February 20, 2017

Ms. Becky Young
Competition Division
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Re: FCA Asset Management Market Study: Interim Report – MS 15/2.2

Ms. Young:

The Asset Management Group of the Securities Industry and Financial Markets Association ("AMG") appreciates the opportunity to comment on the Financial Conduct Authority's ("FCA") Interim Report on its Asset Management Market Study.[1] AMG members are U.S., U.K. and multinational asset management firms with combined global assets under management exceeding $34 trillion. The clients of AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS, and private funds such as hedge funds and private equity funds.

AMG understands the FCA's goal to ensure that the asset management market "works well" and that the investment products offer consumers value for money. Further, AMG agrees with the FCA that fees are a relevant consideration for investors and that "[e]ven small differences in charges can have a significant impact over time."[2] However, we believe that effective regulation can only be based on rigorous analysis that reflects an accurate understanding of the role of asset managers and the investment products they offer. We appreciate that this is an initial report and believe that additional time and analysis is necessary, including additional consultation with industry participants, before the FCA should draw any concrete conclusions from the research. To that end, we provide feedback below on the analysis, as well as general comments related to the U.S. experience and perspective on fees and disclosure.

We would also like to address the FCA's first two proposed remedies, where consideration is being given to (1) creating a "strengthened duty on asset managers to act in the best interest of investors," including reforms that will hold asset managers accountable for how they deliver "value for money," and introducing independence on fund oversight

[1] FINANCIAL CONDUCT AUTHORITY, MS15/2.2, ASSET MANAGEMENT MARKET STUDY INTERIM REPORT (November, 2016) [hereinafter, "FCA Interim Report"], *available at* https://www.fca.org.uk/publication/market-studies/ms15-2-2-interim-report.pdf.

[2] *Id.* At 8.

committees; and (2) introducing an all-in fee approach to quoting charges so that investors in funds can easily see what is being taken from the fund. While we agree that there are ways in which the regulatory structure or processes could be improved, we believe the FCA has not adequately considered existing regulation and industry practices, and that some of its proposed remedies could have significant and possibly negative unintended consequences.

A. GENERAL COMMENTS AND ANALYSIS CONCERNS

I. OVERVIEW OF ASSET MANAGEMENT INDUSTRY

The asset management industry is comprised of a large number of diverse firms that provide portfolio management services (whether on a discretionary or non-discretionary basis) to clients. As the FCA notes in the Interim Report, there are 1,840 asset management firms authorized in the UK.[3] The U.S. markets are even larger, with nearly 12,000 registered investment advisers.[4] We believe that the fragmented nature of asset management is a defining characteristic of the industry, which inures to the benefit of investors.

These asset managers offer a wide array of investment strategies across a broad range of asset classes. Regardless of the investment strategy or asset class, however, the basic characteristics of the relationship between the asset manager and its clients are uniform: asset managers provide advice to, and act as agents on behalf of, investors seeking exposure to certain investment strategies and their attendant investment results. Asset managers are fiduciaries, and as fiduciaries, they invest their clients' assets pursuant to investment mandates determined by their clients or the funds in which they invest. In this role, the asset manager's employees apply professional judgment to help clients achieve investment goals within their designated risk profile. The services and products offered by asset managers are not simply commodities where cost is the main determining factor. We agree that overall value and providing the best outcome for consumers is essential, and in this respect, the asset management industry plays an important role.

As both fiduciaries and regulated entities, asset managers must act in the best interests of their clients and employ reasonable care to provide full and fair disclosure of all material facts to their clients. Asset managers must manage and disclose all conflicts of interest that may cause the asset manager to render advice that is not disinterested. These duties are part of the regulatory obligations applicable to asset managers and are also embedded in the culture of our members' firms.

In this role, asset managers provide much of the backbone for the capital markets, encouraging innovation, investment and capital formation. When investors invest with an asset manager, they understand they are taking on investment risk, and choosing their investments based on the principle of "reward for risk," that is inherent within the capital markets. Asset managers and the funds they advise do not function in the same way as banks, in which depositors expect a complete return of their capital. Rather, investors retain

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[3] *See* FCA Interim Report, *supra* note 1, at 10.

