

Commissioner Hill  
European Commission  
(via online submission)

**The Investment Association**

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Dear Commissioner

**Call for evidence: EU regulatory framework for financial services**

The Investment Association represents the UK-based investment management industry and is the second-largest national "buy-side" trade association in the world (and the largest in the EU) by total assets under management of our members: over €7.4 trillion AuM; some 37% of the EU's managed assets.

We represent the wide-ranging interests of over 200 diverse investment management and fund management companies on issues of financial services policy, asset management business and regulation.

We are broadly supportive of existing EU financial services law, as, in general, it sets appropriate standards for financial services, which also support the single market in financial services. The single market, passporting rights, the UCITS regime and a relatively harmonised single rulebook have brought significant benefit to the UK's asset management industry. Our recent appearance before the UK Parliament's Treasury Select Committee allowed us to record our support for your decision to review the cumulative impact of regulation after a period of regulatory initiatives which were, understandably, focussed upon crisis management and prevention.

We believe that now is the time to ask what should be done to support greater investment, increased productivity, and growth and job creation across the EU and beyond. Much of that is in the hands of the industry itself, some can be assisted by regulation – such as your initiative on securitisation – and some requires the removal or re-alignment of existing regulations. Accordingly, we welcome the opportunity to comment on those areas where the rules impose unnecessary burdens, or otherwise impede the core function of the financial system to finance the economy and provide related financial services.

The asset management industry's concerns about EU regulation cover, broadly three areas:



1. Rules that adversely impact the industry's ability to provide the widest range of services and products to savers and investors, including in the form of UCITS and AIFs;
2. Rules that adversely impact the functioning of the financial markets, particularly in their core purpose – to facilitate the allocation of savings to productive business at low cost whilst minimising rent extraction;
3. Rules that adversely and directly impact the cost and benefits of running asset management businesses in the EU, such as certain prudential and remuneration requirements.

Our on-line response to your call for evidence gives details of many of these adverse impacts.

In addition, we have some concerns about the policy making and legislative processes in the EU (including in the European System of Financial Supervision). In our on-line response we draw attention to instances of inadequate implementation periods, which are often due to delays in the "level 2" process (which themselves can result from unreasonable deadlines at level 1). More generally, a key tenet of "better regulation" – the use of impact assessments in devising and assessing policy – is inadequately incorporated into the EU legislative process, especially at the trilogue stage.

### **Rules that adversely impact the industry's ability to provide services to investors**

Our principal concern is that existing conflicts of interest and inducement rules are not driving a better consumer outcome (as regards investment product price and choice) for EU consumers, particularly in comparison to the improvements to the UK market delivered by the UK "retail distribution review" (RDR) reforms. Although we expect MiFID 2 to improve the situation, we believe that the EU should do more to address this issue.

We suggest that the regulation of professional investors is excessive in some respects. For example, marketing materials destined solely for professional investors are expected to have the same risk warnings as for retail investors; the interpretation of "fair, clear, not misleading" does not seem to change from retail to professional. Furthermore, it is unnecessary to require provision of the KIID (a document clearly designed for retail investors) to professional investors; their due diligence will usually go considerably deeper than the level of detail in the KIID. Having to send client categorisation and other requisite terms of business to professionals also seems unnecessary – "professionals" can agree their own terms with firms as they wish.

### **Rules that adversely impact the functioning of the financial markets**

We are concerned that regulation of banks is impairing their ability to make markets and otherwise contribute to the efficient functioning of financial markets. In particular, key Basel 3 metrics – such as risk-based capital requirements, the NSFR and the leverage ratio – are impacting secondary market liquidity and even leading affected bank intermediaries to withdraw key services (e.g. as derivatives counterparties).

Similarly, some direct financial market regulation is impairing unintentionally financial market function. For example, we have concerns as to the eventual EMIR margin requirements for non-cleared derivatives and the MiFIR pre-trade transparency requirements. We welcome and support all ongoing work to calibrate Solvency II requirements for infrastructure and

securitisation investments, but remain concerned that the Directive continues to constrain insurers' ability to invest across a broader range of assets.



### **Rules that adversely and directly impact our members**

Our members are subject to operationally burdensome reporting obligations under several pieces of EU legislation (EMIR, MiFID, UCITS, AIFMD etc.). In some cases these reporting obligations are duplicative, inconsistent or overlapping. They often impose a compliance burden that is disproportionate to the public benefit to be derived through reporting to regulators. We take the view that new implementation costs arising from revised reporting rules would likely be acceptable relative to the high ongoing costs associated with existing regulatory reporting.

A significant proportion of our membership are "investment firms" by reason of the MiFID permissions required for their businesses. This brings them within the scope of the prudential and other regulations designed for banks that are set out in the CRR and CRD 4. As the EBA has already pointed out, this bank-focussed regulation is often inappropriate to the risks in our members' businesses, particularly when one considers that they are agency businesses, where any prudential risks reside at the fund/end-investor level – unlike banks, which hold all prudential risks on their deposit-guaranteed, central bank lender-of-last-resort back-stopped balance sheets.

We therefore welcome the Commission's current review of the regulation of investment firms under CRR and CRD 4. However, we are concerned that related policy making on remuneration – notably, EBA December 2015 guidelines on proportionality – would appear to contradict at least the spirit of this review by imposing a "one-size-fits-all" approach to proportionality in remuneration requirements that were originally designed for banks (and which have no equivalent in sector-specific fund regulation: the UCITS laws and the AIFMD): the so-called "bonus cap".

We have given detail of many of our members' concerns in our on-line response to your call for evidence and we would be pleased to provide follow-up material to your services.

I and my team look forward to working with you and your services, in that wider context with which I began this letter - our common interests to engender sustainable growth and job creation so as to provide greater prosperity to the EU's savers and investors.

Yours sincerely

**Guy Sears**  
**Interim Chief Executive**