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Governance & Professionalism Policy  
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Financial Conduct Authority  
Via email: [cp17-25@fca.org.uk](mailto:cp17-25@fca.org.uk)

3 November 2017

Dear Sir or Madam,

**AIMA and MFA joint response to FCA Consultation Paper 17/25  
Individual Accountability: Extending the Senior Managers & Certification Regime  
to all FCA firms**

The Alternative Investment Management Association<sup>1</sup> (**AIMA**) and Managed Funds Association (“MFA”)<sup>2</sup> welcome the opportunity to provide comments to the Financial Conduct Authority (**the FCA**) on its Consultation Paper (**the CP**)<sup>3</sup> relating to the extension of the Senior Managers and Certification Regime (**SMCR**) to all FCA-regulated firms, including asset managers. Our interest in the proposals reflects the interest of our members – both large and small – in how the SMCR regime is extended to asset managers from 2018.

First, we would like to acknowledge the FCA’s efforts to engage with the industry as its thinking developed on the approach to extending the SMCR. In light of the population of firms coming into scope

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<sup>1</sup> AIMA, the Alternative Investment Management Association, is the global representative of the alternative investment industry, with more than 1,800 corporate members in over 50 countries. AIMA’s fund manager members collectively manage more than \$1.8 trillion in assets. AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programmes and sound practice guides. AIMA works to raise media and public awareness of the value of the industry. AIMA set up the Alternative Credit Council (ACC) to help firms focused in the private credit and direct lending space. The ACC currently represents over 80 members that manage \$300 billion of private credit assets globally. AIMA is committed to developing skills and education standards and is a co-founder of the Chartered Alternative Investment Analyst designation (CAIA) – the first and only specialised educational standard for alternative investment specialists. AIMA is governed by its Council (Board of Directors). For further information, please visit AIMA’s website, [www.aima.org](http://www.aima.org).

<sup>2</sup> 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, North and South America, and many other regions where MFA members are market participants.

<sup>3</sup> See <https://www.fca.org.uk/publication/consultation/cp17-25.pdf>.

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of the SMCR, it has been encouraging to see the FCA proactively working to understand the unique challenges in different sub-sectors within the financial services industry. From our point of view, this is reflected in the proposals set out in the CP, which deliver on the FCA's commitment to take a proportionate and flexible approach in designing the extended regime.

We have set out our submission in response to the CP at **Annex A** to this letter. We have structured our response to address the specific questions raised in the CP. In our responses, we have raised a number of outstanding issues for AIMA and MFA members, and will be happy to discuss these issues further in person, if that would assist.

One of the primary concerns for our members is the removal of the central register for persons other than Senior Managers. While we can see some benefit in the register being distilled down to only those individuals responsible for managing the business, the register has served as an important centralised tool for verifying the employment history of new employees. The alternative proposed, of firms publishing lists of certified persons on their own websites, does not achieve the same level of benefit as a centrally published resource. We therefore encourage the FCA to consider ways of maintaining a central record in some form (at the very least for individuals certified in the client dealing function) if this can be achieved with a reasonable level of accuracy and without a significant administrative burden on firms. We have addressed this point in our submission.

In our submission, we also suggest:

- Including an additional certification function for partners who are not senior managers – We have suggested an additional certified function, recognising that some partners may not meet the definition of a 'senior manager', and may also not manage a material business unit, but should have their position of influence on the conduct of the business appropriately reflected in the regime.
- Allowing additional flexibility in the core regime – We have received feedback from a number of member firms that they would support additional flexibility in the core regime by adding the COO SMF24 function as an additional option to allocate prescribed responsibilities.
- A streamlined process for opting-up to the enhanced regime – In our submission, we ask you to ensure there is an efficient process for opting up to the enhanced regime, with some concerns regarding the process to apply for a voluntary requirement.

We understand that the FCA is proposing to publish a further consultation paper, setting out details for the transitional arrangements to move to firms from the Approved Persons Regime to the SMCR. We also understand that the timing for the commencement of the regime is in the hands of Treasury, rather than the FCA. Nevertheless, we would like to take this opportunity to reiterate the need for industry to have sufficient notice of commencement and adequate time to properly implement the new regime. As the FCA has acknowledged on a number of occasions, the industry is in the process of implementing significant regulatory change, including MiFID2 and GDPR. In light of this, we would strongly support a delay in the proposed 2018 commencement. In any event, early confirmation of the timing of commencement and the transitional arrangements will be greatly appreciated.



