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

September 30, 2013

Via *FCA Website*

Policy, Risk and Research Division
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Re: FCA Consultation Paper CP13/6: *CRD IV for Investment Firms* (July 2013) (the "Consultation Paper")

Dear Sir or Madam:

Managed Funds Association ("**MFA**")[1] welcomes the opportunity to provide responses to the Consultation Paper; MFA's responses to the Financial Conduct Authority's ("**FCA**") questions are set out in the Annex to this letter. Please note that we have only responded to certain questions in the Consultation Paper.

We would be very happy to discuss our comments or any of the issues raised in the Consultation Paper with the FCA. If the FCA has any comments or questions, please do not hesitate to contact Benjamin Allensworth or the undersigned at +1 (202) 730-2600.

Respectfully submitted,

/s/ Stuart J. Kaswell

Stuart J. Kaswell

Executive Vice President &
Managing Director, General Counsel

[1] The Managed Funds Association (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, the Americas, Australia and other regions where MFA members are market participants.

ANNEX

MFA responses to FCA Consultation Paper CP13/6:

"CRD IV for Investment Firms"

MFA Responses to Questions Posed in the Consultation Paper

Q25: Do you agree to our proposal to exercise the discretion in article 95(2) of the CRR to retain current CRD rules in force on own funds requirements (Pillar 1) for BIPRU firms keeping the 'status quo' pending the EU-wide review of what is an appropriate prudential regime as a whole for firms in the investment sector in 2015? If not, please explain why not and propose alternative approaches and the rationale for those approaches.

MFA agrees with and supports the FCA's proposal to keep the "status quo" for UK investment firms. However, given the draft definition of "BIPRU firms," the proposal in its current form may not be able to achieve the intended objective.

Article 95(2) of the Capital Requirement Regulation (EU) 575/2013 ("**CRR**") provides that:

(i) "investment firms" (as defined in the CRR) that are not authorised to provide MiFID investment services 3 (dealing on own account) and 6 (underwriting/placing of financial instruments on a firm commitment basis); and

(ii) those firms referred to in Article 4(1)(2)(c) of the CRR that provide MiFID investment services 2 (execution of client orders) and 4 (portfolio management),

are subject to capital requirements similar to the current requirements (but using the new, stricter definition of "Own Funds" under the CRR and other new calculations).

Article 4(1)(2)(c) of the CRR refers to those firms (which are excluded from the definition of "investment firm") that:

(i) are not authorised to provide MiFID ancillary service 1 (safekeeping and administration of financial instruments);

(ii) are not authorised to hold client money; and

(iii) provide only one or more of the following MiFID investment services: 1 (reception and transmission of client orders), 2 (execution of client orders), 4 (portfolio management) and 5 (investment advice).

The Consultation Paper summarises (in paragraph 6.4) the firms under Article 95(2) of the CRR as those that:

- carry out MiFID investment services 2 (execution of client orders) and/or 4 (portfolio management);
- may carry out MiFID investment services 1 (reception/transmission of order) and/or 5 (investment advice);

- do not carry out MiFID investment services 3 (dealing on own account), 6 (underwriting/placing of financial instruments on a firm commitment basis), 7 (placing of financial instruments without a firm commitment basis) and/or 8 operation of Multilateral Trading Facilities);

- do not carry out MiFID ancillary service 1 (safekeeping and administration of financial instruments); and

- are not permitted to hold client money or client assets.

We understand that the proposal is intended to keep "such firms" (*i.e.*, the firms noted immediately above; see paragraph 6.8 of the Consultation Paper) subject to the current capital requirements so that the "status quo" is maintained for UK firms pending the European Commission's review of a prudential regime for firms in the investment sector by end 2015.

However, under the draft BIPRU 1.1.1G set out in the Consultation Paper, only firms falling within the newly defined category of "BIPRU firms" may take advantage of this "status quo" regime. In the draft Glossary set out in the Consultation Paper, "BIPRU firm" is defined as:

> "*a firm, as defined in article 4(1)(2)(c) of the CRR that is authorised to provide* ***only*** *one or more the following investment services*:
>
> *(a) execution of orders on behalf of clients* [*i.e.*, MiFID investment service 2];
>
> *(b) portfolio management* [*i.e.*, MiFID investment service 4]."
>
> (Emphasis added)

This definition of "BIPRU firm" is much narrower in scope than those firms summarised in paragraph 6.4 of the Consultation Paper (as referred to above) which we understand are intended to benefit from the "status quo" regime.

Since most firms provide other MiFID investment services (*e.g.*, MiFID investment service 1 (reception and transmission of orders)) in addition to those two investment services mentioned in the new definition, they would fall outside the definition of "BIPRU firm" as currently proposed.

If implemented, this would mean that most firms in the UK investment sector would be subject to the CRR capital requirements (which, although similar to the current requirements, are stricter in certain aspects, as referred to above), contrary to the intention of keeping the "status quo."

The discretion provision under Article 95(2) of the CRR provides that:

> *"[c]ompetent authorities may set [the current CRD requirements as implemented in their national measures] for firms referred to in point (2)(c) of Article 4(1) that provide the investment services and activities listed in points (2) and (4) of Section A of Annex 1 to [MiFID] …"*

The provision refers to those firms under Article 4(1)(2)(c) providing MiFID investment services 2 (execution of client orders) and/or 4 (portfolio management); it does not refer to such a firm providing ***only*** those two services (as used in the proposed definition of "BIPRU firm").

As the FCA points out in the Consultation Paper (paragraph 6.16), with which we agree, the "status quo" regime will avoid the need for firms to implement unnecessary changes to systems and capital that otherwise might have had to be undone in a few years time (depending on the outcome of the Commission's review).

We therefore urge the FCA to broaden the proposed definition of "BIPRU firm" to include firms included in paragraph 6.4 of the Consultation Paper and referred to above so that the "status quo" will be maintained as intended.

Q26: Do you agree to our proposal to retain current CRD rules in force on Pillar 2, Pillar 3 and systems and control requirements in SYSC (including the Remuneration Code) for BIPRU firms keeping the 'status quo' pending the EU-wide review of what is an appropriate prudential regime as a whole for firms in the investment sector in 2015? If not, please explain why not and propose alternative approaches and the rationale for those approaches.

MFA agrees with and supports the FCA's proposal to retain current CRD rules on Pillar 2, Pillar 3 and the SYSC systems and control requirements for BIPRU firms. However, as discussed in our response to Q25 above, MFA urges the FCA to broaden the proposed definition of "BIPRU firm" in the manner discussed above so that the intended goal of maintaining the "status quo" can be achieved for UK firms.