[4] As of April 2016, 11,847 investment advisers were registered with the SEC and collectively managed $66.8 trillion in assets for 36.4 million clients. Investment Adviser Association "2016 Year in Review," *available at* https://www.investmentadviser.org/eweb/docs/Publications_News/Reports_and_Brochures/IAA_Activity_Reports/ActivityReport_2016.pdf.

asset managers and their funds to pursue their investment goals and preferences through the management of risk.[5]

There are already significant obligations imposed upon firms in the UK to treat their customers fairly ("TCF"), report to clients, and make disclosures to clients in a variety of circumstances. For example, under Principle 6 of the FCA Principles all firms must be able to show consistently that fair treatment of customers is at the heart of their business model.[6] There is also a basic obligation (arising from the Markets in Financial Instruments Directive ("MiFID")) to provide adequate reports to clients on the services provided by the firm.[7] Such reports must include details of the costs associated with transactions and services provided by the firm to the client.[8] Similarly, Alternative Investment Fund Managers ("AIFMs") are subject to considerable reporting and disclosure requirements, both in relation to information to be provided to investors and disclosures to be made, as well as information to be provided to regulators. These requirements include initial disclosure to investors of the latest net value of the Alternative Investment Fund ("AIF") or the latest market price units or shares in the AIF, as well as ongoing disclosure requirements in relation to liquidity and the management of risk. Both the FCA Rules and the UCITS Directive impose upon asset managers obligations to provide full information and disclosure to clients, for example, in the form of key features documentation and the prospectus.[9] These Rules and obligations as to disclosure provide a consistent standard across the industry, both in the UK and in the EU.

Although it may be desirable to impose uniform outcomes for the protection of UK investors, it is extremely unlikely that it would be possible to impose regulatory standards that would achieve this. UK investors access asset management services in a variety of ways. The main alternatives include: (1) the location of the investment manager (and in some cases, the sub-manager); (2) where the manager is established (in the case of AIFs); in the case of UCITS, where the UCITS management company is established; (4) where the fund (if any) is established; and (5) whether the fund (if any) is authorised and regulated in the UK. The interim report does not specify to which entity or entities the proposed regulatory changes would apply. Instead, it focuses entirely on outcomes. However, the competitive landscape would be significantly affected in relation to outcomes, depending upon the entities to which the proposed regulations are designed to apply.

The Interim Report is not entirely clear on whether the FCA intends to apply these changes just to FCA-authorized funds, or to all funds sold into the UK. However, it seems

[5] *See* White, *Enhancing Risk Monitoring and Regulatory Safeguards for the Asset Management Industry*, Remarks at The New York Times DealBook Opportunities for Tomorrow Conference Held at the One World Trade Center, New York, N.Y. (Dec. 11, 2014), *available at* http://www.sec.gov/News/Speech/Detail/Speech/1370543677722, stating, "Our objective, however, is not to eliminate all risk. Far from it. Investment risk is inherent in our capital markets – it is the engine that gives life to new companies and provides opportunities for investors. Just as our regulatory program evolves, so too must our understanding of the balance that program strikes between reducing undue risks and preserving the principle of "reward for risk" that is at the center of our capital markets."

[6] FINANCIAL CONDUCT AUTHORITY, FAIR TREATMENT OF CUSTOMERS, https://www.fca.org.uk/firms/fair-treatment-customers (last visited Feb. 19, 2017).

[7] COBS 16.1.1R; and MiFID Article 19(8).

[8] *Id.*

[9] For example, COBS 14.2; and UCITS Directive, Articles 80 and 81.

very unlikely that the FCA would be able to impose these requirements on offshore funds. Consideration therefore would need to be given to the risk of materially increasing administrative costs and - more generally - the competitiveness of UK funds as against their EU competitors. Even if the intended scope is UK-only, there is a huge variety of different fund models available and any new remedies would need to have enough flexibility to be capable of being translated to each model.

In addition, the FCA concludes in the Interim Report that there is a need for a formal review of the client side of the institutional market. Therefore, it would be sensible to wait for the outcome of that review before drawing any conclusions on proposed changes to the service provider market.

