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IA RESPONSE TO FCA FUTURE MISSION PAPER

The Investment Association (IA) is the trade body that represents UK investment managers, whose 200 members collectively manage over £5.7 trillion on behalf of clients.

We welcome the FCA's publication of the future mission paper. As the UK enters a new post financial crisis era and with Brexit looming, this is a once in a decade opportunity for the FCA to consider how it should regulate. The UK is a cutting edge financial centre with highly sophisticated financial markets. FCA should set its regulatory approach to match the status of the UK as a globally preeminent jurisdiction.

In considering its future mission, FCA should calibrate its approach to reflect the importance of financial services to the economy, jobs and growth. Financial services (and related professional services) represent the largest industry in the UK employing over 2.2 million people, two thirds of which are outside London. Asset management and supporting firms represent a large section of this industry, employing over 92,000 people, managing approx. 40% of European Assets, producing 6% of net services exports and providing pensions for 75% of UK households.

Our key points of feedback are:

- The need for appropriate calibration of regulation in supporting the UK's sophisticated financial markets.

- An enhanced role for the FCA in supporting the industry to work through the post-Brexit implications.

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- Improved governance and transparency in FCA decision making.
- The importance of integrating UK regulation within relevant international standards.
- Improved use, communication and impact of enforcement activity.
- Closer adherence to the principles of better regulation.
- FCA's role in the twin peaks regulatory environment.

INTRODUCTION:

We thank the FCA for initiating an honest and open conversation with industry stakeholders on how it can best pursue its statutory objectives. We are confident that engaging with industry on a strategic level will go a long way to helping the FCA achieve its objective of ensuring that markets function well. In discussing the regulator's approach to UK's most important industry, we have a shared and mutual interest in supporting well-functioning markets and protecting consumers. We view this as a shared objective of the FCA and of the financial sector.

As outlined above, financial services and asset management are structurally important to the UK economy, therefore regulation must recognize this. The IA does not support a return to light touch regulation. Rather, FCA must seek to create a regulatory regime that protects consumers and ensures financial stability while fostering an environment that prioritises opportunity and innovation for markets, firms and consumers. It is vital to the economy that this industry continues to attract foreign direct investment, create jobs and helps generate growth in the UK as an internationally attractive place to do business post Brexit.

We fully support FCA's assertion that '*it is not possible, or desirable, to create markets and firms which never fail*' (p.4). We understand that this acknowledgement is an important step towards setting a realistic, yet ambitious, remit for the FCA. We believe that FCA must not focus narrowly on improving the current market but rather the deeper question of what kind of market should we be aiming for? The IA's view is that this new market should be characterised by being robust, liquid, open, appropriately transparent, modern, internationally attractive and fair to both existing participants & potential new entrants.

We agree with the FCA that it should interpret its wide objective to prioritise those issues which cause the most harm, employing its efforts, time and resources to realise those objectives most effectively.

As the FCA Mission Paper makes clear, only where the regulator has a clearly scoped objective with a means of intelligently identifying explicit priorities, can it measure its performance, justify its decisions and actions, and build on its performance for the future. We recognise the difficulties involved in assessing regulator performance and support the FCA's three tier approach to measurement which reflects both activity and impact.

The FCA should take this opportunity to undertake a wide-ranging review of its regulatory philosophy and not confine itself to a backwards looking technical discussion on regulatory delivery. A reductive review of current practice will quickly be superseded by the post Brexit legal and political environment.

As the regulator for one of the world's leading financial centres, the FCA must reflect on its position as a key thought leader in regulation and commit sufficient resources to be better engaged with international standard setters.

THE ROLE OF REGULATION:

Clearly, regulation is intended to protect investors and ensure financial stability. The IA supports these broader aims. Good regulation ensures that markets operate efficiently for the wider economy, investor confidence is maintained in the financial system and firms are able to innovate to provide a broad range of solutions to meet investors' needs while ensuring investors remain appropriately protected. This should be reflected in FCA's objectives. This represents an important counterpoint to just narrowly focusing on consumer protection.

In the US the SEC has a dual responsibility. It has to oversee the efficient operation of financial markets, but it also is required to ensure the wider US economy continues to generate employment and economic growth. We believe this creates a valuable tension in their regulatory approach and acts as a barrier to over regulation, which leads to less employment and economic growth.

Good regulation also provides an appropriate threshold to ensure that new entrants meet the standards required of practitioners entrusted with the management of the wealth of individuals and organisations.

Accessibility for new entrants is an important criteria in setting regulatory standards. Applying these standards in a pragmatic way can enhance the market. For example, the improvements of the FCA Fund Authorisation team in significantly reducing timescales for approving new fund applications, along with revising its forms to more clearly set out the information it requires, are welcome. The changes have greatly assisted firms in being able to more predictably manage new fund launch projects in the UK, while maintaining the robust regulatory oversight of authorised funds.

However, regulation even when well intentioned can have unintended consequences:

- Excessive regulation can prove a barrier to high quality and innovative new entrants. It can also tie up resources of current participants, increasing costs to the end investor and diverting resources that could otherwise be used to develop new products or business solutions or improve the efficiency or effectiveness of the organisation.

- Poorly designed regulation may have a range of impacts, both on the behaviour of market participants and on that of savers and investors. For example, providing inadequate or conceptually challenging information, such as that which was proposed in the draft Regulatory Technical Standards (RTS) for PRIIPs[1], may not facilitate good decision-making. In this regard, we strongly support the recent FCA emphasis on smarter communications as well as undertaking our own work on enhancing consumer disclosures.

It is therefore important that regulation is proportionate to the risks posed, and that an appropriate balance is maintained between adequate investor protection and financial stability safeguards on the one hand, and on the other ensuring barriers remain low enough to enable a vibrant and competitive market.

Looking forward, we would ask the FCA to consider the development of an additional tool which could provide formal regulatory forbearance. Such a tool would afford industry more time to build systems and/or negotiate terms, in scenarios which could otherwise result in significant market instability. We would refer FCA to an example in the United States, where the US Securities and Exchange Commission (SEC) has 'No-Action' letters' at its disposal. Where the SEC issues a No-Action letter, the SEC staff agree not to recommend that the SEC take enforcement action against the requester based on the facts and representations described in the individual's or entity's request. Similar provisions for the UK could go a long way to providing the FCA with the necessary tools to prevent significant harm to relevant markets functioning well.

Such No-Action letters are useful in scenarios where incoming rules are having unintended consequences that were not foreseen at the time of drafting. For example the upcoming implementation in the UK of the new Variation Margin (VM) requirements under the European Market Infrastructure Regulation (EMIR) on 1 March 2017. As a result of this requirement all counterparties undertaking Over The

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[1] Packaged Retail and Insurance-based Investment Products (PRIIPs).

