

HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Thursday 7th May 2020

Dear Sir/Madam,

Overseas Funds Regime consultation March 2020 IMMFA Response

The Institutional Money Market Funds Association (IMMFA) is the trade association which represents the European money market fund (MMF) industry. IMMFA's mission is to promote and support the development and integrity of the MMF industry by engaging with and informing policy makers and, amongst other things, providing a primary point of contact.¹

On behalf of The Institutional Money Market Funds Association, we are pleased to respond to HM Treasury's consultation on the overseas funds regime for retail and Money Market Funds (MMFs). We welcome HM Treasury's engagement with the fund management industry and stakeholders, and we support the pragmatic approach set out in your consultation paper.

The MMF industry has a long history and substantial footprint in the UK and we believe it is important to preserve the ability of fund providers to offer a product which provides UK investors with both choice and competition.² It is also vitally important, in our view, to avoid dislocations and minimise disruption in the financial markets arising from the UK's decision to leave the European Union. Facilitating access for MMFs, as well as the many other UCITS funds, by establishing a suitable overseas funds regime, will help to achieve a smoother transition.

IMMFA supports the principle of a specific and proportionate regime for MMFs, as distinct from the regime for retail investment funds. However, the current approach suggested by the consultation makes a further distinction between retail and non-retail MMFs. IMMFA urges HM Treasury not to draw this distinction and instead to provide an inclusive regime covering all types of MMF. We base this recommendation on the following considerations:

- I. MMFs are a relatively low risk investment with the aim of preserving capital and maintaining liquidity. MMFs are marketed primarily although not exclusively to professional investors. They are also a vital cash management tool and play an important role in the real economy.
- II. All IMMFA MMFs are structured as UCITS which is internationally recognised as the gold standard for retail funds.

¹ See Appendix A for Overview of IMMFA Members and Funds

² See Appendix C for Background to MMFs

- III. In addition, IMMFA MMFs are regulated by the EU Money Market Fund Regulation (MMFR) which offers a very high degree of investor protection.³ We note that EU MMFR does not differentiate between investor types and we believe it would be most appropriate to align with the EU regulatory approach.

Although MMFs are primarily targeted at institutional investors, they also need the ability to include non-professional investors. MMFs are not offered *exclusively* to professional investors, they contain multiple share classes, the assets are pooled and there are a number of circumstances, detailed in our response, whereby MMFs may be held by non-professional investors. We therefore recommend that the HM Treasury aim to provide a single, homogenous regime applicable to all MMFs that qualify under the MMFR and which are structured as UCITS.

Given the existing framework, MMFs are heavily regulated and already provide high levels of investor protection. As such, we believe that the process of achieving equivalence for EU domiciled MMFs should have less friction than other types of fund, such as retail.

IMMFA very much welcomes HM Treasury's consultation and supports any efforts to provide a 'long-term and sustainable solution to ensure there remains a competitive market of MMFs available to UK investors.'⁴ In particular, we would wish to:

- Safeguard the ability of our members to continue to be able to offer EU domiciled MMFs in the UK.
- Ensure that UK investors continue to have easy access to MMFs.
- Minimise operational and administrative constraints while ensuring UK investors benefit from economies of scale and high levels of investor protection.
- Promote an open and transparent international financial system and ensure that businesses and other institutions which rely on the MMF industry have access to short term funding markets.
- Enhance the UK's global status as a leading investment management centre and promote competition in the interests of investors.

Given that MMFs are heavily regulated and already provide high levels of investor protection within the existing framework, as explained above, we believe these objectives can best be achieved by providing a single, stream-lined regime that covers all types of MMF.

In preparing this response IMMFA has worked with its members and other industry associations with which IMMFA shares many common interests and members such as The Investment Association (IA), Irish Funds and the Association of the Luxembourg Fund Industry (ALFI).