II. THE US EXPERIENCE ON FEE DISCLOSURE AND PRICING

The FCA's report rehashes many of the same issues that have been debated over time in the U.S. as the mutual fund industry has grown and evolved. The Securities and Exchange Commission ("SEC") has repeatedly taken a close look at fund fees because of the dramatic impact they could have on investor returns, and because, similarly to the UK, some have argued that "the growth of the fund industry has produced economies of scale and that funds have not passed on to shareholders the benefits of these economies of scale in the form of reduced fees."[10] Generally, however, the SEC (as well as the United States General Accounting Office) has concluded that disclosure is key to promoting competition among funds on the basis of fees.

In the United States, marketplace competition determines fund fees. The SEC and Congress have developed a dual approach to protecting the interests of fund investors, which they believe is more appropriate than other regulatory interventions. Investors are protected through (1) procedural safeguards, which reduce the conflicts of interest that could lead to inappropriate or inflated fees, and (2) uniform disclosure of fees and expenses by funds.[11] Under this structure, independent fund directors have the responsibility to approve and monitor fee arrangements where funds pay for investment advice or the distribution of their shares.

Independent fund directors have been a key safeguard for the U.S. asset management sector since the passage of the Investment Company Act in 1940. When debating the legislation, Congress recognized that there is an inherent conflict of interest created between the fund and the investment adviser regarding the amount of the fees that the fund will pay to the adviser in exchange for the adviser's services, but they opted not to address this conflict through direct regulation.[12] Rather, the Investment Company Act requires there to be fund

[10] U.S. SECURITIES AND EXCHANGE COMMISSION, DIVISION OF INVESTMENT MANAGEMENT: REPORT ON MUTUAL FUND FEES AND EXPENSES (Dec. 2000) [hereinafter SEC Report], *available at:* https://www.sec.gov/news/studies/feestudy.htm.

[11] *Id.*

[12] *Id.* As enacted in 1940, the Investment Company Act had few limits on mutual fund fees, including sales loads and advisory fees. The Investment Company Act included a general prohibition on unconscionable or grossly excessive sales loads (that was modified in 1970 to prohibit excessive sales loads), to be defined by a securities association. *See* Investment Company Act of 1940, Pub. L. No. 76-768, § 22(b), 54 Stat. 789, 823 (1940) (codified as amended at 15 U.S.C. § 80a-22 (2000)); Investment Company Amendments Act of 1970, Pub. L. No. 91-547, § 12, 84 Stat. 1413, 1422 (1970) (codified as amended at 15 U.S.C. § 80a-22 (2000)).

directors that are not affiliated with a fund's management in the role of "independent watchdogs" who would "furnish an independent check upon the management of mutual funds."[13] In 1970, Congress also adopted Section 36(b) of the Investment Company Act, which places a fiduciary duty on investment advisers with respect to the receipt of compensation for services provided to a fund.[14]

Regarding disclosure, the SEC has spent significant time focusing on ensuring disclosures are uniform, accessible, and easy to understand. They have also focused on financial literacy initiatives for retail investors, and have developed products such as the Mutual Fund Cost Calculator, which enables investors to compare the costs of owning different funds by entering data from fund prospectuses. As part of this campaign, the SEC advises investors that past performance is not an indication of future results, but fees and expenses "can be a reliable predictor of mutual fund performance."[15] The SEC goes on to remind investors, however, that selecting a mutual fund "involves more than just picking one with low fees and expenses."[16]

It is worth noting that when the SEC undertook an expansive review of fees charged by mutual fund industry in 2000, they found that during many of the years between 1970 and 2000, fees increased. However, the SEC noted that many factors were at play causing these increases. For example, the number and size of international and specialty fund classes increased in those years, and there were a large number of new funds that had not yet reached the critical size needed to pass on economies to their shareholders.[17] The report also noted that additional work could be done to improve disclosure and "energize fund directors to take a more active role in monitoring fees," but reiterated that the disclosure and financial literacy approach was sound and consistent with the regulatory framework established by Congress.[18]

Further, the SEC has considered whether and how to disclose other costs to investors. For example, as AMG noted to the FCA in its response to its Consultation Paper on *Transaction Cost Disclosure in Workplace Pensions*, on multiple occasions the SEC has considered and rejected proposals to require mutual funds to quantify and disclose transaction costs.[19] When considering these disclosures, the SEC recognized that spread, impact, and opportunity costs are implicit costs, which are difficult to identify and quantify. The SEC also considered and rejected requiring asset managers to disclose the total fees and expenses

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[13] *See* SEC Report, *supra* note *10.*

[14] *See* S. Rep. No. 91-184 (1969), *reprinted in* 1970 U.S.C.C.A.N. 4897.