Counter (OTC) derivatives transactions are required to exchange VM on a daily basis. This requires new documentation being put in place with every counterparty on a multilateral basis. The sheer scale and difficulty of this renegotiation exercise has been much greater than either the market or regulators anticipated. In such circumstances, if the FCA had a No-Action relief tool, it could provide additional time for the industry to undertake this project and avoid any potential liquidity squeezes or market disruption caused by the hard 1 March 2017 deadline.

We would emphasize that the industry sees relevant markets functioning well as a shared goal. For the industry and regulator to work together effectively towards this shared goal, transparency and governance is of central importance. It is self-evident that the FCA has an overarching responsibility to consumers and the firms it regulates to build confidence and trust in clean, fair and efficient markets as well as being proportionate in its actions.

GOVERNANCE:

In considering its future mission, the FCA should review its approach to governance and transparency. The IA believes that there must be more transparency in the FCA decision making process. From the outside it often seems as if different departments within FCA are not always fully aligned (Supervision vs Competition). The SEC holds public meetings under the provisions of the Government in the Sunshine Act and the FCA could take a similar approach which would allow the industry and other stakeholders to engage and understand the FCA's thinking earlier in the policy making process.

We would also encourage the FCA Chairman's office to have a much more robust role in reviewing the FCA's operation and performance. While the principal role of the Chairman is to provide leadership to the Board of FCA. The Chairman's independent role should be used to provide a much stronger check on and review of the FCA's executive.

TRANSPARENCY:

Greater transparency in other areas of FCA's work would give industry the opportunity to engage and learn lessons from FCA interventions. For example enforcement actions currently provide very limited feedback to firms - see the comments below on questions Q25 and Q26 which explore this in more detail.

Perhaps an even more important and long-term consequence of greater transparency, is its ability to foster trust between industry & regulator and new levels of joint endeavour. The Mission Paper makes plain that 'not all breaches [of FCA rules] result in a formal investigation and public sanction may not be inevitable or

even likely' (p.8). Indeed, the FCA can play an equally important role helping firms comply, as opposed to simply sanctioning them. This being the case, we would urge the FCA to share more examples of positive interactions between industry and regulator with firms. This should include examples of what it has identified as good practice and poor practice in its supervisory work; recognising that certain cases will need to remain confidential on account of the commercial information which they would otherwise reveal.

Transparency is essential for promoting objective standards. There is the need for a healthy and open dialogue between regulators and regulated entities – founded on ideally, a recognition that firms and the regulator share a common outlook. Likewise, regulators need to be able to engage firms in a dialogue that enables them to ask questions and gain the insights of practitioners for better rulemaking and other decisions.

The historical environment created a fear of 'regulatory capture' in which regulators are concerned about being perceived as being too close to the entities that they regulate. This is unfortunate as a frequent two-way dialogue is important to a healthy relationship, and often a direct conversation is much more productive than a formal hearing or relying on an analysis of the black letter rules in the handbook. However, we are encouraged by the FCA's approach to engaging firms in dialogue as part of a broader process of market intelligence and within the context of the 'close and continuous' approach to supervision.

When the industry requests that the FCA consider making a change to a rule(s), it would be useful if there were a clear process on what happens to such suggestions. It would be very helpful if FCA were to set out a timescale within which it would respond, even if that schedule is not set in stone. In addition it would be helpful for the industry to understand FCA's thinking if, for rejected submissions, it was able to provide an outline of why it had not been adopted.

CONDUCT ISSUES:

The FCA rightly highlights in the paper the recent history of conduct issues, in particular LIBOR, FX markets, sale of interest rate hedging to corporates, Payment Protection Insurance (PPI) misselling and breaches of financial crime rules. As the conduct regulator for the UK, the lessons of the past should inform the appropriate allocation of resources, regulation and supervision going forwards. This should include decisions on allocation of resources between parts of the financial sector (the sell side or the buy side) that have exhibited past conduct issues.

As governments increasingly require their citizens to provide for their own retirement, it is the buy side which is filling that gap, providing innovative financial solutions to meet consumers long term needs.

The Investment Association's (IA's) purpose is to ensure investment managers are in the best possible position to:

- Help build people's resilience to financial adversity.
- Help people achieve their financial aspirations.
- Enable people to maintain a decent standard of living as they grow older.
- Contribute to economic growth through the efficient allocation of capital.

The UK is the second largest investment management centre in the world and IA members manage 37% of European assets[2].

In considering its regulatory & supervisory approach, FCA should work together with the industry to support the important role that the buyside is fulfilling in meeting consumers' long term financial requirements.

NEW REGULATION:

The Mission Paper covers a very wide range of issues for FCA to consider in its future strategy. It would be disappointing if the concerns raised in the paper imply the creation of additional regulation. The need to maintain market access with the EU may limit the space in which the FCA can operate post-Brexit. Existing EU regulation will likely be copied out into UK law. In addition, international obligations to the G20, Basel and IOSCO among others, will continue to apply. As such we do not anticipate that the existing body of law and FCA Handbook rules is likely to change extensively in the near future, other than for the purpose of transcribing EU law.

In the short term there is a need to maintain a UK regime which is functionally equivalent to the EU. In the long term the FCA must set a new agenda based around making the UK an internationally attractive place to do business, consumer protections and growth of the UK economy. This change in approach must be brought about in the tone as well as the substance of the FCA's approach. In the short term changes in substance may be limited but tone can change immediately.

[2] More information can be viewed on our website.

Since the 2008 financial crisis there has been a continuous layering on of regulation from Europe, international standard setters and domestic regulation. The full impact of this extensive new body of regulations has yet to be fully examined.

The unprecedented volume of new regulation means it is impossible to judge the effect of any single regulation due to the cumulative effect of the numerous other regulations impacting on the market in close proximity. Just some of the regulations coming into force in 2016 alone were the Market Abuse Regulation (MAR), Undertakings for Collective Investment in Transferable Securities V (UCITS V), aspects of the European Markets Infrastructure Regime (EMIR) and Solvency II.

In addition, firms continue to build toward the introduction of the Markets in Financial Instruments Directive II (MiFID II), Packaged Retail and Insurance based Investment Products (PRIIPs), the Benchmarks Regulation and the 4th Money Laundering Directive (4MLD) which are due to be implemented in the near future.

It is important for the FCA and its stakeholders that it should be able to measure how effectively it meets its objectives. To do this there needs to be a stable base to measure against. For example, cost disclosures in financial products is an evolving area of work, which has been a feature of the Retail Distribution Review (RDR), For example, the change from Annual Management Charge (AMC) to an Ongoing Charges Figure (OCF) following the FCA Thematic Review that took place last year. In 2017 the IA is committed to doing further work to increase transparency in costs by developing a new disclosure code to meet the requirements of PRIIPs and MiFID II. All of these attempt to address the very issues the FCA sees. Existing changes need to be allowed to flow through to the consumer and the results should be assessed before the introduction of further changes.

