbate the scale-up gap by redirecting capital towards investments in smaller tickets.

We therefore suggest extending the criteria proposed by the Danish Presidency to investments in funds with higher minimum tickets (based on EuVECA and Prospectus thresholds, which are also applied in most Member States' national law). The (much) higher threshold and the reference to direct commitments will entirely discourage investments in funds through trading platforms.

Please note that it is possible to further restrict this criterion, if needed, for example by limiting it to closed-ended funds (which are the typical illiquid funds where these large investments are made) or by raising the threshold (200K could still be ok for most investors targeted with this change).

In any case, as clarified under amendment No 5 and 7 the change in category will be subject to a previous robust assessment of the clients' expertise, ensuring that such products are not offered inappropriately. This approach strikes a balanced compromise between investor protection and the goal of mobilising private capital to support the Union's economic development.

AMENDMENT NO 2

(969) Commission Proposal and EP mandate: *Annex I, fourth paragraph, amending provision, first paragraph*	*AMAFI-FBF Amendment*
- the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments exceeds EUR 250 000 on average during the last 3 years,	- the size of the client's financial ~~**instrument**~~ portfolio, defined as including cash deposits**,** ~~**and**~~ financial instruments **and insurance-based investment products** exceeds EUR 250 000 on average during the last 3 years.

Justification

Assets held in insurance-based investment products (IBIPs), including certain life insurance contracts (assurance-vie) are very similar to those held in financial accounts. There is no reason for not considering the IBIPs when assessing clients' portfolio as regulation between these two categories is becoming increasingly consistent. This can have a major impact since, for instance, in France, where households invest a significant part of their savings in IBIPS.

AMENDMENT NO 3

(970) *Annex I, fourth paragraph, amending provision, numbered paragraph (—)*	*AMAF-FBF Amendment*
- the client works or has worked in the financial sector or undertaken capital market activities requiring to buy and sell financial instruments and/or to manage a portfolio of financial instruments for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.	- the client works or has worked in ~~**the financial sector or undertaken capital market**~~ activities requiring **them:** - to buy**,** ~~**and**~~ sell **or structure** financial instruments and/or - to manage a portfolio of financial instruments for at least one year in a professional position, **and/or** - **to have** ~~**which requires**~~ knowledge of the transactions or services envisaged**, such as CEOs, CFOs, heads of Compliance, internal controller, auditor of regulated financial companies, relevant position in family offices, business angel or manager of patrimonial holdings and all compliance, legal, marketing, risk, and front-office staff (traders, asset managers, structurers) directly covering financial markets,** **or the client can provide the firm with proof of recognised education or training that evidences an understanding of the relevant transactions or services envisaged and the ability to evaluate the risks adequately[1].** **In addition, a client who seeks to carry out a transaction in a financial instrument for an amount of 100.000€ can be classified as a professional client for the purposes of this transaction regardless of the satisfaction of the criteria above for the purposes of this type of financial instruments.**

Justification

The understanding of the characteristics and risks of financial instrument may be acquired through professional experiences in a wider range of positions not limited to those the financial sector.

We propose introducing an additional stand-alone criterion for private assets, based on the "size of commitment" (EUR100k threshold, which defines what "sophisticated investors" are in Article 6 of the EU VECA Regulation), and subject to the condition that such investment is considered suitable for the client. We support the goal of the PCY to facilitate long-term investment in real economy. However,

[1] Council mandate.

currently, many private assets funds can only be bought by professional investors. Therefore, for these products, it is not relevant to require a previous number of transactions, that are not available to retail investors. To us, clients should be considered as professional for private assets if (i) they intend to invest a minimum of 100.000€, in coherence with the EU VECA Regulation and (ii) such investment is considered suitable for them. [If this proposal is not retained, please see our alternative proposal in criterion d) in Amendment No 1].