[15] U.S. SECURITIES AND EXCHANGE COMMISSION, Investor Publications: Calculating Mutual Fund Fees and Expenses, https://www.sec.gov/investor/tools/mfcc/mfcc-int.htm (last visited Feb. 19, 2017).

[16] *Id.*

[17] *See* SEC Report, *supra* note *10.*

[18] *Id.*

[19] Request for Comments on Measures To Improve Disclosure of Mutual Fund Transaction Costs, 68 Fed. Reg. 74,820 (Dec. 24, 2003), *available at:* https://www.gpo.gov/fdsys/pkg/FR-2003-12-24/pdf/03-31695.pdf; Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, 74 Fed. Reg. 4,546 (Jan. 26, 2009), *available at* https://www.gpo.gov/fdsys/pkg/FR-2009-01-26/pdf/E9- 1035.pdf.

in its fee table, omitting line item breakdowns to simplify investors' investment decisions.[20] Each of these rulemakings and reviews once again focused on improving disclosure rather than taking more invasive regulatory intervention actions.

The SEC has therefore repeatedly revisited and evaluated its approach toward asset management fee disclosure, and reiterated that appropriate disclosures and financial literacy campaigns adequately protect investors. Further, as perhaps expected, in recent years the U.S. asset management industry has confronted "intensifying downward pressure on prices."[21] According to U.S. asset managers, as well as various market studies, this is due to changing investor preferences and market dynamics, not regulatory pressure.[22] Even hedge funds, which historically have had among the highest fees in the industry, have slashed fees in recent history, given the weak return environment. These developments should be instructive to the FCA, as they seem to indicate that the SEC's approach has worked and prices are being appropriately controlled by the free markets.

III. ACTIVE VERSUS PASSIVE MANAGEMENT

The Interim Report notes that the asset management industry is not concentrated, with the top ten asset managers accounting for around 55% of the assets under management in the U.K.[23] Despite this acknowledged lack of concentration, the Interim Report goes on to argue that because most charge similar fees, there is limited industry competition. We disagree. There are many more aspects to competition beyond price. Throughout history, few asset managers have remained dominant for long in the industry. Asset managers face fierce competition from peers on new product development and technology innovation. Clients, both retail and institutional, evaluate many factors, including price as well as performance, when deciding on a manager and a strategy. In addition, an overpriced and underperforming manager will not remain in business for long in this highly competitive industry.

The FCA also takes issue with the fees charged by active asset managers, arguing that there is little value shown for the additional cost. We strongly disagree with this assertion, and believe that both active and passive managers (as well as those who offer both) play a valuable role in the industry for investors. The FCA's proposals would have the effect of pushing investors towards passive funds solely based on their cost, which may not necessarily be the best choice for them. We believe that all investors should have options and the right to choose which strategy is best for them and their individual circumstances.

Further, not only will artificially pushing investors toward passive funds negatively impact active funds, but it may have unintended consequences for financial markets more broadly. Dangerous market distortions may result from pushing too much of the market toward any one strategy. If regulators force too much of the market toward a passive

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[20] Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, 74 Fed. Reg. 4,546 (Jan. 26, 2009), *available at* https://www.gpo.gov/fdsys/pkg/FR-2009-01-26/pdf/E9- 1035.pdf.

[21] Sarah Krouse, The Wall Street Journal, *Fidelity Investments Reports Record Revenue in 2016* (Feb. 16, 2017) *available at:* https://www.wsj.com/articles/fidelity-investments-reports-record-revenue-in-2016-1487262732.

[22] *Id.* See also Amanda White, top1000funds.com, *Asset Owners Zero In on Managers' Fees* (Feb. 10, 2017) available at: http://www.top1000funds.com/analysis/2017/02/10/asset-owners-zero-in-on-managers-fees/.