The IMMFA response is based on the recommendation that the new OFR should not differentiate between retail and non-retail MMFs. Therefore, in the case of questions 12 to 22,

³ Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds <http://eur-lex.europa.eu/eli/reg/2017/1131/oj>

⁴ HM Treasury Overseas funds regime, A consultation, page 5.

‘Obligations for retail funds’, we defer to the IA response on retail funds to which many of our members have contributed.

In the Appendices we have provided more detail on the following:

- A. IMMFA’s constituency by size, currency and fund characteristics such as domicile
- B. A list of IMMFA Full Members
- C. Some background on MMFs in the UK

We look forward to our continuing engagement with HM Treasury on the Overseas Fund Regime and remain at your disposal should you have any questions on our response or wish to discuss it in more detail.

Yours faithfully,

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Appendix A – Overview of IMMFA Members and Funds

IMMFA currently has 27 members, consisting primarily of asset managers but also custodial banks and other firms. Of the 27, 19 are asset managers (referred to as Full Members) and all are located in the UK.⁵ IMMFA MMFs are institutional funds primarily but not exclusively targeted at professional investors.

IMMFA MMFs currently have €785bn (GBP684bn) Euro equivalent in assets under management (AUM). As of year-end 2019, this number was €721bn, which represented 57% of the European MMF industry. The overwhelming majority of the balance is held by the domestic French MMF sector, meaning that IMMFA represents the majority of internationally distributed MMFs. The IMMFA share of European MMFs remains fairly constant. Within the IMMFA universe of funds there are 3 main currencies, USD, GBP and EUR. USD is the largest currency, (USD462bn), followed by GBP (GBP207bn) and lastly Euros, (€94bn).⁶ The split between currencies also remains fairly constant.⁷

All funds, except for one registered in the UK, are registered offshore, in either Ireland or Luxembourg. We note that at the end of 2018 these jurisdictions accounted for the two largest domiciles for all (not just MMF) UCITS and AIF funds, namely Luxembourg 27 % and Ireland 16 %.⁸ Given the overall dominance of these two domiciles and the fact that all bar one of IMMFA MMFs are domiciled in one or the other, we would recommend that Luxembourg and Ireland be prioritized in the process of equivalence determination.

IMMFA's response to the Consultation questions reflects the make-up of our member funds which can be summarised as follows:

- IMMFA members (see Appendix B) currently manage 30 umbrella funds and 79 active sub-funds⁹
- The 79 funds have 907 underlying share classes¹⁰
- Total AUM are currently €785bn
- IMMFA MMFs are targeted primarily at professional investors with sophisticated risk management and due diligence capabilities. There are however certain circumstances where they may be bought by other types of investor. We detail these in our response.
- All funds are UCITS registered
- With two exceptions, all funds are domiciled in Ireland (54) or Luxembourg (23). The two exceptions are domiciled in the UK. By asset size, this equates to 98.6 % of AUM domiciled in the EU, specifically Ireland and Luxembourg
- All funds are subject to EU Money Market Regulation, namely *Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds*.
<http://eur-lex.europa.eu/eli/reg/2017/1131/oj>

⁵ See Appendix B

⁶ As at 24th April 2020

⁷ Funds in AUD and CAD also exist but are statistically insignificant

⁸ EFAMA Fact Book 2019 Chapter 3

⁹ IMMFA IRIS data base

¹⁰ IMMFA IRIS data base

Appendix B IMMFA Full Members

1. Aberdeen Standard Investments
2. Amundi Asset Management
3. Aviva Investors
4. BlackRock Investment Management (UK) Ltd
5. BNY Mellon Investment Management EMEA Limited
6. DWS Asset Management International
7. Federated
8. Fidelity International
9. Goldman Sachs Asset Management International
10. HSBC Global Asset Management (UK) International
11. Insight Investment
12. Invesco
13. JP Morgan Asset Management
14. Legal & General Investment Management Limited
15. Morgan Stanley Investment Management Ltd
16. Northern Trust Company
17. Royal London Asset Management
18. State Street Global Advisors UK Ltd
19. UBS Asset Management

Appendix C Background on Money Market Funds

The UK has traditionally been the base for the management and distribution of MMFs other than those offered in domestic markets, such as the French sector. IMMFA MMFs have grown from €93bn in 2001 to €785bn currently, illustrating the importance of the product to UK investors.

