



MANAGED FUNDS
ASSOCIATION

MiFID Coordination
Markets Policy Department
Financial Conduct Authority
25 The North Colonnade
London
E14 5HS.

Submitted via email: cp16-43@fca.co.uk

15 February 2017

Dear Sirs

AIMA and MFA Response to CP16/43 on Markets in Financial Instruments Directive II Implementation – Consultation Paper IV

The Alternative Investment Management Association (**AIMA**)¹ and Managed Funds Association (**MFA**)² (together, **we**) thank the Financial Conduct Authority (**FCA**) for the opportunity to respond to its fourth consultation paper on the implementation of MiFID II '*CP16/43 on Markets in Financial Instruments Directive II Implementation – Consultation Paper IV (the Consultation)*'.³

Our response is targeted at the specialist regimes provisions covered by the Consultation, namely Question 5 covering the update to COBS 18 Annex 1 for collective investment scheme operators, alternative investment fund managers (**AIFMs**) and UCITS.

As noted in our response to '*CP16/29: Markets in financial instruments Directive II implementation – Consultation Paper III*',⁴ we question whether it is appropriate to extend MiFID II standards such as research payments rules to non-MiFID authorised firms undertaking management of collective investment schemes.⁵

Regarding the Consultation, we have particular concerns on the proposal to require full scope AIFMs and other collective investment scheme operators to provide all investors with a periodic breakdown of payments made to specific research providers. We suggest this is disproportionate gold-plating that

¹ AIMA, the Alternative Investment Management Association, is the global representative of the alternative investment industry, with more than 1,600 corporate members in over 50 countries. AIMA works closely with its members to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programmes, and sound practice guides. Providing an extensive global network for its members, AIMA's primary membership is drawn from the alternative investment industry whose managers pursue a wide range of sophisticated asset management strategies. AIMA's manager members collectively manage more than \$1.5 trillion in assets. AIMA is committed to developing industry skills and education standards and is a co-founder of the Chartered Alternative Investment Analyst designation (CAIA) – the industry's first and only specialised educational standard for alternative investment specialists. For further information, please visit AIMA's website, www.aima.org.

² MFA, based in Washington, DC, is an advocacy, education and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry's contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk and generate attractive returns. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, North and South America, and all other regions where MFA members are market participants.

³ Available online: <https://www.fca.org.uk/publication/consultation/cp16-43.pdf>

⁴ Available online: <https://www.fca.org.uk/sites/default/files/cp16-29.pdf>

⁵ Available online: <https://www.aima.org/resource/aima-mfa-draft-response-to-fca-cp16-29-pdf.html>

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could introduce commercial problems: (a) for managers with regard to their research providers; and (b) for research providers with regard to their different clients. In both cases, we believe that the proposed requirements are for a level of information which is of little or no interest to underlying investors in funds. The relevant figure is the aggregate research spend.

We recommend that the proposed obligation to provide a breakdown to fund investors of individual research providers be removed, or at least replaced with an obligation for firms to 'make available' relevant research spending information, which could include provider percentages but only on an anonymised basis.

We would be glad to discuss our proposal further or answer any questions you may have. Please contact Oliver Robinson (orobinson@aima.org) or Adam Jacobs-Dean (ajacobs@aima.org) of AIMA, or Matthew Newell (mnewell@managedfunds.org) of MFA.

Yours sincerely,

/s/

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/s/

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Annex 1

Q5: Do you agree with our proposals to update COBS 18 Annex 1? If not, please give reasons why. In particular, are there any issues affecting internally-managed AIFs that we should consider?

As noted in our response to CP16/29, we question whether it is appropriate to extend MiFID II standards such as research payments rules to non-MiFID authorised firms undertaking management of collective investment schemes. We also have one key concern and a suggested amendment regarding the FCA's proposals for COBS 18 Annex 1.

Aggregate research spending information

We support the objective of ensuring sufficient transparency is offered to fund investors to enable them to make fully informed decisions and to monitor their investments in an optimal manner. However, we are concerned that the proposal for the disclosure of the amount each research provider was paid during the preceding period, contained under Section 4.11(2)(a) and (b) of draft COBS 18 Annex 1 and discussed within paragraph 2.31 of the Consultation, will effectively constitute a disclosure into the public domain, which will introduce commercial problems for:

- (a) *Managers* with regard to their research providers, who are likely to use this sensitive information about the payment to them relative to other providers as leverage in future pricing discussions; and
- (b) *Research providers* with regard to their differing investment management clients if research providers have differing pricing structures (for example charging less to start-up managers).

Moreover, we believe that mandatory disclosures of such granular information are of little or no interest to underlying investors in funds, who, until now, rarely even ask our members about the aggregate level of spending on investment research.

Our recommendation is to instead require only the disclosure of the aggregate levels of research spending across all providers.

We believe that the policy objective of ensuring investors are able to monitor and query levels of research spending would be achieved most proportionately by providing them with a single aggregated figure for research spending during the account period. We consider that such a figure would enable investors to make the key decision of whether they believe spending is too high or too low, as appropriate, with the ability to make *ad hoc* requests for further information as is always the case with fund manager/investor relationships.

We suggest that the proposals also represent gold-plating of the underlying EU requirements set down within Article 13 of the European Commission's Delegated Act - which requires firms merely to provide 'annual information on the total costs that each of them has incurred for third party research'.⁶ To this extent we believe that sub-paragraphs (a) and (b) of the 4.11(2) should be deleted.

⁶ Article 13(1)(c) of 'Commission Delegated Directive with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits', available online: <https://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-2031-EN-F1-1.PDF> The UK of course is already gold plating this provision by virtue of its extension to non-MiFID firms.



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If an additional breakdown is nonetheless viewed as essential by the FCA, **we would strongly recommend that it be made available on an anonymised basis i.e., Provider A, Provider B etc.** We believe that this would help to mitigate commercial risks that the information is subsequently used against the relevant firm by research providers whilst still providing information of equivalent utility – i.e., to enable investors to see the concentration of spending with different anonymised research providers.

'Make available' rather than 'provide'

If the FCA still wishes to enable investors to see a breakdown of research spending on a per-provider basis, **we would suggest that - in addition to such information being fully anonymised - the information be 'made available' by firms rather than 'provided' on a periodic basis.** As stated above, we do not believe that most investors are interested in this granularity of information, but recognise that it could be beneficial to ensure investors are able to request such information if they wish to obtain it.

We, therefore, recommend that the words 'provide' used in Section 4.11 of COBS 18 Annex 1 be amended to 'make available', such that the final rule would read *'A firm using a research payment account must, for each fund it manages, **make available** the following information to investors:...' [emphasis added].*