We hope you find our comments useful and would be more than happy to answer any questions you may have in relation to this letter. AIMA and MFA are also very interested to continue to engage with the FCA throughout implementation of the SMCR, and facilitate conversations with our members on the key challenges, to support a smooth transition. Please do not hesitate to contact Adele Rentsch ([arentsch@aima.org](mailto:arentsch@aima.org)) or Adam Jacobs-Dean ([ajacobs-dean@aima.org](mailto:ajacobs-dean@aima.org)) or Benjamin Allensworth ([ballensworth@managedfunds.org](mailto:ballensworth@managedfunds.org)) or Stuart Kaswell ([skaswell@managedfunds.org](mailto:skaswell@managedfunds.org)) in relation to the issues raised in this letter or implementation of the extended SMCR more generally.

Yours sincerely,

/s/ Jiří Król

Jiří Król  
Deputy Chief Executive Officer  
Global Head of Government Affairs  
AIMA

/s/ Stuart J. Kaswell

Stuart J. Kaswell  
Executive Vice-President,  
Managing Director & General Counsel  
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## **ANNEX A**

### **AIMA and MFA joint submission**

**Q1: Does the proposed list of Senior Managers in the core regime cover the appropriate roles, i.e., the most senior decision makers within a firm?**

Subject to our suggestion in response to Q2, AIMA and MFA members are generally of the view that the list of Senior Management Functions for the core regime addresses the most senior decision makers within a firm. We appreciate that the FCA has also clarified that an SMF role only needs to be filled if a person is performing (or required to perform) one of these roles. This enables smaller firms to work within their existing structure, and then build up from the minimum to allocate additional functions and spread out responsibilities in line with growth of their size, business model and governance arrangements.

**Q2: Are there any other roles that the FCA should consider specifying as SMFs? (You may wish to consider the list of proposed Senior Managers under the enhanced regime in section 8.16)**

In light of the huge number of firms coming into scope of the regime, and the differences in governance arrangements across those firms, we support the flexible approach taken by the FCA but have also received feedback that firms would appreciate having additional options for allocating prescribed responsibilities. In particular, AIMA and MFA members would support the inclusion of the SMF24 Chief Operating Officer Function to the list of SMFs for the core regime. For a number of firms, the COO will already be an SMF by virtue of being an executive director. But for other firms, we have received feedback that this would provide an additional level of flexibility, where the head of operations meets the definition of a senior manager but is not an executive director. And of course, where a firm's COO does not meet the definition of a senior manager, then the regime would still provide the flexibility that the SMF24 Function would not need to be filled.

**Q3: Are there any proposed Senior Managers that the FCA should consider excluding from the core regime?**

AIMA and MFA have not received feedback that the FCA should consider excluding any of the proposed Senior Managers from the core regime.

**Q4: Do you agree with our approach to Senior Management Functions for Limited Scope Firms? If not, please explain why.**

AIMA and MFA have not received feedback from members regarding the arrangements for Limited Scope Firms, which we expect will be of limited relevance to our members.

**Q5: Do you agree with our proposed list of Prescribed Responsibilities? If not, please explain why.**

AIMA and MFA members generally agree with the list of proposed Prescribed Responsibilities. We appreciate that the FCA has taken a proportionate approach to limiting the prescribed responsibilities for core firms.



**Q6: Do you agree with our proposed Prescribed Responsibility for AFMs as set out in CP17/18? If not, please explain why.**

AIMA and MFA have not received feedback on this issue as our members are not generally Authorised Fund Managers, as defined under the FCA Handbook.

**Q7: Do you agree with the functions we have proposed making Certification Functions? If not, please explain why.**

AIMA and MFA members generally agree with the list of proposed Certification Functions, subject to the additional function we have suggested under Q8.

**Q8: Are there any other functions that we should make a Certification Function?**

AIMA and MFA members have suggested the inclusion of an additional function to reflect the reality for certain partners of a firm who do not meet the definition of a 'senior manager' under FSMA but who may be involved in, for example, strategic changes or decisions related to the firm and the way the firm conducts its business. Many of these individuals will likely be captured by one or more of the existing Certification Functions, for example the client dealing function. However, this does not acknowledge the level of influence that certain individuals have in relation to the strategic direction of the business. As currently drafted, these individuals will not likely meet the definition of the Significant Management Function, in that they may not manage a material business unit given the differences in the way asset management firms are structured and managed, as compared to banks. We therefore suggest an additional function be added to account for those individuals who have a sufficient level of influence in a firm e.g., a Strategic Influence Function. In our view, this addresses a practical gap arising out the commercial and legal realities for certain types of partnership governance models.

**Q9: Do you think the identity of people performing Certification Functions should be made public by firms? If so, which Certification Functions should be made public?**

AIMA and MFA members do not support the publication of lists of certified persons on individual firms' websites. Most importantly, this does not replicate the benefits of having a central source where a single search will reveal an individual's employment history. We appreciate that the FCA no longer approving these individuals will mean that you are reliant on firms reporting the list of individuals to the FCA to publish. We don't view that this would significantly reduce the benefits of centralising this data, although this would likely depend on the frequency of reporting and accordingly the accuracy of the database.