[23] *See* FCA Interim Report, *supra* note 1, at 33.

strategy, for example, this could result in lower participation by active managers or less trading by active managers, which could lead to lower liquidity in the markets. It will also negatively impact efficient capital allocation and price discovery and drive up borrowing costs for companies that fall outside of the index, which would include a significant number of (if not most) UK companies. This would therefore impact the broader economy, affect job growth, and even lower returns for retirement investors who are all herded into similar-looking funds.

Active and passive products are distinctly different from one another: passive products simply track a benchmark, whereas active products aim for returns that do not necessarily correlate to the market (or at least, not necessarily the whole of the market) and may include hedging and other active features. In the Interim Report, the products are referred to as if they were interchangeable, as if one could be substituted for the other. This is very misleading. As assumption that these products would produce exactly the same returns is difficult to justify and indeed, it would be extremely unlikely. It therefore follows that the generalization which the FCA extrapolates from these flawed assumptions - that an investors always will be better off choosing a passible product over an active one - is inherently flawed. In our experience, whether an investor chooses a passive or active strategy is an individual decision. It depends ultimately on the investor's individual investment mandate to an asset manager. As the FCA notes, passive investing is less efficient in certain areas, including emerging markets and small caps, where there is less available information and more market anomalies. Further, there is no such thing as purely passive investment. Increasingly, investors are paying attention to asset allocation and deciding to blend active and passive investment strategies in their portfolios, seeing the advantage of having a mixed strategy.

Many investors accept the higher costs of active management intentionally, in exchange for the benefits of active management. Active managers consider many factors when managing a fund. Political events, the economy, and company-specific issues are all analyzed when determining which stocks to trade, and when. Active management brings expert analysis, and in many markets active managers do beat the market, or protect assets during market volatility. Whilst in recent history some active managers may have underperformed for some strategies, this is not a universal phenomenon. Different strategies fare better in different market conditions. The FCA should not base policy making on either outperforming funds or underperforming funds – or on how funds have performed over short measuring periods. While we agree that there may be ways where performance measurements could be standardized and benchmarks could be improved, we strongly disagree with the FCA's implication that all investors should evaluate funds and asset managers the same way, or that certain factors are inherently better than others in such an evaluation.

The FCA should suspend judgment on these issues until other work is completed before evaluating whether there is a need for additional disclosure or investor protections. Such restraint will avoid establishing potentially conflicting regulatory regimes. For example, the FCA notes that the Investment Association is developing a disclosure framework for investment costs, "which aims to create a standardized, fully Comprehensible Disclosure Code for asset managers to disclose investment costs."[24] It would be advisable to

[24] *See* FCA Interim Report, *supra* note 1, at 61.

wait until this work was completed and yet, there is no indication in the Interim Report that the FCA plans to do so.

B. REMEDY CONCERNS

I. STRENGTHENED FIDUCIARY DUTY

Governance in the asset management industry is a multi-faceted area and the proposals set out in the Interim Report do not adequately address the variety of asset management firms or fund structures. In assessing any of the possible options, it will be vital for the FCA to consult with a realistic sample of industry firms and undertake a rigorous cost benefit analysis. In doing so, the FCA should apply proportionality; the more radical proposals may involve considerable complexity, and there may be a simpler way to achieve the desired outcomes. For example, changing the process rather than the structure will lessen the impact on investors and the industry alike.

The Interim Report is slightly unclear in places as to whether the proposals in relation to independent directors relate to independence in relation to the directors of fund boards, or the directors of manager boards. However, the Interim Report does refer mostly to the fund boards and so we assume that this is what is intended. In any event, we believe that it would be extremely harmful for the FCA to conclude that the standards should be applicable to the directors of manager boards.