BREXIT:

The challenges and uncertainties posed by Brexit to regulated firms are considerable. Since the referendum vote the FCA has engaged with the financial sector to understand the impact of Brexit, albeit many of the key issues to be resolved will be political. In this uncertain environment firms are making decisions now about their businesses, future investments and the roll out of new products and services. The IA would encourage the FCA to continue to engage in the Brexit discussions with the industry, with government and with European international counterparts.

While we understand that the FCA will continue to promote the highest level of consumer protection and conduct post Brexit we do not see how FCA can achieve its objectives of well-functioning markets, effective regulation and sustainable growth without considering the impact of Brexit:

Business continuity - for example there are thousands of passports both into and out of the UK and on products which are manufactured/managed in the UK and sold outside the UK and vice versa.

Scale and depth of the UK financial sector – Many international firms chose the UK as a place to do business but the attractiveness of the UK goes beyond what terms of access to the single market are negotiated. It is also important to consider how Brexit will impact perceptions of wider international competitiveness. Many businesses investing into the UK will have done so on the assumption that terms of access to the EU single market would have been more dependable than the referendum result has now implied. They will be watching closely how other factors evolve and this could ultimately have an impact on the size of the UK's financial sector.

The FCA's role in regulatory policy development - The FCA will have to be both strategic and innovative in how it engages with international bodies such as IOSCO and with other European regulators. While recognising many of the final decisions will be in the hands of the politicians negotiating Brexit, the FCA should feed its technical expertise into the negotiating process and communicate effectively to the industry on an ongoing basis.

Future EU market access for UK firms depends both on formal EU regulatory provisions and access to national markets without restrictions arising from national discretion. Moreover, a number of Member States permit cross border provision of services, including many of the Member States that UK investment managers have a focus on (e.g. Luxembourg, Ireland, Netherlands, Germany, Finland and Sweden) from third country firms. The FCA could have a vital role in discussions with regulators in EU Member States to clarify the rules on cross border services, potentially opening up opportunities for UK firms beyond the specific provisions of EU law.

FCA RESOURCES:

We recognise that the challenge facing FCA is considerable. We consider that in order to achieve its objectives the FCA should have an additional overarching goal, similar to the German regulator (BAFIN) to recruit, retain and nurture high quality staff. The FCA's capabilities are determined by the skills and motivation of its staff. Enhancing the quality and skillset of its staff should therefore be a high priority if the FCA is to meet its extensive responsibilities.

We are encouraged by FCA's open-mindedness to new technologies which can offer the opportunity to improve FCA use of resource. The Mission Paper highlights the

'great potential' of data science and its ability to help the FCA sift through the large amounts of data it receives to target those firms which pose a higher risk to investors and markets. We are supportive of further exploration of the use of data science by FCA and consider that it could potentially generate substantial benefits for the efficient allocation of FCA's resource.

The way in which FCA collects data from the industry needs careful consideration. Widespread use of section 166 reviews is a costly burden on the industry which could be replaced by better use of technology to achieve the same effect. We would encourage FCA to explore new RegTech opportunities to more effectively gather data from the industry at a lower cost.

The FCA should apply its recent and growing interest in RegTech to the s166 review process. We recognise that the s166 reviews have served as an important tool for the FCA. However, with recent technological advances and in conjunction with the FCA's explicit enthusiasm for data science in the Mission paper, we see an opportunity for firms to put into practice technological developments to facilitate a streamlined delivery of regulatory requirements.

In May 2016, the US Office of Financial Research published a paper[3], 'Developing Best Practices for Regulatory Data Collections', seeking to '*initiate a discussion about identifying best practices in financial regulatory data collection, with a view to aligning the interests of government officials and the industry'.* The paper proposes a four-step data collection preparation process to facilitate better data collection for the benefit of both regulator and regulated entities. An example of this is the second phase - 'Design a template' phase - which makes explicit reference to the role of information technology specialists ensuring that data streams can be automated.

Automated data collection is just one example of RegTech's potential. RegTech could offer further streamlining benefits to both the s166 reviews, involving reports by skilled persons, and to other regulatory requirements far more widely. Not only can RegTech create efficiencies for industry, the impact of which will flow through to end consumers, it can also systematise and streamline FCA's efforts to look into aspects of regulated firm's activities. We believe it has significant potential to benefit both FCA and industry.

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[3] https://www.financialresearch.gov/viewpoint-papers/files/OFRvp-2016-01_Best-Practices-Data-Collection.pdf

CULTURE:

Culture is all-pervasive – and good culture needs to be reinforced at every opportunity. Culture should not only be in evidence through leadership ('tone at the top'), it should be embedded, reinforced and amplified by governance structures, training, compensation, hiring and promotion incentives.

Poor culture could result in reputational risk for firms and risk for their clients. The FCA's business plan for 2014-15 sets out a number of high level expectations of firms around culture, which we support:

- A properly implemented customer-centric strategy, which produces sustainable profits;
- A Board-led culture which supports that strategy and positive consumer outcomes;
- Develop products that operate in the interests of customers, and use behavioural techniques to ensure that those customers also understand them; and
- Take a prospective view on product, stress-testing and client appropriateness.

We believe that the FCA should focus its supervisory approach more tightly to generate a positive culture within financial services firms.

THE UK'S GLOBAL POSITION:

Whilst the FCA does not retain its predecessor's objective of international competitiveness, this is a necessary constituent of the FCA's statutory objective to enhance competition.

We would emphasise the international dimension of the UK asset management industry and market, which contributes substantially to UK investor choice as well as UK export earnings as clients draw internationally on world-leading expertise. While we agree that the UK can be a beacon of good practice, and that this solidifies its domestic and international strength, one criterion of such a status is ensuring a strong degree of compatibility with core international regulatory architecture.

This compatibility is compromised in cases where the UK is perceived to be front-running or gold-plating global initiatives. Having a strong regulator focused on achieving well-functioning markets is an asset to the UK financial sector. But this goes

hand in hand with ensuring that the UK is not seen as an outlier in relation to international norms, and that international firms see in the UK a familiar and consistent approach to the regulation of a large and sophisticated financial sector.

Compatibility with global standards for financial services regulation may become even more important under a post-Brexit EU-UK deal. For example if compliance with global standards were the basis for mutual recognition of supervisory regimes by the UK and EU.

FUTURE PROCESS & OUTCOMES:

Following the deadline for submissions, we would welcome additional clarity on the process that the FCA will go through to establish its future mission. The IA looks forward to engaging constructively with the FCA in an ongoing conversation about this important topic.