However, even now the FCA's approval of these individuals under the Approved Persons Regime is, of course, a point in time approval. Accordingly, this cannot be taken as verification of the FCA's assessment of the individual's ongoing fitness and propriety. But these records do serve as an easy method to check the employment history of an individual and our members will then conduct additional checks and screening regarding the individual's fitness and propriety in relation to the role being recruited for.

If there were a way to maintain a central database of this information, accessible to firms, our members would be in favour of this, in particular for individuals certified in the client dealing function. However,



this would need to be balanced against the administrative burden on firms to report the necessary information to the FCA and the frequency at which the register is updated and so a reliable source of information. As a general suggestion, this might be tied to firms' annual certification process, whereby an annual point-in-time list is provided to the FCA, and any subsequent withdrawal of, additions to, or change in, certification is notified to the FCA within 30 days of the change or withdrawal.

**Q10: Do you agree with our proposed territorial limitation for the Certification Regime? If not, please explain why.**

AIMA and MFA members broadly agree with the FCA's approach to limiting the extra-territorial limitation to MRTs and individuals based offshore dealing with UK clients of the firm.

**Q11: Do you agree with the approach we have proposed to allocating CASS responsibilities? If not, please explain why.**

AIMA and MFA have not received specific feedback regarding allocation of CASS responsibilities.

**Q12: Do you agree with our proposed approach to rules and guidance on the fit and proper test? If not, please explain why.**

AIMA and MFA members broadly agree with the FCA's proposed approach regarding the fit and proper test.

**Q13: Do you agree with our proposed requirements on criminal record checks? If not, please explain why.**

We understand from our member firms that they already routinely conduct criminal record checks in relation to key appointments. Accordingly, they do not generally have concerns about conducting such checks for senior managers.

**Q14: Do you agree with our proposed requirement of regulatory references? If not, please explain why.**

AIMA and MFA members are supportive of measures aiming to prevent or reduce instances of rolling 'bad apples' in the industry. Firms would, however, benefit from additional guidance on what is considered to be 'relevant information'. Smaller firms do not necessarily have the resources or experience to determine what might reasonably be considered to be relevant in relation to an individual's fitness and propriety for an outgoing role. It would be extremely helpful for firms, in order to avoid potentially costly external HR or legal support, to better understand the regulator's expectations on what constitutes 'relevant information'. This will also better support a level of consistency, which will benefit the industry as a whole.

**Q15: Do you agree with our proposal to apply the Conduct Rules to financial services activities?**

We support the proportionate approach the FCA has taken to applying the Conduct Rules to financial services activities. In reality, we expect that for many of our members, the activity of their staff will



always be directly or indirectly linked to the firms' financial services activities, and will therefore be subject to the Conduct Rules.

**Q16: Do you agree with our proposal to apply the Conduct Rules to all employees who perform financial services, with the limited exclusions listed in section 7.14?**

AIMA and MFA members have noted that for many smaller firms, individuals performing a number of the ancillary roles should be arguably subject to the conduct rules. The nature of a small asset management firm is that all staff will be intrinsically linked to the financial services activities of the firm, will be subject to many of the same standards pursuant to relevant internal compliance policies and the like, and should arguably be subject to the same standards of conduct. In saying this, we do not suggest that the list is shortened or revised. As firms grow there may be more segregation in the duties, and it should be for firms to sensibly extend the application of the conduct rules where they determine it is appropriate in light of the inherent involvement of ancillary staff members in the financial services activities of the firm.

**Q17: If you disagree, please explain why, including (where appropriate) cost implications.**

N/A

**Q18: Do you agree with our proposal to link notification requirements for disciplinary action to breaches of the Conduct Rules?**

We generally agree with the proposal. Linking the notification requirements for disciplinary action to breaches of the Conduct Rules enables firms to work within, or revising their existing disciplinary framework to identify conduct breaches. This provides firms with an easily identifiable internal event to trigger consideration of whether a conduct breach should be reported.

**Q19: Do you agree with our proposed frequency of Conduct Rules notifications? If not, please explain why.**

AIMA and MFA members broadly agree with the proposed frequency of Conduct Rules notifications.

**Q20: Do you agree with our proposed approach of using the objective criteria set out above to identify firms for the enhanced regime? If not, please explain why and propose alternative approaches.**

AIMA and MFA members generally agree with the FCA's proposed approach to identify enhanced SMCR firms. It has been extremely helpful to have the FCA draw a clear bright line between the core and enhanced regimes. We are very supportive of the setting of objective criteria to conduct this assessment. Ultimately this provides certainty and clarity to firms in identifying the rules applicable to them.