The independence of the Authorized Fund Manager ("AFM") boards is a well-established principle and one which works well, in the best interests of both the firm and investors. However, imposing an "explicit and well-defined obligation to seek value for money" for investors could be problematic. The concept of "value for money" would be extremely difficult (even impossible) to define, as it would mean different things to different investors within the same fund. The example given in the Interim Report is that AFM boards "do not compare the asset managers' fees for managing a retail fund's portfolio with the fees they charge institutional client accounts to assess whether the difference in fees is reasonable compared to the difference in cost."[25] This would push boards towards a consideration simply of numeric values (that is, the size of fees and costs) and not overall value. Similarly, the Interim Report states that the FCA wishes to reform governance standards to "ensure asset managers are held to account for how they deliver value for money."[26] This type of regulatory overreach will stunt the development of the capital markets by providing a disincentive to growth. Furthermore, as stated above, to do so would require a workable definition of what is meant by "value for money." This cannot simply be cost and would vary by individual investor circumstances – it would be nearly impossible to develop a meaningful requirement that would work for all in all situations.

An asset manager also does a significant amount of work when determining how much to charge for their funds. While the asset manager may take into account other funds' charging structures, they primarily will look at their own cost structure internally and do an analysis for what would be fair and attractive to investors. From a U.S. perspective, it seems

[25] *Id*. at 88.

[26] *Id*. at 184.

far better to allow market forces to work when determining how to price funds for such a reputation-driven industry, because history has proven that asset managers do not dominate – or even remain in business – for long if they are not providing value for money.

Overall, the FCA is proposing a strengthened duty to act in the best interests of investors and the six options proposed each suggests a different way in which this may be achieved. As noted above, the FCA's focus on TCF has been enshrined in UK regulation for many years and firms are obligated to be able to "show consistently that fair treatment of customers is at the heart of their business model."[27] Accordingly, the six TCF "consumer outcomes" aim at ensuring that customers are treated fairly.[28] These principles address the obligation to provide fair value, without the need for a specific new rule, which would be difficult to formulate and define.

We comment on each of the proposed options for reform to fund governance as follows.

Option A: Keep existing governance structure but clarify their duties.

The proposal is that the AFM board should be required to demonstrate how it has complied with the strengthened duty to act in investors' best interests. This is analogous to the duty to TCF, which provides considerable flexibility and works to the advantage of both of firms and the FCA in its supervision of those firms. Some clarification of duties may be useful, but it really depends upon how this is done. There is considerable variety in the corporate governance of AFMs, depending upon the size and type of firm and a "one size fits all" approach to imposing rules as to the duties of boards would be highly undesirable. Some further thought is necessary to determine how this would work in practice.

Option B: Strengthen the requirements on senior managers of the AFM

As stated in the Interim Report, the duties on AFM boards are already going to be extended by the introduction of the Senior Managers and Certification Regime. The proposal is to require senior managers to consider value for money as part of the requirements of the regime. However, again the problem arises of how to define "value for money." In addition, as stated in relation to Option A, the flexibility of the existing approach is desirable and should be preserved. Any additional obligations on senior managers as part of the Senior Managers and Certification Regime would require very careful thought and further consultation in order to determine the form such obligations would take. Any prescriptive rules in this regard could run the risk of creating an inflexible regime, if not properly considered and the problem of the precise scope.

Option C: Changing the composition of existing governance bodies to create more independence

As a U.S. based asset management trade organization, our members understand and appreciate the value of having independent boards. We believe it may make sense for the UK

[27] FINANCIAL CONDUCT AUTHORITY, FAIR TREATMENT OF CUSTOMERS, https://www.fca.org.uk/firms/fair-treatment-customers (last visited Feb. 19, 2017).

[28] *Id.*

to seriously consider changing the composition of existing governance bodies to create more independence, as this adds an additional layer of checks and balances and helps eliminate potential conflicts of interest, as noted above. However, we believe such an important change should be considered as part of a broader discussion that is separate and apart from a review of asset management fees. As part of this broader discussion, we believe that it is important to consider whether minimum qualification requirements should be standardized, to ensure the independent directors are appropriately qualified. A thorough cost-benefit analysis must also be undertaken, as there are costs associated with having independent boards. The fact that the proposals would give rise to a need for a larger number of qualified people would also need some further thought. Certainly, further consideration and consultation will be necessary.

Option D: Creating an additional governance body

This would be unnecessary if the fund boards were independent. However, we reiterate that additional analysis should be undertaken before considering implementing independent Board requirements to the UK.

Option E: Placing greater duties on trustees and depositaries

Again, this would be unnecessary if the fund board were independent. However, we reiterate that additional analysis should be undertaken before considering implementing independent Board requirements to the UK.