A Money Market Fund (MMF) is an open-ended fund that invests in short term assets. The key objectives of an MMF are the preservation of capital and the maintenance of liquidity. Yield is a secondary consideration. The preservation of capital and provision of liquidity are achieved by investing in very high-quality, short term money market instruments. 'Money market fund' is a designated term as set out in European Money Market Regulation (EU 2017/1131 14 June 2017) which provides detailed, uniform rules on portfolio composition, eligible assets, their maturity, liquidity and diversification as well as on governance, stress testing and valuation. These rules build on Directive 2009/65/EC which forms the legal framework governing the establishment, management and marketing of UCITS in the EU.

For the investor, MMFs provide a vital cash management tool and an alternative to bank deposits, as noted in the Regulation:

'On the demand side, MMFs are short term cash management tools that provide a high degree of liquidity, diversification and stability of value'¹¹

On the supply side, MMFs provide an invaluable source of funding to a wide range of borrowers:

'Money market funds (MMFs) provide short-term finance to financial institutions, corporations and governments. By providing finance to those entities, MMFs contribute to the financing of the economy and the Union.'¹²

¹¹ Regulation (EU) 2017/1131 14 June 2017 (2)

¹² Regulation (EU) 2017/1131 14 June 2017 (1)

Consultation questions

Outcomes-based equivalence

This section seeks member views on how an equivalence determination will be made under the OFR, and the concepts of ‘outcomes-based equivalence’ and ‘additional requirements’.

1. *Are there any other relevant factors HM Treasury should consider in the design of the equivalence regime for retail funds?*

We fully support an outcomes-based assessment. In particular, we recommend an outcomes-based assessment of the equivalence of a jurisdiction’s legal and regulatory framework for ensuring consumer protection, supplemented by an assessment of the supervisory framework and willingness of the relevant local regulator to enter into supervisory cooperation arrangements.

In this regard, we note that consideration should be given to the close regulatory alignment between the UK and the EEA, the extensive cross border fund activity between the two and the impact on UK investors arising from any disruption in the provision of funds.

In moving from the TPR to the new recognition regime the industry needs clear timelines and achievable deadlines once a jurisdiction has been deemed to be equivalent to move from the TPR to the new recognition regime.

While we understand that the OFR will apply to all new overseas funds, providing certainty is particularly crucial for those UK investors already invested in funds currently being marketed in the UK.

We would urge the government not to expose investors, and fund managers utilising the OFR, to avoidable cliff-edge uncertainty by granting equivalence determinations on a time-limited basis (such as we have seen for certain equivalence determinations relating to market infrastructures granted by other jurisdictions).

We recommend that HM Treasury prioritise funds recognised under Section 264 FSMA to ensure continuity for existing investors in EU domiciled funds, ideally grandfathering funds which already have recognised fund status under section 264 FSMA. In addition, we note the consultation does not make provision for a grandfathering arrangement for EEA UCITS funds already marketed to UK investors and urge HM Treasury to reconsider such an arrangement. Introducing a grandfathering arrangement would streamline the commencement of the OFR in the UK, while also ensuring avoiding unnecessary disruption for UK investors already in those funds. Furthermore, it would ensure UK investors could continue to access specialist products where there is currently no other viable alternative in the UK, as is recognised in paragraph 3.24 concerning the cash management function provided by EU MMFs.

Furthermore, since the overwhelming majority of MMFs are domiciled in Ireland and Luxembourg, we would further suggest that those domiciles be prioritised.

We recommend a transparent process for the frequency at which issues of equivalence are assessed and a process for curing any deficiencies, either at the level of the jurisdiction and/or at the level of the manager.