Our members are keen to move toward a model where there is greater co-operation and engagement between the industry and the regulator. Promoting a fully developed dialogue which leverages industry expertise to create better functioning markets for consumers, should be a key touchpoint in FCA's review.

ENSURING MARKETS FUNCTION WELL

Q1: Do you think our definition of a well-functioning market is complete? What other characteristics do you think we should consider?

We agree that a well-functioning market will have engaged consumers, firms and employees that follow clear standards, alongside well-judged, timely, predictable and cost-effective regulation. However, we would highlight the importance of consumers being both genuinely engaged and educated in the interests of well-functioning markets.

We also agree the importance of sufficient competition between firms to provide consumers with better products and services as a constituent factor of well-functioning markets. Well-functioning markets are characterised by innovation and disruption, with new products or new methods of delivery of services being brought to the marketplace either by existing participants looking to gain a competitive edge or new entrants.

Increasing longevity and taking prime responsibility for planning for retirement are posing significant challenges to consumers. A recent Blackrock survey indicated that only 17% of UK consumers say they use the services of an advisor – this means the vast majority of the population relying on their own decisions or by holding excessive amounts of cash.

One of the prime ways of protecting consumers from our perspective is empowering them to take informed decisions and empowering firms to give standard messages on how to embark on financial planning using guidance tools which sit half way between execution-only and full investment advice.

Last year's AFM discussion paper set out some tough challenges to regulators in this area, in particular on the challenges facing self-directed investors. Whilst the FCA partly acknowledges these challenges in the section on the unpredictability of disclosure, stronger recognition of such issues would be helpful.

A vital factor of well-functioning markets is empowering consumers. However, in FCA's paper there is very little focus on the Financial Advice Market Review (FAMR).

We would have liked to see a very strong commitment from FCA to deliver on the outcomes of the FAMR. With much of the government's focus now being on Brexit,

there is a risk that the implementation of the FAMR recommendations is deprioritised, leading to worse consumer outcomes.

Another area to consider is how to encourage retail investors to invest in long term assets (the long term patient capital debate). We increasingly have the investment challenge that individuals are being encouraged to invest for the long term. However, due to the regulatory constrains (liability and extended suitability processes) it is increasingly difficult for financial institutions to provide easy access to long term investment strategies to retail investors. It is our view that a new balance needs to be struck in this area.

There is a debate to be had about how to help consumers overcome their bias against short term volatility and loss in favour of long term growth. Whilst the FCA makes reference to long term products, FCA could be more ambitious regarding the challenges in this space, particularly around providing financial education.

Q2: Do you think our approach to consumer loss in well-functioning markets is appropriate?

The FCA is right to highlight that in a well-functioning market consumers can lose and firms can fail. In this respect, it is important to distinguish those losses which have arisen due to risks inherent in participating in financial markets, such as market risk and credit risk – these are risks that consumers take in order to participate in the opportunity to make potential gains from capital markets, from those due to poor conduct. Losses arising from poor conduct, e.g. where money belonging to investors has not been protected under client money rules, or where investors have been misled into buying unsuitable products or services, are examples of market failure.

We would encourage efforts to further educate consumers regarding the possibility of losses from investments.

Q3: Do you think we have got the balance right between individual consumer due diligence and the regulator's role in enforcing market discipline?

The IA believes that the best consumer outcomes will be delivered in a market where the balance between three key sources of influence upon competitive dynamics is effectively measured and calibrated:

a. Regulation and supervision.

b. Market forces (including intermediaries such as distributors and advisers).

c. Firm and product level governance (including independent controls).

In broad terms, a competitive market is one in which proportionate regulation combines with other disciplines to provide consumers with a wide choice of products offered by numerous different firms. These products should be offered with appropriately detailed information so that consumers can effectively compare the value for money of both the products and the firms advising them.

Certainly, it is important for individuals to take personal responsibility for their financial decisions and actions. However, as expressed elsewhere, this balance would shift dependent upon the vulnerability and capabilities of that particular consumer/group of consumers. We support the FCA's position to keep under review the relative vulnerability of different consumer groups. However we strongly encourage the FCA to better define what makes a given consumer group 'vulnerable' in each instance.

Q4: Do you think the distinction we make between wholesale and retail markets is right? If not, can you tell us why and what other factors you believe we should consider?

We support FCA's distinction between wholesale and retail markets.

Q5: Do you think the way we measure performance is meaningful? What other criteria do you think are central to measuring our effectiveness?

As a framework, we support the Mission Paper's three-tier response. This composite approach encompasses both activity and impact.

We recognise the difficulties involved in assessing regulator performance, not least because the FCA is often instrumental in preventing harm in scenarios which must remain confidential, on account of the commercial information which they would otherwise reveal. Moreover, the FCA's role is to *ensure and support* relevant markets function well by taking appropriate actions. It is not relevant markets functioning well in and of themselves that demonstrates success but rather the underlying, and often hidden interventions of the FCA that should be measured.

Whist the paper makes clear that the FCA shall measure the *impact* of its interventions, if the FCA were to reduce its numbers of interventions, this might nevertheless be seen to reduce the number of opportunities where the FCA could measure the impact of its interventions.

We would highlight the importance of not falling into this trap. Indeed, a reduced number of interventions will by no means necessarily be at odds with the FCA's objective and we would like to stress the importance of quality over quantity. Each intervention would be most effective if it had its own bespoke set of targets and objectives at its beginning, against which its success could be measured. Whilst this will be harder to articulate, its assessment would be more meaningful. Further, we support the aim to continue to keep progress against this measurement under review.

MEETING OUR OBJECTIVES

Q6: Do you think our intervention framework is the correct one?

There is considerable uncertainty in the industry resulting from the ongoing waves of regulatory change. In an ideal scenario, the buyside would partner with the regulator to gain clearer interpretation of the rules and work together to create industry solutions.

In some instances it appears FCA is not very interested in engaging with the industry, by offering definitive guidance and finding solutions to problems. To foster such constructive engagement, FCA could usefully develop better relations with those it regulates and foster a two-way dialogue to achieve sensible solutions and standards that everyone should be held accountable to.

For example thematic reviews typically result in recommended standards of behaviour, but often, with no suggestion of how to implement them. Rather than set firms against each other in an attempt to create competitive regulatory adherence, it would be more constructive for the regulator to lead the drive to standardise industry practices by offering to work with firms and offer interpretation and guidance on acceptable behaviour. Good practices should be shared and adopted across the industry. The FCA should facilitate that process by providing more examples.