II. ALL-IN FEE APPROACH

Transparency on costs is positive for investors, and we are supportive of enhancing transparency. However, as with any information, when misunderstood or taken out of context or without appropriate comparisons, it could result in unintended consequences.

Additionally, both the MiFID II and PRIIPs initiatives have introduced transparency measures and have contributed towards the enhanced clarity of information for investors. The Interim Report does say that the final package of proposed remedies will "take account of PRIIPS, MiFID II and the outcomes of [the FCA's] consultation on transaction cost reporting to pensions schemes and Independent Governance Committees," but it does not appear to have taken account of it to date, in producing the Interim Report. It is regrettable that the Interim Report does not explicitly acknowledge this work, which covers a lot of the same ground, simply leaving it for some future consideration.

The proposed "all-in fee" approach taking in all costs is intended to improve transparency and competition amongst asset managers, but in fact, if this were to include transaction costs, would introduce a regime that would be considerably more stringent than anywhere else in the world – and so in fact, could damage the competitive position of UK asset managers. We therefore strongly believe that in relation to the four options proposed, transaction costs should be excluded, rather than being incorporated into an all-in fee.

In particular, Option D proposes a single charge, which includes all charges taken from the fund, with no option for overspend. This would create an unnecessary and highly undesirable conflict for the AFM, both in relation to setting the cap initially and in responding to unforeseen market conditions, where extra trading may be helpful, but where the cap has been reached. Option C provides an option for "overspend", but even this would be very likely to involve a degree of awkwardness for the AFM in having to justify the right to overspend. This may create an adverse incentive to avoid doing so - even in circumstances where the AFM believes the portfolio would be advantaged by taking such action. The AFM can never be certain that his or her investment decisions will achieve the desired outcome. We would suggest that the heightened focus on these "overspend" trades may result in unfair conclusions being drawn retrospectively on the need for the "overspend" resulting in AFMs being reluctant to engage in trades that they believe would be of benefit to the fund, out of fear of such future conclusions being drawn.

Benchmark reform would assist investors in understanding fees and the value received from the asset manager. Without benchmark reform, various asset managers may use different benchmarks, resulting in significantly different (and incomparable) results. Therefore, the proposal to disclose managers' benchmarks in order to illustrate performance is to be welcomed. As stated in the Interim Report, this would allow managers to track performance against the objectives set and this would allow investors to assess whether returns are reasonable and in line with expectations.

C. TIMING AND PROCESS CONCERNS

Given our and others' many concerns, we implore the FCA to slow its timeline for issuing a final report and any rulemakings in relation to its review of the asset management sector. In its current form, the Interim Report contains too many inaccuracies and concerns to provide a foundation for a Final Report, particularly on the timetable laid out by the FCA. The FCA's outreach also seems small and statistically insignificant compared to the size of the UK market. We believe the work would benefit from a more reliable sample on which to base any meaningful conclusions. Further, it seems exceedingly quick for the FCA to attempt to meet the Q2 2017 deadline for publishing a final report together with any necessary amendments, given the feedback we anticipate the FCA will receive in response to its Interim Report.

The FCA's work could significantly impact the reputation of various managers and the asset management sector generally not just in the UK, but globally. Therefore, we ask that any further action be taken thoughtfully, with careful consideration of our and other industry participants' concerns with the Interim Report. We also ask that the FCA consult further and publish another Interim Report for comment before considering any final action. Additionally, should the FCA proceed in the future with any Rule changes following the publication of the final report, we implore the FCA to ensure that it offers a complete consultation period and includes a rigorous cost-benefit analysis. AMG looks forward to working with the FCA as it reviews the comments made to the Interim Report and considers next steps.

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D. CONCLUSION

AMG again supports the FCA's efforts to ensure that the investment products consumers use offer value for money, and we stand ready to provide any additional assistance that the FCA might find useful. Please do not hesitate to contact either Tim Cameron at tcameron@sifma.org or Lindsey Keljo at lkeljo@sifma.org if you have any comments or questions regarding this letter.

Sincerely,

Timothy W. Cameron, Esq.
Asset Management Group - Head
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