ADDITIONAL PROPOSALS

AMENDMENT NO 4

Modification to Annex II Section I of MiFID II

Current MiFID II	*AMAFI-FBF Amendment*
Section I. Categories of client who are considered to be professionals The following shall all be regarded as professionals in all investment services and activities and financial instruments for the purposes of the Directive. (1) Entities which are required to be authorised or regulated to operate in the financial markets. The list below shall be understood as including all authorised entities carrying out the characteristic activities of the entities mentioned: entities authorised by a Member State under a Directive, entities authorised or regulated by a Member State without reference to a Directive, and entities authorised or regulated by a third country: (a) Credit institutions; (b) Investment firms; (c) Other authorised or regulated financial institutions; (d) Insurance companies;	**Section I. Categories of client who are considered to be professionals** The following shall all be regarded as professionals in all investment services and activities and financial instruments for the purposes of the Directive. (1) Entities which are required to be authorised or regulated to operate in the financial markets. The list below shall be understood as including all authorised entities carrying out the characteristic activities of the entities mentioned: entities authorised by a Member State under a Directive, entities authorised or regulated by a Member State without reference to a Directive, and entities authorised or regulated by a third country: (a) Credit institutions; (b) Investment firms; (c) Other authorised or regulated financial institutions; (d) Insurance companies;

(e) Collective investment schemes and management companies of such schemes; (f) Pension funds and management companies of such funds; (g) Commodity and commodity derivatives dealers; (h) Locals; (i) Other institutional investors;	(e) Collective investment schemes and management companies of such schemes; (f) Pension funds and management companies of such funds; (g) Commodity and commodity derivatives dealers; (h) Locals; (i) Other institutional investors; **(j) Companies established with the corporate purpose of buying, holding and selling financial instruments, if they meet own funds requirement by way of a minimum investment amount of EUR 1 000 000;** **(k) Any entity owned solely by entities belonging to the above categories.**

Justification

1. *Family offices are created for clients, and managed by persons who possess the experience, knowledge and expertise to make their own investment decisions and properly assess the risks that it incurs.*
2. *Firms, including banks, may have subsidiaries or create SPV which do not belong to (a) to (i) categories. There is no reason for these spin-offs of professional clients, being totally controlled by professional clients, not to be treated as their parents' firms. Such a differentiated qualification creates unnecessary barriers and complexity.*

AMENDMENT NO 5

Modification to Annex II Section II. 1 of MiFID II

Current MiFID II	*AMAFI-FBF Amendment*
Section II (…) **II.1. Identification criteria** Investment firms shall therefore be allowed to treat any of those clients as professionals provided the relevant criteria and procedure mentioned below are fulfilled. Those clients shall	**Section II (…)** **II.1. Identification criteria** Investment firms shall therefore be allowed to treat any of those clients as professionals provided the relevant criteria and procedure mentioned below are fulfilled~~**. Those clients**~~

not, however, be presumed to possess market knowledge and experience comparable to that of the categories listed in Section I.	~~shall not, however, be presumed to possess market knowledge and experience comparable to that of the categories listed in Section I.~~
Any such waiver of the protection afforded by the standard conduct of business regime shall be considered to be valid only if an adequate assessment of the expertise, experience and knowledge of the client, undertaken by the investment firm, gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making investment decisions and understanding the risks involved.	Any such waiver of the protection afforded by the standard conduct of business regime shall be considered to be valid only if an adequate assessment of the expertise~~, experience~~ and knowledge of the client, undertaken by the investment firm, gives reasonable assurance, in light of the nature of the transactions **and the risks associated with the financial instruments** or services envisaged, that the client is capable of making investment decisions and understanding the risks involved. **Such assessment should not involve any self - assessment.**
(…)	(…)
In the course of that assessment, as a minimum, two of the following criteria shall be satisfied:	**In addition to** ~~**In the course of**~~ that assessment, as a minimum, two of the following criteria shall be satisfied:

Justification

It is recalled that before deciding to accept any request for waiver, investment firms are required to take all reasonable steps to ensure that the client requesting to be treated as a professional client meets the relevant requirements stated in Section II.1.", including "an adequate assessment of the expertise, experience and knowledge of the client, undertaken by the investment firm,[that] gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making investment decisions and understanding the risks involved."