Our members have a strong focus on adhering to regulatory standards and as a result have a strong demand for direction from FCA. It would greatly enhance FCA's effectiveness if its managers were directed to offer more informal advice on proposed new processes and controls. Building on the sandbox concept, it would be positive for FCA to offer a sounding board to firms seeking high level guidance. This would give firms greater confidence in their approach but without formally committing the FCA through the provision of formal written instruction.

We would also like to see a greater openness by FCA to look at unintended consequences of its actions that are brought to its attention and, where appropriate, to deliver prompt remedial action.

Harm to well-functioning markets does not only stem from failing to protect – whether it be protecting consumers or the integrity of the market. Harm can also stem from failing to facilitate innovation, that is, hindering healthy competition. The FCA's three statutory objectives reflect these two sides to harm. We are supportive of the way in which the FCA's statutory objectives are reflected in the intervention framework, namely in its breakdown of harm, shown in the table on p19 of the paper.

In both FCA's views on the intervention framework and under the section on 'Severity' in Chapter 10, it is evident that FCA recognises the importance of both harm and intent. For example, p6 asserts *'We will also look at the severity of the misconduct, regardless of the scale of harm'*. We are supportive of this approach and would refer the FCA to a paper from the U.S. based think-tank, Information Technology and Innovation Foundation (ITIF), which explores this distinction further and develops a typology to assist regulators in their allocation of penalties to regulated entities.

In its 2015 report[4], *'How and When Regulators Should Intervene'*, ITIF bases its typology upon the understanding that:

'from a societal perspective there is a significant difference between mistakes that harm consumers due to maleficence, negligence, wilful neglect, or ineptitude on the part of the company and those that harm consumers as a company strives to create innovations that benefit society' (p.1).

ITIF urges regulators to consider their approach to penalties carefully, dependent upon the presence and relative importance of both harm and intent. Their conclusion is as follows:

[4] http://www2.itif.org/2015-how-when-regulators-intervene.pdf

'...intentions matter. As companies race to innovate, mistakes will inevitably happen. Regulators should make sure the punishment fits the crime, or they could chill the kind of risk-taking needed for innovation' (p.8).

Q7: Do you think the way we interpret our objective to protect and enhance the integrity of the UK financial system is appropriate? Are there other aspects you think we should include?

Please refer to our comments in the introduction.

REGULATION AND PUBLIC POLICY

Q8: Where do you believe the boundary between broader policy and the FCA's regulatory responsibility lies?

By its very nature this is not an explicit boundary, there will always be broader policy overlays on to regulation. Whilst it is artificial it is necessary to draw a distinction - in keeping with the Mission paper's aims - to find a clear remit for the future actions of the FCA, while providing the market with necessary clarity and legal certainty. We agree that it is important that this boundary is proactively defined in a way that it can be justified.

For example, the paper asserts that the FCA does not *'have a specific objective or duty to ensure consumer access or financial inclusion'* (p. 22). However, it is clear that the FCA can exercise significant discretion in the interpretation of its statutory objectives. FCA need not be constrained by an overly literal reading of its objectives if it believes it would further its overarching objective to shift the boundary between FCA's remit and broader public policy. As it stands, we support the current boundary. HM Treasury (HMT) recognised and acted on its responsibility to ensure consumers access to financial services, when it launched the 2015 Financial Advice Market Review (FAMR), in conjunction with the FCA.

Similarly Brexit is clearly a broader policy issue but it intersects with FCA's regulatory responsibility. Whilst this is primarily an area for the government, it is nonetheless important for the FCA to remain mindful of the challenges that industry will encounter during the Brexit process and in the new post-Brexit world. We believe that the next step for the FCA is to engage with industry to adapt its mission to the opportunities and challenges that Brexit will bring. This will necessarily be a longer-

term project, dependent on the eventual relationship between the EU and the UK and the UK's priorities for financial services. The Investment Association stands ready to assist the FCA in this task.

Q9: Is our understanding of the benefits and risks of price discrimination and cross subsidy correct? Is our approach to intervention the right one?

FCA discusses inertia and cross subsidisation extensively in the paper. FCA should ensure there is an open and competitive market such that consumers can easily access new products and providers to address the problems of inertia.

Q10: Does increased individual responsibility increase the need and scope for a greater and more innovative regulatory response?

Increased individual responsibility does not necessarily increase the need and scope for a greater regulatory response. It does however call for FCA resources to be targeted toward more innovative responses. We agree with the FCA that an ageing population, changes to working patterns and technology represent new challenges to the markets, which require innovative thinking. We therefore welcome the FCA's open approach to such challenges, including the use of 'non-traditional regulatory responses' (p.23), such as opening FCA processes to all to allow technological solutions to be developed to meet FCA concerns.

Q11: Would a Duty of Care help ensure that financial markets function well?

We agree with the FCA that an unspecified Duty of Care obligation would not significantly add to either the functioning of markets or consumer protection. There are already clear requirements in the FCA handbook and in UCITS and MiFID to act honestly, fairly and professionally, in the best interests of clients and to have conflict management. This does not exclude improvements in the way that such duties are defined, implemented or overseen. We note that the Market Study is currently exploring this issue. However, it does mean that a new duty appears disproportionate.

There is a further important point in this respect. The debate has come at a time when increasing regulatory and political interest has been shown in the issue of fiduciary responsibility. The Law Commission looked at the question in 2013/14 in the wake of the report on the functioning of UK equity markets by Professor John Kay of Oxford University. The Law Commission stopped short of recommending

significant changes to the legal definition of duties in the investment chain, particularly as applies to investment managers. Indeed, the report provided a fairly forthright commentary on the reluctance of the UK judiciary to assign fiduciary responsibilities in commercial relationships, and to view the concept of fiduciary responsibility as a broad starting point rather than as a clear source of direction with respect to how duties may have been exercised. Instead, courts have been far more influenced by the regulatory regime.

We believe the policy position taken in the FCA's Mission paper should carry through clearly and consistently to all sectors within the regulator's remit, and we therefore take the view that a statutory duty of care should be avoided where other reforms could achieve similar aims.

PROTECTING CONSUMERS

Q12: Is our approach to offering consumers greater protection for more complex products the right one?

In assessing complexity for consumers, it is important to focus on the outcomes of the product rather than the construction of the product. A product with a complex structure may deliver simple outcomes for a consumer – provided the potential outcomes and key risks of a product need to be clearly communicated and understood by the consumer, the consumer does not necessarily need to understand the detailed workings of the engine to assess whether the product is suitable for them.

It is important to ensure that greater protection measures rightly in place for more complex products do not prevent consumers from accessing products which may be beneficial for them.

Q13: Is our regulatory distinction between consumers with greater or lesser capability appropriate?

