

6 August 2014

Mark Glibbery
The Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

By email to: cp14-08@fca.org.uk

Dear Mark

FCA CP 14/8 Quarterly consultation No. 5 – Chapter 7

The IMA¹ welcomes the FCA's willingness to accommodate the revised SORP. Our response to the questions raised is attached and includes a number of recommendations for enhancing the proposals. In particular, we recommend amendments to the transitional provisions and enhancements to the instrument text.

We also suggest that the FCA takes steps to ensure ESMA fully appreciate the essential difference between ex ante information and ex post reporting and accountability in finalising its advice to the Commission in respect of the costs and charges aspects of MiFID II. We would be happy to discuss this matter further with you.

Please do not hesitate to contact me if we can assist any further.

Yours sincerely



Mark Sherwin
Senior Adviser, Financial Reporting

¹ The IMA represents the asset management industry operating in the UK. Our Members include independent fund 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.

IMA response to Chapter 7 of CP14/8

Q7.1: Do you agree that AFMs should adopt the new version of the IMA SORP, subject to transitional provisions?

We agree, but the transitional provision does not appear to work.

The transitional provisions are designed to permit an election to be made to use the 2014 SORP with immediate effect and to require the 2014 SORP to be used for annual accounting periods commencing on or after 1 January 2015. As an exception, the other amendments to COLL become mandatory in respect of reports required to be published on or after 1 April 2015. We understand that a change to the glossary definition of a defined term in a rule is regarded as an amendment to that rule. Therefore, the rules in column (2) of TP 30 include the requirement to apply the 2014 SORP²; this has the effect of forcing adoption of the 2014 SORP on the shorter timescale. This is inconsistent with the FCA's intention as set out in paragraph 7.6 and **we recommend amending the transitional provisions to avoid forcing early adoption of the SORP.**

TP 29 refers to the 2014 SORP applying to periods commencing on or after 1 January 2015, whereas paragraph 7.6 refers to periods ending before 31 December 2015. Where there is a short period of less than 12 months these are not the same. In our view the text in TP 29 achieves the desired outcome and should prevail in order to avoid conflict with the effective date of the accounting standards on which the SORP is based.

Q7.2: Do you agree that the advantages of aligning the information on the fund to the same time period outweigh its potential disadvantages?

We agree. It is helpful to investors for all the information in the report to relate to the same period as the audited accounts.

Paragraph 7.10 suggests this may complicate comparisons with other funds. We do not agree. The comparative information in annual reports is designed to facilitate comparisons across time in order to demonstrate the progress of investors' holdings. It is not intended, and it may be misleading, to compare the information to other funds. Other information, which is contained primarily in the KIID, is designed for the purpose of making comparisons with other funds.

Q7.3: Do you agree with the proposals to change the way that records of highest and lowest unit prices and net income are presented in long and short reports?

We agree and welcome this step to facilitate the SORP's comparative table. It is helpful for investors to find the comparative information in respect of the class of unit/share they hold to be presented in a single table in the annual report. This

² By virtue of the references to the IMA SORP in COLL 4.5.7R (1)(a) and (2)(a)(i), and the equivalent provisions for interim reports and QIS.

enables them to focus on the numbers relevant to their holding when considering the progress of their investment over the year.

Other comments

We note that the SORP comparative table is being extended to QIS, which have not previously been required to produce comparative information or to calculate an ongoing charges figure. We are not convinced that the SORP initiative to enhance the presentation of the comparative table is sufficiently persuasive to require QIS to start providing a comparative table (see our response to question 7.6).

We note that the SORP comparative table is being extended to annual short reports. In the interests of transparency we welcome this. However, we are aware that some Managers are concerned that this will make the short report rather long (we are aware of sub-funds with as many as 26 different share classes). Moreover, information about multiple share classes in which an investor has no interest could be regarded as extraneous material prohibited by COLL 4.5.5R (3). It has been suggested that making available a class specific short report might alleviate these concerns and allow investors to continue to access a focussed and relevant short report. **We would encourage consideration of these concerns as part of concluding the deliberations in respect of chapter 4 of CP 13/18.**

We agree with the proposed amendments to COLL 4.5.10 R but paragraph (1A) defines the comparative table differently to the SORP. Within the SORP the comparative table includes all items listed in (1A), but (1A) appears to define the comparative table as just part (a). **It would be helpful and more consistent to restructure (1A) as follows:**

