THE
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INVESTMENT MATTERS

Yujin Baskett and Ruby Bhavra
Client Assets Department
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

The Investment Association
Camomile Court, 23 Camomile Street,
London, EC3A 7LL

T +44 20 7831 0898
E enquiries@theia.org
W theinvestmentassociation.org
Twitter @InvAssoc

Date: 19 July 2016

Dear Mr Baskett and Ms Bhavra

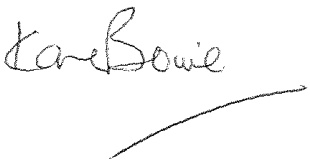
RE: UCITS V Level 2 Regulation, SFTR and consequential changes to the Handbook

The Investment Association represents the UK asset management industry. Our members manage £5.5 trillion in the UK of assets on behalf of UK, European and international clients, both retail and institutional. Our aim is to make investment better for clients so they achieve their financial goals, better for companies so they can get the capital they need to grow, and better for the economy so that everyone prospers.

We welcome the opportunity to provide comments on the matters consulted upon in CP 16/14. Our comments are attached.

If you have any queries, please do not hesitate to contact me

Yours,



Karen Bowie

Senior Adviser, Product Regulation

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CP16/14: UCITS V LEVEL 2 REGULATION, SFTR AND CONSEQUENTIAL CHANGES TO THE HANDBOOK

INVESTMENT ASSOCIATION RESPONSE

Q1 Do you agree with the proposed application of CASS and CASS-related Handbook provisions in relation to depositaries of UCITS? If not, please provide reasons.

A No comments.

Q2 Do you agree that retaining the existing guidance in COLL 6.9, when read together with the UCITS V Level 2 Regulation, will not result in a reduction in the current level of investor protection?

A Yes. As the FCA has taken the decision to retain existing guidance, this results in no reduction in the current level of investor protection.

We ask that the FCA provides, in its Feedback Statement, commentary on the application of the L2 Regulation to situations where the Depositary delegates custody to a sister company of the Authorised Fund Manager.

In the UK, this is common in financial groups which contain both types of company. Existing rules cover this through the guidance in COLL 6.9 which (as the FCA notes) has resulted in the UK having structural independence of the Depositary and also robust rules on conflicts of interest (COLL 6.6.17) where related companies provide services to the UCITS.

Informal discussions with a number of law firms suggest that the L2 Regulation could be interpreted as either applying or not applying to such arrangements.

As the FCA will be supervising compliance with the L2 Regulation, it would be helpful to have commentary in the Feedback Statement which reflects how the FCA interprets the application of each of articles 22, 23 and 24 to this situation.

Q3 Do you agree with our proposed changes to SYSC 19E.2.9R(1)? If not, please provide reasons.

A Yes, we agree that the change should be made.

Q4 Do you agree with our proposed amendments to the Handbook resulting from the SFTR? If not, please provide reasons.

A We welcome the FCA's decision to provide guidance on the Article 13 and Article 14 requirements in the FCA Handbook. We particularly welcome the proposed guidance in COLL 4.2.5A G(4), 8.3.2A G(4) and FUND 3.2.4A G(3) that the pre-investment disclosures are not required where the manager does not engage in securities financing transactions (SFTs) or total return swaps (TRS) on behalf of the fund. Similarly, we welcome the proposed guidance in COLL 4.5.8AB G (3), 8.3.5A G(3) and FUND 3.3.7BG(3) that the periodic disclosures are not required where the manager does not engage in SFTs or TRS on behalf of the fund. We would, however, welcome

further clarification that managers of funds which have the power reserved to use SFTs or TRS, but are not utilising this power, do not need to include these disclosures unless and until they decide to utilise these powers.

We note the FCA has indicated in its proposal for COLL TP1.1 (38), (39) and FUND TP1 (7) that in respect of umbrella schemes, the 18 month transitional provision relating to the pre-investment disclosures only applies to sub-funds which were in existence before 12 January 2016. We have been advised by our members that some regulators in other jurisdictions appear to be taking a different approach, in applying the transitional provision in Article 33(2)(c) of the SFTR at the level of the umbrella. We would therefore urge the FCA to continue its dialogue with other European regulators to reach a common position and ensure its interpretation of Article 33(2)(c) is aligned with the interpretation of other European regulators in this regard.

The proposed guidance in COLL 4.2.5A G(3) and COLL 8.3.2A G(3), that managers of NURS and QIS who are full-scope AIFMs should include the pre-investment disclosure requirements in the prospectus, does not seem unreasonable. However, given this requirement is specified as guidance and is not strictly required by the SFTR, we believe that a manager who elects to provide the pre-investment disclosures through other means should not be unfairly penalised, provided these are fully compliant with the requirements of the SFTR.

Q5 Are there any other points we should address in the Handbook in relation to the SFTR?

A A number of our members have queried whether the periodic disclosures required by Article 13 are required for those accounting periods commencing after 13 January 2017, or if these have to be included in all applicable reports published after 13 January 2017 (including where the applicable accounting period ended before the 13 January 2017). We believe that, having consulted with other European regulators and/or ESMA to ensure a consistent approach, guidance should be added to COLL 4.5.8AB G, COLL 8.3.5AB G and FUND 3.3.7B to clarify this requirement.