We do not consider appropriate levels of consumer protection should be judged solely on product complexity. It is clearly appropriate to distinguish between consumers with greater or lesser capability. In particular, it is important that firms have appropriate policies and procedures to identify vulnerable consumers and ensure they can manage their requirements appropriately, or if appropriate, decline

the business. Firms should be able to apply proportionality to ensure they meet the requirements of consumers. The requirements of different consumer groups will vary – protections in place for less sophisticated retail investors would be disproportionate and inefficient for professional investors. Equally, professional investors may require technical and granular information for due diligence purposes which would be unnecessary, incomprehensible and overwhelming for most retail investors.

Q14: Is our approach to redress schemes for issues outside our regulatory perimeter the right one? Would more specific criteria help firms and consumers?

We support the FCA's use of its enforcement powers in a proportionate manner for such issues.

Q15: What more can we do to ensure consumers using redress schemes feel they are receiving the appropriate level of personal attention?

The IA view is that 'protecting consumers' goes beyond protecting consumers from misselling and fraud. The FCA has a pivotal role in fostering a market environment which allows consumers to meet their long term financial needs and objectives.

In the current historically low interest rate environment, it is important that consumers are able to access and engage in an informed manner with a wider set of financial products. As savings accounts are providing only very small returns or even a negative real return, in order to provide for their future requirements, consumers need to feel confident about putting their money into a wider set of investment products. It is part of the FCA's role to ensure that consumers are confident and informed about moving into such products. The importance of this is accentuated by the demise of defined benefit pensions and the move to defined contribution as the default mechanism for pension provision.

The FCA must not allow aggressive supervision, restrictive rules and enforcement actions in the name of consumer protection to choke off vital provision of financial services for consumers to meet their long term financial needs. A stultified and over regulated market place which is not serving the needs of wider society is not a good outcome. Indeed, it is not protecting consumers' long-term needs.

Appropriate risk taking is necessary for growth and a vibrant economy. The FCA should work with the financial sector to create a regime centred on appropriate incentives and penalties to impact individual behaviour. It should not punish

shareholders and end-investors with regulations and penalties that drive up the cost of capital or cause unintended harm without concrete benefits to justify these costs.

As FCA states in its paper, the objective is not to create a no (firm) failure regime. Equally it is not about creating a 'no loss' regime which ultimately fails consumers in the long run as it does not allow them to take appropriate risks to meet their financial needs. The Australian Securities & Investments Commission (ASIC) has just such an objective to: *promote confident and informed participation by investors and consumers in the financial system.*

It is also important that consumers have easy access to professional, informed and affordable advice they can trust in order to identify, understand and access products and services which meet their financial aspirations. Given the range and varying complexity of financial products and services available, not every consumer can expected to be aware of or understand the full suite of products or services available to them. Consumers should have the right to conduct their own research and make their own financial decisions if they choose to and if they are confident in their ability to understand their decisions.

However, where consumers have any doubts or uncertainty about the financial products they require, they should be able to access and be encouraged to access affordable professional financial advice. It is therefore important that while the FCA rightly sets high standards of professionalism and qualifications for financial advisers, it also ensures its regulation is proportionate and enables a healthy advice and guidance market able to serve a broad population of consumers.

VULNERABLE CONSUMERS

Q16: Is our approach of giving more vulnerable consumers greater levels of protection the right one?

Our members are strongly supportive of the principle of providing enhanced protection for vulnerable consumers. The challenge for the industry is identifying when such consumers become vulnerable. If they are not part of a definable vulnerable category when they first create a relationship with the firm (e.g. that person is registered as disabled) there is no way for the firm to know if their clients are vulnerable in the wider sense or if they subsequently fall into that category.

Beyond definable categories e.g. disability, it is extremely unlikely that consumers will give their financial services providers the wider holistic type of information

referred to in the paper. Even where consumers are in specific vulnerable categories, this information will often only be provided if the consumer considers that something has gone wrong in the relationship with the firm. As such FCA should carefully consider what information the firm had available to it at the time when assessing in hindsight whether the firm's behaviour has met the required standards.

When deciding on regulatory approach in this area, FCA should focus on:

- Specific identifiable groups who can be given additional protections.
- Products that are likely to attract vulnerable consumers – e.g. payday lending.
- Whether the consumers had access to suitable, informed advice from a regulated professional.

In addition FCA should not conflate tackling financial crime / fraud with legitimate businesses who are interacting with a wide range of consumers, some of whom may be vulnerable. These are two very different issues that require separate and distinct approaches.

There will always be some vulnerable consumers, addressing the needs of this group can only be effectively achieved by the FCA and the industry working in partnership. It will not be achieved by supervisory rules or actions alone.

THE ROLE OF DISCLOSURE IN CONSUMERS' CHOICES

Q17: Is our approach to the effectiveness of disclosure based on the right assumptions?

Disclosure can serve different purposes and it is important for both regulator and industry to be clear about objectives in any given area of disclosure. In asset management, disclosure can serve both to ensure effective accountability and to facilitate decision-making. In practice, both objectives are linked but there is a critical distinction. The way in which accountability is provided may have a wider confidence-building objective entirely separate to the way in which disclosure may be constructed for the purposes of good decision-making. For example, levels of trust in a given sector may be affected by positive or negative perceptions of transparency.

The IA has been very clear that it accepts that better disclosure of the total cost of investment is necessary to facilitate wider public confidence. Furthermore, it believes that such information should be provided in a consistent manner (both language and methodology) regardless of the nature of the product, whether it is a unit trust, unit-linked insurance vehicle or other form of long-term savings vehicle. To that end, the IA has proposed a detailed new Code that will provide total cost accountability at the level of the investment component.

However, the IA does not believe that good decision-making is necessarily facilitated by providing either highly detailed lists of costs, or by aggregating costs that impact the client in different ways into an apparently simple single number. In other words, data (either aggregated or disaggregated) is not the same thing as information.

There needs to be a balance struck, based on evidence as to how decision-making takes place at the level of a given group of consumers and/or intermediaries. Such disclosure needs to recognise the challenges that consumers have in navigating the financial services landscape, and support better decision-making by considering a range of tools, not just those taken from behavioural finance. While behavioural finance offers important insights about the limitation of rational economics for consumer decision-making, there is also a risk of getting the balance wrong between attempting to increase levels of understanding and using sophisticated techniques to ensure that consumers make the 'right' choice regardless. These are the limits of what Richard Thaler described as 'libertarian paternalism'.

The IA believes there is an opportunity at the very least to undertake further work to support 'informed choice' alongside automatic enrolment and other behavioural techniques. This could be facilitated by testing of how combinations of graphics, narrative and quantitative metrics help fund investors. This debate also raises an important issue of segmentation and tailoring, particularly given the intermediated nature of the retail and institutional markets.

The IA has set up a working group to look at how the asset management industry can improve its communication with consumers. We are taking the points raised in the Discussion Paper on Smarter Communications into account and are liaising directly with the FCA on this piece of work.