(1A) for a unit of each class in issue, a comparative table as at the end of the period to which the report relates, prepared in accordance with the requirements of the IMA SORP and showing at least:

(a) the performance record of a unit of that class;

(b) an indication of the actual charges and costs borne by the class;~~and~~

(c) the highest and the lowest prices of the unit during the period;

(d) the net income distributed (or, for accumulation units, allocated) for the unit, taking account of any sub-division or consolidation of units that occurred during that period;

(e) the net asset value of the unit as at the end of the period; and

(f) (i) (for a report of the directors of an ICVC) the number of units of the class as at the end of the period; or

(ii) (for a report of the authorised fund manager of an AUT or an ACS) the number of units of the class that are in existence or treated as in existence as at the end of the period;

We note that both the QIS requirements and the short report requirements refer to parts (a) and (b) of the proposed text in the draft instrument (i.e. (a) to (d) in our suggested layout above). As a minimum, these requirements should refer additionally to part (e) above (the net asset value of the unit) because this is an integral part of the summary of the progress of a unit. We would prefer the short report requirement to refer to parts (a) to (e) above. However, in respect of QIS, please see our response to question 7.6.

We note the guidance on the indication of actual costs and charges provided in COLL 4.5.10A G. There are two aspects of this with which we do not agree:

- First, the examples of operating charges in the first sentence include performance-related fees. The final sentence states that operating charges should be presented as a single figure. This is not consistent with the SORP or with the KIID Regulation. The SORP defines the operating charges as being calculated in accordance with CESR's guidelines on the calculation of the ongoing charges figure (CESR/10-674) which specifically excludes performance-related fees. The KIID Regulation also excludes the performance-related fees from the ongoing charge figure. Both the SORP and the KIID Regulation require separate disclosure of any performance-related fees. It can be misleading to hide the existence of a performance-related fee within a metric for recurring charges. **We recommend removing the reference to performance-related fees from the examples of operating charges.**
- Second, the examples of direct transaction-related costs include costs of buying and selling units in an underlying scheme. This will cause such costs to be double counted because these costs are required to be included in operating charges due to paragraph 8(f) of CESR/10-674. **We recommend removing the reference to costs of buying and selling units in an underlying scheme from the examples of direct transaction-related costs.**

We note that column (4) of TP 30 refers to the instrument referred to in column (2). Although the meaning is apparent, we observe that column (2) of this TP does not refer to an instrument.

Do you agree these changes should take effect by April 2015?

We agree and welcome this step to facilitate the adoption of the SORP's comparative table, but it is unclear precisely what this means.

TP 30 refers to reports that are required to be published on or after 1 April 2015, whereas the paragraph 7.14 refers to reports published on or after that date. Where Managers take less than the full four months to publish the report (two months is common), it is unclear when the requirement becomes mandatory: is a report actually published in February for a year ended in December (ie less than four months before 1 April 2015) required to comply with the COLL amendments contained in the instrument? **We recommend amending the transitional provision by to reflect when the report is actually published.**

We note that the implementation date will require preparers of the annual report to calculate figures for the earliest comparative period, which could be for years ended in December 2012. The data for the comparative periods are already available as

they will have been used to comply with the IMA's 2012 Enhanced Disclosure Guidance, but Managers and their administrators will need to obtain the data in order to calculate the average number of units of each class for each comparative period. We do not expect this to be overly burdensome.

Q7.4: Do you agree we should replace the aggregation of the accounts of an umbrella's sub-funds by information about cross-holdings between the sub-funds? Is there any other aggregated information that would help investors in a sub-fund to make an informed judgement about the activities of the umbrella as a whole?

We agree with proposal to remove the aggregation for the reasons given in the consultation. However, we have not identified any benefits from including a table of cross-holdings and suggest that it is not included. Paragraph 7.16 observes that such information is already available in the portfolio statement, where investors also can identify their sub-fund's holdings in sub-funds of different umbrellas managed by the same Manager. In reality sub-funds are grouped in umbrellas for administrative convenience and, for protected cell schemes, the umbrella itself has no significance for an investor. We have not identified any other aggregated information that should be specified.

We note that the 2010 SORP requires an aggregation, so Managers will not be able to dispense with the aggregation until they elect to adopt the 2014 SORP. As a result, if the FCA proceeds with the table of cross-holdings, there may be periods where both the aggregation and the new table are included in the same annual report.