We think it is important that the UK regime is future-proofed and maintains sufficient flexibility to take into account future potential changes, whether to UK rules or rules in third-country jurisdictions (these are already on the agenda in the UK and the EU).

We think it is also important to ensure lessons are learned and that we avoid the drawbacks of equivalence regimes in other jurisdictions – e.g. avoid the potential politicisation and uncertainty in the EU regime, as well as the overly-prescriptive approach adopted by HK.

To conclude, the OFR should provide long term certainty for UK investors and for fund managers marketing those funds.

Recognition of money market funds (MMFs) as retail funds (Step 2 in Chart 2.A of the consultation)

We note the proposal that MMFs that are structured as UCITS and wish to market to both retail and professional clients must be recognised under the OFR for retail funds and would be further subject to “additional requirements”.

All IMMFA MMFs are EU-domiciled Undertakings for the Collective Investment in Transferable Securities (UCITS) funds. While these vehicles are typically marketed to institutional clients, not individual retail investors, they contain multiple share classes, assets are pooled and there are a number of circumstances, as detailed below, whereby MMFs may be held by non-professional investors. Therefore, it is expected that the majority of EU MMFs will require recognition under the OFR for retail funds.

For example, the majority of these institutional clients would be classed as ‘professional clients’ for regulatory purposes. However, some clients, such as public authorities, may have to be treated as ‘retail clients’ where they do not meet the criteria set out under the FCA Handbook (COBS 3.5). As such, in utilising the OFR to provide appropriate money market solutions for institutional clients in the UK (including some public authorities), would require the FCA to recognise EU-domiciled MMFs as retail funds. Such funds could be subject to any additional requirements or obligations set out in the equivalence determination underpinning the retail funds regime, which is separate from the MMFs equivalence regime under which MMFs would be marketed in the UK.

We note that whilst MMFs are principally sold to professional clients these funds are also made available on a number of platforms for the clients of private wealth managers. MMFs are also invested in by a number of DC pensions subject to the permitted links rules and as such it is preferable for these funds to have “recognised” status to ensure ongoing eligibility. The relevant rules on the eligibility of a recognised fund can be found in the FCA Handbook COBS 21.3.1.¹³ The relevant rules on eligible investment (including of a recognised fund) can be found in the FCA COLL Sourcebook 5.2.13.¹⁴ We note that certain local authority clients

¹³ <https://www.handbook.fca.org.uk/handbook/COBS/21/3.html?date=2015-11-02>

¹⁴ <https://www.handbook.fca.org.uk/handbook/COLL/5/2.html?date=2016-03-07>

can still be classified as retail investors (i.e. they have not opted up to professional) and would welcome more clarity on the future client classification regime in this regard under the UK's equivalent of MiFID.

In addition, many authorised investment funds invest in MMFs in order to optimise their cash management, recognising that any cash swept into MMFs is subject to asset segregation rules in the event of default, a protection that will not apply to cash balances held directly with the fund's depository. Retaining recognised status for MMFs will assist such fund managers in assessing the eligibility of MMFs in their portfolio composition.

UCITS is a retail brand and is widely recognised as the international gold standard that affords a high degree of investor protection for retail investors. As acknowledged by HM Treasury in section 3.20, Money Market Fund Regulation (MMFR) applies an additional set of comprehensive requirements to managers of MMFs in the EU over and above the UCITS Directive which serves 'to ensure the integrity of the funds for prudential and investor protection purposes'.

We therefore urge the government to consider the appropriateness of applying additional requirements or obligations to retail MMFs.

- 2. Should the OFR allow for funds which make use of the management company passport under the EU UCITS Directive? Do similar arrangements, which allow the management company to be located in a separate country from the fund, exist outside of the EU?*

Yes, the OFR should allow for funds which use the management passport under the EU UCITS Directive, provided both jurisdictions have received positive equivalence determinations.