Appropriately simple and clear information is effective for consumers. However FCA should consider carefully what the appropriate level of detail to be supplied to the

consumer is. This is very often not just boiling everything down to one – essentially meaningless – number which contains too many disparate underlying constituent factors to give a proper comparison. Whilst there should be an emphasis on simplicity, sufficient granularity to give a true comparison is what's required.

The format in which this information is presented to consumers is important. Some consumers are more likely to interact with information received electronically rather than paper based. The FCA should be open, flexible and supportive of alternative disclosure methods firms would like to deploy.

In conjunction with the FCA, the IA has well advanced work on a new Disclosure Code for charges and transaction costs that covers not just the institutional market, but all substitutable UK long-term savings products and services.

Q18: Given the evidence, is it appropriate for us to take a more 'interventionist' approach where conventional disclosure steps prove ineffective?

We would welcome an active role from the FCA in assisting the asset management industry in improving communication with investors. As mentioned above in Q17 we are keen to work closely with the FCA to ensure firms communicate more effectively with their consumers; not just at the point of when they invest in a product but on a regular basis thereafter.

We note that the FCA authorises retail investment funds and takes into account for this decision information from the fund literature (prospectus, simplified prospectus, KIID, etc.). The nature and style of the statement of investment objectives and policy in prospectuses has developed based on a dialogue between the regulator and the Authorised Fund Manager or, more typically, the regulator and the AFM's solicitor, who is required to certify that the prospectus conforms to the relevant rules. The regulator must provide approval, and the IA believes further dialogue on regulatory expectations in this area would be valuable.

We believe that interventionist measures such as imposing constraints on price should only be used where all other measures have failed. As the Office of Fair Trading (OFT) and other regulators have noted, price caps run the risk of significant unintended consequences, not least a potential indicator of where price should be within a given market. We would not describe some of the innovative approaches currently being tested to improve consumer outcomes in the long-term savings and pensions market as conventional. As we outline above, the failure of rational

economics to provide a compelling framework to facilitate good decision-making in some parts of the UK long-term savings market suggests that unconventional techniques should be tested. This is not necessarily synonymous with interventionism.

WHEN WILL WE INTERVENE?

Q19: Do you think our approach to deciding when to intervene will help make FCA decisions more predictable?

Clarity over regulatory expectations and decision making processes is needed to help make the FCA's decisions more predictable.

Q20: Are there any other factors we ought to consider when deciding whether to intervene?

The purposes of regulatory intervention should be clear and well thought through, with specific (and, ideally, SMART[5]) targets. The FCA has limited resources and is responsible for regulating 56,000 firms. It is important that interventions are rationed and targeted to achieve as great a regulatory impact as possible. The FCA must be mindful of how its actions may impact the market through its supervisory or enforcement approach to innovation.

While the questions the regulator must consider (p36) are necessary, they are not sufficient. The regulator should also ask:

- Whether the intervention is the most effective (or efficient) way of achieving its objective?
- Whether the intervention may have unintended, and undesirable, consequences?
- Are there other bodies with whom the regulator could co-ordinate its intervention?

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[5] 'SMART' : **S** – specific, **M** – measurable, **A** attainable, **R** relevant, **T** - time-bound.

- Is intervention possible? Does the regulator have tools which are sufficient to achieve its aims? Have previous efforts been made, and if so, how successful were they?

Q21: What more do you think we could do to improve our communication about our interventions?

A coherent, strategic approach to regulatory intervention would be greatly appreciated by those regulated by the FCA. Currently, there seems to be little visible consistency in how intervention decisions are made or publicised, or how the outcome of intervention efforts are reported. While it is acknowledged that much of this information is available, if you know where to look for it, a more consistent approach to making this information public would improve the visibility and effectiveness of the FCA's interventions.

The FCA may wish to consider setting out some of its interventions as 'case studies' in a dedicated section of its website. It could provide background and context of its initial intentions, decision making process, and desired outcome, followed by actions taken, and an ex-post analysis of the intervention's effectiveness.

An open approach to its actions would encourage external input and discussion. Deliberately inviting academic input to the process, or an independent evaluation of the results of an intervention may help with similar regulatory interventions in the future.

Such an open approach would also have the effect of helping members of the regulated sectors to understand the intentions and objectives of the regulator, and possibly lead to mutually beneficial, ongoing, 'conversations' between the regulator and the regulated.

COMPETITION AND MARKET DESIGN

Q22: Is there anything else in addition to the points set out above that it would be helpful for us to communicate when consulting on new proposals?

In addition to the points set out on p39, we believe the FCA should outline why the proposal is required, including detailed findings and robust supporting evidence of these findings.

We would encourage the FCA to engage with the industry suggestions on areas where markets are not working well and could be usefully reviewed under its competition objective.

SUPERVISING FIRMS

Q23: Do you think it is our role to encourage innovation?

In well-functioning markets it should not be necessary for the regulator to actively encourage innovation. It is our view that FCA and all public authorities have to be alert to keeping the UK prepared for the post Brexit environment with growth coming from both internal innovation and a comprehensive international strategy to drive foreign direct investment. However, it is certainly the role of the regulator not to impede innovation. In many instances, financial services legislation has become an onerous burden on regulated firms. Furthermore, it has become a significant barrier to entry for new firms wishing to enter the regulatory space.

The extent of Financial Services legislation has arisen, in large part, as a result of the complex and often uncoordinated process which developed the legislation. Financial services legislation was first built on a basis of statutory legislation by Self-Regulatory Organisations, and was further developed by statutory regulators. These developments were then, in many places, overwritten by multiple, uncoordinated European directives and regulations, as well as by international standards.

The current regulatory landscape can makes it difficult for both existing regulated firms and new firms looking to enter the market to do business in a way which has not been explicitly catered for or anticipated by current regulations. As a result, the industry would welcome the introduction of some form of 'safe space', in which to experiment with new approaches, new technologies or new business models. Excessive regulatory conservatism should not shut off innovation in financial services.

It is important that the FCA continues, and expands, its approach to encouraging innovation, otherwise regulated firms risk becoming stultified and the financial services industry in the UK suffering as a result. Such an outcome would only serve to entrench large existing players and create barriers to entry for new firms.

It is vital that the industry is encouraged and enabled to develop new, cutting-edge solutions and services to better service consumers and the wider economy.

We consider that encouraging innovation is a necessary prerequisite constituent to achieving FCA's third statutory objective to enhance competition. Moreover, effective competition is cited as an operational objective against which the FCA considers types of harm (p.19). This would suggest that effective competition through innovation is not just a desirable addition to relevant markets functioning well, but actually a necessary precondition.