Therefore, it is to us contradictory to state that" professional clients on option shall not be presumed to possess market knowledge and experience comparable to that of the categories listed in Section I. Such provision creates unnecessary complexity as well as legal uncertainty. The third amendment aims at clarifying that the assessment of the client's expertise experience and knowledge of the client should not be based on self-assessment to address the risk that clients may tend to overestimate their knowledge.

The fourth amendment aims at clarifying, as provided under Answer to Question 3 of Section 11 of ESMA's Q&As on MiFID II and MiFIR investor protection and intermediaries topics, that the two conditions, namely (i) the assessment of the client's expertise and (ii) the satisfaction of the relevant criteria, must be fulfilled cumulatively for the client to qualify for the opt-up procedure. Such clarification, enshrined at Level 1, represents a significant step forward in strengthening this requirement, given that ESMA's Q&As do not, in themselves, have binding legal effect.

AMENDMENT NO 6

Modification to Annex II Section II. 1 of MiFID II

Current MiFID II	*AMAFI-FBF Amendment*
Section II (…) **II.1. Identification criteria** In the course of that assessment, as a minimum, two of the following criteria shall be satisfied: (…)	**Section II (…)** **II.1. Identification criteria** In the course of that assessment, as a minimum, two of the following criteria shall be satisfied: (…) **The assessment of the number of transactions mentioned above includes transactions executed on unit-linked life insurance.**

Justification

Transactions on unit-linked life insurance are very similar to transactions on financial instruments. There is no reason for not considering transaction on unit-linked life insurance when assessing the experience of clients, especially since regulation between these two categories is becoming increasingly consistent. This can have a major impact since, for instance, in France, households invest a significant part of their savings in IBIPS and in particular in unit-linked life insurance.

AMENDMENT NO 7

Modification to Annex II Section II. 2 of MiFID II

Current MiFID II	*AMAFI-FBF Amendment*
Section II (…) **II.2. Procedure** Those clients may waive the benefit of the detailed rules of conduct only where the following procedure is followed: - they must state in writing to the investment firm that they wish to be treated as a professional client, either generally or in respect of a particular investment service or transaction, or type of transaction or product,	**Section II (…)** **II.2. Procedure** Those clients may waive the benefit of the detailed rules of conduct only where the following procedure is followed: - they must state in writing to the investment firm that they wish to be treated as a professional client, either generally or in respect of a particular investment service or transaction, or type of transaction or product, - the investment firm must give them a clear written warning of the protections and investor

- the investment firm must give them a clear written warning of the protections and investor compensation rights they may lose, - they must state in writing, in a separate document from the contract, that they are aware of the consequences of losing such protections. Before deciding to accept any request for waiver, investment firms must be required to take all reasonable steps to ensure that the client requesting to be treated as a professional client meets the relevant requirements stated in Section II.1.	compensation rights they may lose, - they must state in writing, in a separate document from the contract, that they are aware of the consequences of losing such protections. Before deciding to accept any request for waiver, investment firms must be required to take all reasonable steps to ensure that the client requesting to be treated as a professional client meets the relevant requirements stated in Section II.1. ***Investment firms may propose clients other than those mentioned in section I, including public sector bodies, local public authorities, municipalities and private individual, to be treated as professionals. Such proposal should be possible under two cumulative conditions:*** ***i) the clients should be deemed sufficiently competent according to the assessment provided under II.1;*** *ii)* ***a balanced description of the advantages and disadvantages of this change in light with their personal situation has been previously presented to the clients.*** ***If, following this information, the client wishes to be treated as a professional, the procedure set out in the current section shall be followed.***

Justification

Clients who have been classified as "non-professional" by default, sometimes for many years, are often unaware that they can request a change of category. If investment firms are not in a position to propose their clients to opt up to professional status, this optional regime risks remaining purely theoretical, since it is highly unlikely that a client would spontaneously request it.

We therefore recommend clarifying that intermediaries may, propose such a change of category to clients under two cumulative conditions: the clients have fulfilled the assessment provided under II.1, and have been presented a balanced description of the advantages and disadvantages of each category in the light of their personal situation. If, following this information, the client wishes to request a change of category, this should be done in accordance with the procedures already set out in the directive. This amendment ensures that only clients with the appropriate level of expertise will be offered the option to move to a less protective categorisation.