



September 1, 2016

Via email: cp16-17@fca.org.uk

Supervision – Investment, Wholesale and Specialists
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Re: MFA Comments on Chapter 10 of Consultation Paper 16/17, Transparency reporting requirements for AIFMs

Dear Sir or Madam:

Managed Funds Association (“MFA”)¹ welcomes the opportunity to provide comments to the Financial Conduct Authority (“FCA”) in response to Chapter 10 of its Quarterly Consultation No. 13 of July 2016 (CP16/17) (the “Consultation Paper”) on transparency reporting requirements for alternative investment fund managers (“AIFMs”) under the Alternative Investment Fund Managers Directive (the “AIFMD” or the “Directive”). We note that for some time, MFA has supported in principle regulations that require hedge fund managers to provide relevant information to competent regulators.² We understand the FCA’s goal of collecting information from master alternative investment funds (“AIFs”) that it does not currently collect; however, we encourage the FCA to consider the issues discussed below before determining whether to implement the proposed expanded reporting requirements.

In general, we believe that EU national competent authorities (“NCAs”) imposing requirements beyond those set out in the AIFMD creates disincentives for non-EU AIFMs to

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 many other regions where MFA members are market participants.

² See, January 2011 MFA letter to ESMA on its call for evidence on implementing measures of the AIFMD, available at: <http://www.managedfunds.org/wp-content/uploads/2011/06/1.14.11-MFA-response-to-ESMA-call-for-evidence.pdf>. See also, March 2012 MFA letter to the Financial Services Authority on its discussion paper on implementation of the AIFMD, available at: <https://www.managedfunds.org/wp-content/uploads/2012/04/MFA-Response-to-FSA-Discussion-Paper-on-Implementation-of-the-AIFMD.pdf>.

market their AIFs to EU investors under Article 42 of the AIFMD by imposing additional costs and creating legal uncertainty, particularly for AIFMs marketing their AIFs into multiple jurisdictions. As noted in the Consultation Paper, requiring master AIFs that are not marketed to UK investors under Article 42 to submit reports containing the information required under Article 24(2) goes beyond the requirements of that Article. While Article 24(5) of the Directive permits NCAs to collect information beyond what is required by that Article, when necessary for the effective monitoring of systemic risk, to avoid the adverse consequences noted above we believe that NCAs should exercise this discretion sparingly and in a proportionate manner. Accordingly, before finalizing the proposed expanded reporting requirements, we encourage the FCA to give further consideration to the costs of the proposed requirements. We further encourage the FCA to consider issues with respect to harmonization of reporting requirements; protection of confidential data; and the lack of guidance for non-EU AIFMs that cease marketing to UK investors under Article 42 of the AIFMD. Each of these issues has a significant effect on the willingness of non-EU managers to market their AIFs to UK investors under Article 42 of the Directive.

Cost-Benefit Analysis

We appreciate that FCA has done a cost-benefit analysis in connection with the proposal; however, we believe that the FCA's analysis underestimates the cost of providing the AIF002 return (Annex IV report) for AIFMs that also submit Form PF to the United States Securities and Exchange Commission. While the Annex IV report and Form PF do contain a number of similar questions, differences between the forms, differences in timing to submit the forms, and differences in interpretations regarding specific items on the forms significantly diminish the ability of AIFMs to efficiently use the preparation of Form PF to assist with completing an Annex IV report (and vice versa). For example, Annex IV and Form PF require different methodologies for the calculation of certain exposures, including derivative positions. As such, and based on input from our members, we believe that the FCA's estimate in paragraph 10.27 of the Consultation Paper that filing an AIF002 would only cost an AIFM that also files Form PF 15% of its Form PF cost significantly underestimates the incremental cost to an AIFM required to file both reports. We further believe that the FCA's estimated annual reporting costs of £2000 to £3000 per AIF for AIFs with a quarterly reporting obligation, set out in paragraph 10.22 of the Consultation Paper, significantly underestimates the costs for many AIFMs.

At paragraph 10.28 of the Consultation Paper, the FCA notes that Belgium, Luxembourg and the Republic of Ireland have implemented the expanded reporting requirements in respect of master AIFs. The FCA then says that "it is likely that a number of the above threshold non-EU AIFMs impacted by this proposal are already submitting an equivalent article 24 return for those master AIFs to one of the EU jurisdictions which have already implemented these proposals. In such a case there would be no material additional expense in collating the data for our AIF002 transparency report."