Whilst innovation is an important part of generating competition in markets and better outcomes for consumers, we consider FCA should act as intelligent filter on how to use their powers to scope where technology is creating positive outcomes. Clearly this will involve a value judgement but for example, ever smaller tick sizes on venues and high frequency trading (HFT) operating in microseconds seems to fundamentally offer little in the way of benefit to either the wider industry or the end consumer.

In contrast proposals to apply blockchain – a form of distributed ledger technology – to post-trade settlement appear to offer potential structural improvements for the wider industry as a whole.

Similarly, the recent roll out of biometric identification (fingerprint recognition) for access to accounts, reduces the reliance on passwords and enhances the consumer experience.

It is for the FCA to determine where new innovation offers regulatory support but judicious application of FCA's powers can help to ensure innovation is focused on areas valuable to the market as a whole and ultimately the end consumer. We believe that FCA should build on its Project Innovate concept and leverage this gateway to allow a wider range of firms to be involved bringing more creative options to market.

There is a proliferation of algorithmic trading across equity markets and to a lesser extent foreign exchange (FX) markets. This represents a step change in the landscape for trading. FCA should ensure firms have appropriate controls on such algorithms both in development and active use on the market. Such controls will be important to avoid flash crashes and other negative outcomes. MiFID II brings in additional requirements for algorithmic trading when it comes into force on 3 January 2018. The new SMCR regime should dovetail well into the MiFID II obligations. This creates a strong framework within which FCA supervision can operate to ensure appropriate control of algorithms.

Q24: Do you think our approach to firm failure is appropriate?

We strongly support the differentiation by the FCA between firms acting as agents, e.g. our members in the asset management sector, and those acting as principal. One key result of this differentiation is in the level of capital that firms are required to hold.

As neither portfolio nor fund managers hold client assets, and their failure would only, temporarily, inconvenience their clients, it is right that while such firms should have well developed wind-down plans in place, they should only be required to hold sufficient capital adequate to ensure they can operate long enough to transfer their mandates to manage money on to another regulated firm.

OUR APPROACH TO ENFORCEMENT

Q25: Do you think more formal discussions with firms about lessons learned will help improve regulatory outcomes?

WIDER INDUSTRY ENFORCEMENT COMMUNICATION:

The IA fully supports appropriate enforcement action against firms where serious rule breaches have occurred. However we have substantial concerns about the effectiveness of the current approach to enforcement as an intervention tool in changing wider industry behaviour.

Many findings of misconduct are resolved through settlement discussions rather than being pursued though the full process of a decision made in the Regulatory Decisions Committee (RDC). This settlement discussion process is an issue for communication to the industry.

On the plus side, resolving misconduct investigations by agreement speeds up the process and allows FCA to deal with a larger number of cases with limited resources. However in such discussions, certain elements of the misconduct are admitted to whilst others are plea bargained away in order to get a quick resolution. These elements which are negotiated away cannot be included in the FCA final decision notice. The resulting outcome is that when the wider industry is reviewing the decision notice to ensure they are following best practice, crucial information is missing.

Decision notices will contain the most serious and obvious breaches, but exacerbating factors are often excluded. In the UK's sophisticated financial markets, when other firms are reviewing decision notices, it is often these nuances which are important and give the greatest steer. Simply stating obvious rule breaches doesn't help firms understand the detail of FCA's desired approach.

The IA proposes that the FCA gives more information about such nuanced factors on an anonymised basis in a regular enforcement publication or equivalent to Market Watch. It seems bizarre that the industry wants to understand FCA's interpretation of what went wrong in a certain situation, the FCA wants to change the industry's behaviour but they are restricted from communicating important details by a restrictive agreement with the firm which was in breach of the regulations.

SUPERVISION VISITS:

It would also be extremely helpful if the FCA were to share experience from supervisory visits (i.e. not just where activity leads to enforcement action). If the FCA identifies that a particular firms/firms have taken a different interpretation of a rule than it does, it would be beneficial if it shared its views through bulletins. This way, other firms can learn or, indeed, challenge such views.

In addition, with regard to UK Authorised Funds authorisation and changes to funds, it would also be helpful if the FCA were to include within its Authorised Fund webpages, a page that provides anonymised examples of submissions which have given risen to concerns/requiring changes and why. Such anonymised examples would be helpful to all Authorised Fund Managers and will lead to improved submissions.

WHISTLEBLOWING:

The FCA should consider its approach to whistleblowing; other regulators such as the US SEC offer significant legal protections to whistleblowers. Information from a whistleblower who knows of possible rule breaches can be an extremely effective tool for regulators. Reviewing the approach and scale of FCA's whistleblowing process would be beneficial. The operation of an effective whistleblowing programme would help to minimise the harm to investors and ensure capital markets function well.

SMCR:

Building on the introduction of the Senior Management and Certification Regime (SMCR) the IA considers that FCA should have a greater focus on individual responsibility in enforcement interventions. To truly drive behaviour and culture there needs to be sanctions on senior management individuals, not just a fine that hits the bottom line of the firm.

The current approach to enforcement – whereby firms receive large fines – does not appear to be working as a credible deterrent for egregious individual behaviour. To really drive a culture of compliance, regulators should instead identify individual bad actors and take appropriate action.

Temporary bans for individuals, or in some cases, even permanent bans, are appropriate since capital charges and penalties to a firm hurt shareholders and investors but do not tend to fundamentally shift the axis of a firm's culture. Consequently, we recommend that penalties be tailored to individual conduct, making bans and penalties for senior management individuals far more prevalent rather than focusing on fines to the firm.

CONSISTENT USE OF ENFORCEMENT INTERVENTIONS:

It is important that any form of sanctioning power, whether deriving from statutory legislation and enforced through the courts, or from financial services legislation enforced by a regulator is sufficiently clear that those subject to it can adjust their behaviours to ensure compliance. Interventions, including enforcement actions should not take those affected by surprise, due to a capricious or random imposition.

As such, while some degree of discretion on the part of those making enforcement decisions is inevitable, their discretion should not be unfettered. All such discretion should be constrained by clearly and publicly set out principles and processes, as well as by precedent. This is part of why it is necessary that the regulator publish, wherever possible:

- Full details, not only of its decision making process, but also of enforcement actions taken – sufficient to enable those regulated to understand the ways in which the firm that was sanctioned breached regulations;

- The approach of the regulator in taking its enforcement action;
- And the sanctions imposed.

Q26: Do you think that private warnings are consistent with our desire to be more transparent?

As outlined in our response to Q25, the IA considers that there is a limit to the usefulness of private warnings for the industry as whole. For the firm involved remaining anonymous will be an important factor. We do not see why FCA could not create a quarterly update to the industry as a whole - reiterating key points of interpretation, whilst leaving individual firms anonymous.