MANAGED FUNDS ASSOCIATION
The Voice of the Global Alternative Investment Industry
WASHINGTON, DC | NEW YORK

June 21, 2018

Directorate-General for
Financial Stability, Financial Services
and Capital Markets Union
European Commission
1049 Brussels
Belgium

Response submitted via web portal

Re: European Commission sustainable finance proposal

Dear Sir or Madam,

Managed Funds Association ("**MFA**")[1] welcomes the opportunity to provide comments to the European Commission (the "**Commission**") on its proposal for a delegated regulation as regards organisational requirements and operating conditions for investment firms (the "**Draft Delegated Regulation**"). MFA supports the European Commission's aim of promoting sustainable finance within the EU, and of closing the investment gap required to meet European climate and energy targets. Environmental, Social and Governance ("**ESG**") factors are of increasing importance to many investors both in the EU and in the United States, and we welcome the Commission's efforts to enable the asset management industry and the finance sector more generally to meet this increasing demand for sustainability.

MFA supports in particular the aim of the High-Level Expert Group ("**HLEG**") of increasing transparency around products that are "green" or "sustainable" in nature, particularly products that are marketed as such. This increased transparency should enable clients to better assess whether the products and services that they purchase meet their sustainability criteria, and should also allow portfolio managers to make a more informed assessment of how sustainable their overall service is. We also support the client driven approach that the Commission is proposing, which is consistent with the views we expressed

[1] MFA represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent, and fair capital markets. 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 many other regions where MFA members are market participants.

in our January 22, 2018 joint letter[2] with the Alternative Investment Management Association, in response to the Commission's prior public consultation.

Consistent with that approach, MFA believes that there should not be a blanket requirement under Commission Delegated Regulation (EU) 2017/565 (the "**MiFID Org Regulation**") for investment managers to incorporate "ESG considerations" (as defined in the draft Delegated Regulation) into their investment strategies in every case (*e.g.*, where the potential client has expressed no ESG preference). Rather, ESG considerations should only become relevant to the extent that they form an investment objective or preference of the client. With this in mind, MFA believes the Commission should avoid including broad wording requiring investment managers to build "environmental, social and governance considerations" into their suitability assessments under the proposed amendment to Article 54(2)(a) of the MiFID Org Regulation. Instead, as part of the investment manager's suitability assessment, the investment manager could check as to whether a client or potential client has any particular ESG *preferences*. The manager can then determine whether any of its products or services meets the client's ESG preferences (or otherwise make adjustments to existing product offerings to take into account such ESG preferences), and provide such products or services to the client accordingly.

We note that the Commission's proposed amendments to Article 48 of the MiFID Org Regulation would require firms to incorporate ESG considerations into the information they provide to clients or potential clients on investment services in every case. This follows on from the proposed amendments to Article 47, which would require firms providing portfolio management services to disclose details of the types of financial instrument that may be included in the client portfolio "based on the client's investment objectives, including any ESG preferences." While it may be appropriate to disclose general information to a client or prospective client on the ESG profile of a financial instrument or investment strategy, requiring firms to take into account the investment objectives and ESG preferences of a potential client when disclosing information about an investment strategy would be problematic in practice. In particular, firms would no longer be able to work from the same set of information for each potential client; instead, they would need to request that prospective clients disclose their investment objectives (and ESG preferences) in advance, and tailor any information provided to those objectives. This could prove a high bar in practice, since it would require multiple tailored disclosure documents to be produced.

We suggest that a better approach would be to allow investment managers to provide a client or prospective client with general information on what the composition of a fund or portfolio managed by that investment manager might look like in practice. This would then lead to a more detailed discussion with the client around whether that investment strategy would meet the prospective client's investment objectives and ESG preferences.

It is also important to bear in mind that, while a client may have certain ESG preferences, it may view risk or overall financial performance as being the more important

[2] Available at: https://www.managedfunds.org/wp-content/uploads/2018/02/Sustainability-Consultation-22-January-2018.pdf.

criteria for assessing whether the portfolio management service meets its needs. In other words, the Draft Delegated Regulation should not imply that ESG factors should be seen as automatically taking precedence over other investment objectives.

As MFA's members manage alternative investment funds, MFA wishes to make a comment on how ESG could be considered in the investment funds context, notwithstanding that collective investment undertakings are outside the scope of MiFID II.[3] In the context of an alternative investment fund, the fund's offering documents would clearly disclose to investors and potential investors the fund's investment objectives. On the basis of such disclosure, investors decide whether they wish to invest in the relevant fund. To the extent that the investment strategy of the relevant fund does not correspond to an investor's ESG preferences, the investor would simply choose not to invest in that fund (unless the investment manager and client contractually agree to come up with a bespoke approach that suits the ESG objectives of the investor).

MFA would like to reiterate its thanks to the Commission for the opportunity to engage constructively on these issues. We would welcome the opportunity to discuss our views in greater detail. Please do not hesitate to contact the undersigned at +1 (202) 730-2600 with any questions that the Commission or its staff may have regarding this letter.

Respectfully submitted,

Michael N. Pedroni

/s/ Michael Pedroni

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Stuart J. Kaswell

/s/ Stuart Kaswell

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[3] Article 2(1)(i) of MiFID II.