We welcome the clarification in paragraph 7.17 of what the FCA believes to constitute the accounts of the company. We believe this clarifies the relationship between the OEIC Regulations and the rules in COLL. COLL imposes on Managers a duty to prepare sub-funds' accounts in accordance with the SORP and to ensure those accounts give a true and fair view. Simply aggregating accounts that give a true and fair view does not ensure that the resultant aggregation also gives a true and fair view. In order to ensure the clarification remains accessible to users of COLL, **we recommend that a short guidance paragraph consistent with paragraph 7.17 should be added to COLL itself.**

Do you agree that a portfolio statement for QIS should be required to achieve consistency across authorised funds?

We agree. This clarifies what we would expect to be current practice.

Q7.5: Taking account of existing and planned initiatives to improve cost transparency in asset management, do you have any comments or suggestions on what rules or guidance for authorised funds the FCA could develop on this subject?

Paragraph 7.20 rightly states the importance of consumers being able to compare costs between funds and to understand exactly what they are paying for. However, the 2014 SORP is not designed to address either of these points. The KIID is the

primary document for comparing funds and it contains a reliable indicator of likely future charges that will be taken from a fund. The prospectus provides the detailed information about what consumers are paying for. The SORP requires the accounts to give consumers adequate information about the level of returns, fees and other costs associated with their fund. It is designed to contribute to the consumer protection objective by satisfying consumers' right to know how much they have paid.

As you know, the SORP Working Party considered all responses to the SORP consultation and amended their proposals accordingly. Their feedback statement,³ published alongside the 2014 SORP, explains how the proposals were amended and strengthened to ensure that the SORP does give a comprehensive picture of the total costs. It also explains why some respondents' suggestions were rejected because they would significantly increase the risk of misleading consumers.

Paragraph 7.24 states that the SORP disclosure is lacking in certain respects and will need to be modified to show the full cost of investing more accurately. The 2014 SORP requires disclosure of all costs and charges that are taken from a fund. The only costs of investing that are not included in the SORP disclosures are the costs of advice and distribution. We note that MiFID II contains proposals whereby advisers will need to inform their clients of the combined cost of advice and of the financial instrument to which the advice relates and that it is incumbent on the adviser, not the provider of the financial instrument, to provide that aggregated view. We cannot see how the SORP can be modified to require a fund to account for advice and distribution costs for which the fund is not accountable.

We would suggest that the FCA develops thinking within ESMA to appreciate the essential difference between *ex ante* information and *ex post* reporting and accountability. *Ex post*, all charges and costs are known and can be quantified and meaningfully disclosed. *Ex ante*, only certain charges can be quantified while others are contingent upon a range of external factors that are not predictable. The future events that underpin contingent charges and costs should be explained but should not be assumed. The thinking about *ex post* and *ex ante* disclosure in ESMA's draft advice⁴ appears muddled, will be detrimental to consumers' understanding of costs and charges, and may result in misinformed investment decisions.

Q7.6: Do you have any comments on the cost benefit analysis?

Yes. We are not convinced that the SORP initiative to enhance the presentation of the comparative table is sufficiently persuasive to require QIS to start providing a comparative table.

The cost analysis is based on the understanding that Managers already hold the necessary comparative information, so a new presentation should not cause significant implementation costs. However, paragraph 7.27 acknowledges that the comparative information is an entirely new requirement for QIS, which have not previously been required to produce comparative information or to calculate an

³ [Feedback Statement](#) (May 2014)

⁴ [Consultation Paper](#) MiFID II/MiFIR (May 2014) section 2.14

ongoing charges figure. Therefore, the implementation costs will be more significant.

The benefit analysis is based on the improved quality of information available to investors. Previously the FCA has not required QIS to provide comparative information. Paragraph 7.11 suggests QIS need to introduce the comparative table in order to comply with the SORP. This is not the case; there are a number of examples where the SORP accommodates different requirements tailored to QIS, UCITS or NURS. Moreover, the comparative table is a high level summary of more detailed information about costs and charges provided elsewhere in the annual accounts. In practice, QIS investors access more readily the information in the accounts and seek more detailed information from the Manager. Just as the KIID is of no real interest to them, so it is unlikely that QIS investors will be interested in this comparative table.