

8 April 2014

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Communications and International
Financial Services Authority
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By e-mail to: cp14-04@fca.org.uk

Dear Saira,

CP 14/4: Quarterly Consultation (No. 4)

The IMA represents the asset management industry operating in the UK. Our members include independent asset managers, the investment arms of retail banks, life insurers and investment banks, and the managers of occupational pension schemes. They are responsible for the management of around £4.5 trillion of assets, which are invested on behalf of clients globally. These include authorised investment funds, institutional funds (e.g. pensions and life funds), private client accounts and a wide range of pooled investment vehicles. In particular, our members represent 99% of funds under management in UK authorised investment funds (i.e. unit trusts and open-ended investment companies).

We welcome the opportunity to comment on the proposals made in Chapters 2 and 3. Our answers to specific questions are attached below. We have not responded separately to the other Chapters.

We look forward to hearing from you if there is any clarification that you would find useful on the points we have raised. We would be happy to meet to discuss the thinking behind the market disclosure requirements.

Yours sincerely

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Chapter 2 – Changes to the Handbook impacting AIFMs, UCITS managers and certain AIF depositaries

Q2.1: Do you agree with our proposed addition of links in the Handbook to the ESMA guidelines and delegated regulation?

Yes we agree with these proposals

Q2.2: Do you agree with our proposed guidance on AIFMD reporting requirements?

ESMA has recommended that, where relevant, National Competent Authorities collect information on the Value at Risk (VaR) of the AIFs to be reported. ESMA states that this would be particularly relevant for AIFs pursuing hedge fund strategies. The FCA propose to implement this in FUND 3.4.6A R (d). However, as the FCA's Hedge Fund Survey (March 2014) notes hedge funds are *".....one of a category of funds known as alternative investment funds. Alternative funds invest in a variety of global assets, including property and commodities. They often have a high degree of flexibility around how they invest. Hedge funds are a type of alternative fund which use this freedom to pursue a wide variety of strategies in many different asset classes: some run very concentrated portfolios; others pursue complex trading strategies characterised by high levels of turnover; and others employ high levels of leverage."* This description encompasses a vast range of AIFs and we therefore we ask the FCA to clarify that "hedge fund strategy" refers to those strategies identified under section (a) of "Breakdown of investment strategies" in ESMA's Consolidated AIFMD reporting template (AIF specific information to be provided under Article 3(3)(d) & Article 24(1) – questions 58-61) as there are a number of fund types captured within the scope of AIFMD where the calculation of VaR would be impractical and could be impossible.

We also seek clarification on the types of VaR that would be acceptable as the FCA appears to be silent on this. We note that ESMA's opinion considers it appropriate that the VaR be computed as of the last business day of the reporting period with an interval of confidence of 99% over a period of 250 days and with a 20-day holding period using either a Monte Carlo simulation or Historical simulation or a Parametric VaR.

Q2.3: Do you agree with how we propose to transpose these risk management requirements for AIFMs and UCITS managers?

We agree that investment firms should not solely or mechanistically rely on credit ratings issued by credit rating agencies.

Q2.4: Do you agree with our proposed amendment to the funds under management definition that will affect the capital calculations of AIFMs managing AIF portfolios that include derivatives?

The IMA welcomes the change, requiring AIFs to value derivatives at their market value rather than the notional value of the derivatives. The IMA supports this change as it will make AIFM capital ratios, based on AIF FUM, more stable.

Q2.5: Do you agree with our proposed amendments to the requirements for Article 36 custodians?

We agree with the clarification to the requirements governing Article 36 Custodians'

Q2.6: Do you agree with our proposed changes to AIFM remuneration requirements?

We are unsure what change you believe ESMA has made; strictly, the language appears to reflect the directive but the ESMA change of referring to delegates is not relevant to remuneration disclosure and the proposed change should not be read as including them.

Q2.7: Do you have any comments on our proposed forms?

Notification of intention to provide or amend cross border services in another EEA state for marketing an AIF (article 32); and/or notification of intention to market an AIF in the United Kingdom (article 31) (SUP 13 Annex 8BR)

The first question seems to be repeated in a less ambiguous form on page 3 of the form.

Q1.2 requires the AIFM to provide the FCA with any information on the AIF which is available to investors. This is too broad, and should be limited to any information that the AIFM has produced which is available to investors.

In section 3 the form allows the AIFM to tick a box to indicate that it has enclosed Section 2. The AIFM does not have to enter any information into Section 2. This seems otiose.

Could you clarify what is meant by 'national identification number' in the second column of Annex 1?

AIFMD new fund under management notification

While section 2 refers to the 'Schedule of AIFs' such a schedule does not seem to form part of this form. Section 4 makes specific reference to columns I to R of this schedule.

Section 5 – it seems strange that the declaration wording for the different forms is so different. It is only this form, and the EuSEF and EuVECA marketing notifications which require the signatory to tick a box to indicate that they have understood the declaration, as well as signing

Material Change Notification

This form refers to an alternative form provided on the FCA website for notification of 'change to information provided with marketing application'. Where is this form to be found? Is it a specific stand-alone form or related to the 'Notification of intention to market an AIF in the UK' form?

Small registered AIFM change form

The paragraph numbering in section 2 is wrong.

Q3.4 directs people to section 5. There is no section 5 for this form.

The numbering in section 3 is wrong.

EuSEF and EuVECA marketing notifications

While section 2 refers to the 'Schedule of AIFs' such a schedule does not seem to form part of this form. Section 2.2 makes specific reference to columns I to R of this schedule.

Notice of AIFM delegation

The purpose of this form is set out as being in line with Article 20 of AIFMD and Regulations 26-28 of the UK AIFM Regulations.

Recital 31 of AIFMD makes it clear that Article 20 relates to the management functions of the AIFM: portfolio management and risk management from Annex I.1. It does not apply to the other functions of an AIFM, which are set out in Annex I.2 of AIFMD, and include marketing, but not distribution.

Articles 26-28 of the UK AIFM Regulations, correctly, relate only to delegation of the functions of portfolio management or risk management.

The FCA is, however, applying this form to the delegation of all functions listed in Annex I of AIFMD.

Regardless of the scope of the form, the FCA need to be very clear as to the difference between the 'marketing' of an AIF by the AIFM that it is delegating to a third party; the 'marketing' of the AIF by the AIF itself or by third parties to whom such marketing has been delegated by the AIF; and distribution of the AIF by the AIFM and any third parties to whom it delegates this activity.

Marketing is a defined term under AIFMD, and is a lot narrower in scope than distribution. It may be possible for AIFMs to arrange it so that their delegate distributors perform no marketing, as defined, and would thus not trigger any notification requirement.

We note that this form is one for notifying the FCA of changes, rather than applying for permission for changes.

Q2.8: Do you agree with these proposed additional changes?

The proposals for FUND Appendix 1 seem reasonable.

The proposed SUP 15.3.29 seems reasonable.

The proposals in SUP 15.3.31 seem reasonable.

Q2.9: Do you have any comments on our cost benefit analysis?

No comments.

Chapter 3 – Updating the complaints data reporting form and guidance.

Q3.1: Do you have any comments on the proposed updates to the complaints data return form and guidance?

We are supportive of the proposed changes to the return form and guidance