MFA believes that the additional expense is in fact material. Based on discussions with our members, a significant number of above threshold non-EU AIFMs that market one or more non-EU feeder AIFs (but not the relevant master AIFs) in the UK do not currently also market those feeder AIFs in Belgium, Luxembourg, or the Republic of Ireland. We note that, based on the data

published in ESMA's 2015 advice on the application of the AIFMD third-country passport,³ there is a significant difference between the number of non-EU AIFs and AIFMs marketed in Belgium, Luxembourg and the Republic of Ireland, as compared with those marketed in the UK. According to the ESMA advice, based on information collected from NCAs up till March 31, 2015:

- Ireland – 30 non-EU AIFMs marketed 76 non-EU AIFs in Ireland;
- Luxembourg – 33 non-EU AIFMs marketed 46 non-EU AIFs in Luxembourg; and
- Belgium – 7 non-EU AIFMs marketed 105 non-EU AIFs in Belgium.

By contrast, there were 490 non-EU AIFMs marketing 1121 non-EU AIFs in the UK; this is almost five times as many non-EU AIFs as the three other Member States combined.

Lastly, even with respect to those jurisdictions that have implemented Annex IV reporting requirements for master AIFs, differences in interpretation regarding specific items on the form can create significant costs for AIFMs, beyond the administrative costs noted by the FCA in paragraph 10.28 of the Consultation Paper. Accordingly, we encourage the FCA to reconsider its cost estimates for AIFMs in light of the lack of harmonization in reporting requirements across jurisdictions.

Harmonization and Streamlining Reporting Forms

As discussed above, differences in reporting requirements across jurisdictions are a significant source of cost and uncertainty for AIFMs, as well as an obstacle for national regulators seeking to compare information with other national regulators. As such, we encourage the FCA to continue working with other regulators through the International Organization of Securities Commissions ("IOSCO") to create greater convergence in reporting requirements.

As part of that harmonization process, we encourage the FCA also to work through IOSCO to identify data that regulators currently collect, but that they do not use. Eliminating this unnecessary data collection, in a coordinated fashion, would reduce costs on AIFMs and other regulated investment advisers, while allowing regulators to better focus their resources on monitoring and analysing data that is relevant to their oversight responsibilities and the effective monitoring of systemic risk.

Confidentiality and Data Security

To the extent that the FCA decides to implement its proposed expanded reporting requirements, we encourage it to consider the data security and confidentiality protections needed for that information, given the sensitivity of the data it will be collecting from AIFMs. We of course

³ European Securities and Markets Authority, *ESMA's advice to the European Parliament, the Council and the Commission on the application of the AIFMD passport to non-EU AIFMs and AIFs* (30 July 2015), available at: https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-1236_advice_to_ep-council-com_on_aifmd_passport.pdf.

recognize that the FCA is aware of the need to protect sensitive data and keep such data confidential. Given the increasing cyber and data security threats that regulators and market participants alike must respond to, it is important for data protection and security to remain a top priority for regulators, particularly in light of the need to review, update, and upgrade data security processes and systems regularly. As such, we believe it is important for the FCA to continue its work protecting confidential data by taking all reasonable steps to protect confidential data it collects, and to ensure that any other regulator with which it shares confidential data has similar protections in place.

Cessation of Marketing

Finally, we encourage the FCA to reconsider application of the new reporting requirements with respect to non-EU AIFMs that do not continue to market their AIFs to UK investors under Article 42 of the AIFMD. We note that many non-EU AIFMs that have chosen to market to UK investors under Article 42 have done so based on their own cost-benefit analysis of the business opportunities and legal and compliance costs associated with such marketing activity. For the reasons discussed above, the FCA's proposed expanded reporting requirements for non-EU AIFMs would significantly alter that cost-benefit analysis for many firms. As the FCA is aware, however, under its current regulations, the UK Alternative Investment Fund Managers Regulations 2013 (SI 2013/1773) (the "AIFM Regulations"), non-EU AIFMs that decide not to market to UK investors in the future, or otherwise engage in activities in the future that would make them subject to the AIFM Regulations, nonetheless remain subject to the AIFM Regulations, to the extent they continue to have UK investors that they previously marketed to in their AIFs. To the extent the FCA is willing to consider modification of that policy, MFA would welcome the opportunity to participate in discussions regarding that topic.

Absent a change in policy, however, we believe the FCA should, at a minimum, adopt a grandfathering provision that would permit a non-EU AIFM that no longer markets to UK investors under Article 42 to continue Annex IV reporting only with respect to the feeder AIF or AIFs that are marketed in the UK. This approach would avoid imposing unanticipated costs on non-EU AIFMs that chose to market in the UK under the prior reporting rules, but would choose not to market in the UK under the expanded, and more costly, reporting rules. To the extent the FCA does not provide such grandfathering, we encourage the FCA to provide ample time for non-EU AIFMs to prepare for Annex IV reporting on master funds.

MFA would like to reiterate its thanks to the FCA for the opportunity to engage constructively in these issues. 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