**Q21: Do you agree with our proposed approach to moving firms between core and enhanced? If not, please explain why.**

We are of the view that there should be a minimum period that a core firm meets one of the criteria for the enhanced regime, before it is required to move up to the enhanced regime. In our view, firms should not necessarily be subject to the enhanced regime because they meet the criteria for a short period of time, for example, the firm's AuM briefly exceeds £50b in the previous three years. We suggest that the FCA consider triggering the six-month transition to the enhanced regime where a firm has met one of the objective criteria for a minimum period of six months.

As a separate issue, we suggest that the FCA streamline a process whereby groups with both types of entities can easily opt-up to apply the regime consistently across the group. Firms will no doubt assess this on a case-by-case basis depending on their specific structure and governance arrangements. Accordingly, the decision may not be taken in all group circumstances, but where firms decide it is appropriate, it would be helpful to have a straightforward application process. Firms may also make this determination during the implementation phase, so it would be useful to understand how a notification can be made before the requirements are applicable.

In our view, the voluntary requirement process tends to have negative connotations as an intervention tool. We would be particularly interested to understand if such applications would be published on the FCA's website as this would raise concerns that members of the public searching the company online may draw conclusions from the application, without looking into or understanding the content and purpose of the application. We encourage the FCA to consider whether there are other options to support firms in opting-up to the enhanced regime.

**Q22: Do you agree with our proposed Senior Management Functions for enhanced firms?**

AIMA and MFA members broadly agree with the proposed Senior Management Functions for enhanced firms.

**Q23: Do you agree that this will ensure the most senior people in firms are covered by the Senior Managers Regime, regardless of organisational structure? If not, please explain why.**

AIMA and MFA members broadly agree that the proposed Senior Management Functions will cover the most senior people in firms.

**Q24: Do you agree with our proposals for Prescribed Responsibilities in enhanced firms? If not, please explain why.**

AIMA and MFA members broadly agree with the Prescribed Responsibilities in enhanced firms.

**Q25: Do you agree with our proposal to apply the Overall Responsibility requirement to enhanced firms? If not, please explain why.**

AIMA and MFA members broadly agree with the proposal for apply the Overall Responsibility requirement to enhanced firms.





**Q26: Do you agree with our proposal to apply Responsibilities Maps to enhanced firms? If not, please explain why.**

AIMA and MFA have not received feedback from members regarding this aspect of the consultation.

**Q27: Do you agree with our proposal to apply handover procedures to enhanced firms? If not, please explain why.**

AIMA and MFA have not received feedback from members regarding this aspect of the consultation.

**Q28: Do you agree with our proposals for Senior Managers in EEA Branches?**

AIMA and MFA have not received feedback from members regarding this aspect of the consultation.

**Q29: Do you agree with our proposals on the Certification Regime and Conduct Rules for EEA Branches?**

AIMA and MFA have not received feedback from members regarding this aspect of the consultation.

**Q30: Do you agree with our proposals for Senior Managers in non-EEA branches? If you disagree, please explain why.**

AIMA and MFA have not received feedback from members regarding this aspect of the consultation.

**Q31: Do you agree with our proposals for Prescribed Responsibilities in non-EEA branches? If you disagree, please explain why.**

AIMA and MFA have not received feedback from members regarding this aspect of the consultation.

**Q32: Do you agree with our proposals on the Certification Regime and Conduct Rules for non-EEA Branches?**

AIMA and MFA have not received feedback from members regarding this aspect of the consultation.

**Q33: Do you agree with our proposal to introduce a new Prescribed Responsibility for the Conduct Rules that will also apply to banking firms?**

AIMA and MFA have not received feedback from members regarding this aspect of the consultation.

**Q34: Do you agree with our changes to the 12-week rule? If not, please explain why.**

We agree with the proposed changes to the 12-week rule.

**Q35: Do you agree with our approach to applying the partner function to banking firms? If not, please explain why.**

AIMA and MFA have not received feedback from members regarding this aspect of the consultation.



**Q36: Based on the summary above and the full analysis**

[www.fca.org.uk/publication/research/cba-extensionsenior-managers-certification-regime.pdf](http://www.fca.org.uk/publication/research/cba-extensionsenior-managers-certification-regime.pdf)

**do you agree with our approach and methodology for the cost-benefit analysis? If not, please explain why. If not, please explain why.**

AIMA and MFA have not received feedback from members regarding this aspect of the consultation.

**Q37: Based on the summary above and the full analysis**

[www.fca.org.uk/publication/research/cba-extensionsenior-managers-certification-regime.pdf](http://www.fca.org.uk/publication/research/cba-extensionsenior-managers-certification-regime.pdf)

**do you agree with our findings and conclusions for the cost-benefit analysis? If not, please explain why.**

AIMA and MFA have not received feedback from members regarding this aspect of the consultation.