Although only some MMFs have used this facility, we would recommend the ability to do so be retained. Some members noted a positive experience in utilising the EU UCITS management company passport, both in terms of its efficiency of operation and the way in which it allows fund management, for example, to be directed by the appropriate expertise irrespective of fund domicile.

If both fund and management company are covered by UCITS there should be no reason funds managed under this passport should not be permitted entry to the UK under the OFR.

In the event of such an arrangement being allowed, both jurisdictions should have received positive equivalence determinations.

We are not aware of any similar arrangements outside the EU.

- 3. In your view, what additional requirements should be applied to funds accessing the UK via the OFR from the EU? Are there any aspects of the UK regime that would not be suitable to apply? Please explain your answer.*

As noted above, MMFs are primarily marketed to institutional investors, not individual retail investors, and the majority of those clients would be classified as ‘professional clients’ for regulatory purposes. All IMMFA MMFs are covered by both the UCITS Directive and European Money Market Regulation. **On this basis, we do not consider that there should be any additional requirements in particular with respect to EU domiciled MMFs and would support a streamlined, homogenous process for all UCITS MMFs.**

In designing the OFR, we recommend the introduction of a proportionality test when considering whether additional requirements are necessary, noting, as per paragraph 3.16, they are meant to be used only for specific challenges that arise in marketing to individual retail investors. The consultation notes that the FCA, when considering what additional requirements may be needed, will have regard to comparable UK-authorized funds. However, for select specialist products such as MMFs this may be neither possible nor desirable. This includes where no other viable UK market can provide a cash management function or where operational demands to reach a set scale cannot be met in the UK alone.

Consistent with the Chancellor’s stated ambition on financial services post-Brexit that the UK should take a leadership role in promoting international cooperation in financial services by promoting global standards, we would urge that any additional requirements applied to non-UK MMFs marketed in the UK take account of regulatory expectations and recommendations agreed at international level (e.g. by members of the International Organisation of Securities Commissions, IOSCO) on an ongoing basis. This will help to ensure international regulatory coherence which will benefit both UK investors and cross-border fund managers acting on their behalf.

Of the 4 areas where HMT has previously identified the UK regime as being super-equivalent to UCITS, the one that is not expanded on in detail is the findings of the FCA market study, and in particular the value assessment. We do not believe imposing the value assessment as a requirement of equivalence is appropriate, given the UK is much further ahead than other comparable jurisdictions.

We recognise the need for a level-playing field. We would encourage HM Treasury to ensure the process be as objective as possible, to provide certainty and a degree of consistency.

The UK’s consumer protection regime has very specific requirements on year end reporting using the SORP and on assessment of value reports. EU funds will report using local GAAP requirements which may permit the use of IFRS. Local reporting should be treated as equivalent.

4. *Do you consider that any other special provision should be made for the equivalence regime for MMFs?*

As noted above it is not clear why non-retail MMFs warrant a dedicated regime and how many MMFs might avail of this option.

Given the important economic function of MMFs and the high degree of investor protection already provided under both UCITS regulation and the MMFR, we would propose any specific MMF regime be applied to all UCITS MMFs equally. Furthermore, we would suggest that a bifurcated approach for retail and non-retail UCITS MMFs that are both managed in

accordance with a common regulatory framework is overly complex and could mistakenly imply the product offering or the protections afforded to investors differ.

Consistent with our calls for a proportionate approach to be adopted regarding specialist products not otherwise domiciled in the UK, we recommend the Government consider the appropriateness of applying additional requirements or obligations to MMFs.

We suggest the government ensure that the OFR for non-UK MMFs take account of regulatory expectations and recommendations agreed at international level on an ongoing basis.

FCA powers, registration, and notification

This section seeks member views on the process by which a fund will be registered and become recognised under the OFR i. It seeks member views on the powers that the FCA will have to ensure compliance with the OFR, including the ability to suspend or revoke the recognition of a fund.

5. *Do you agree with the proposed approach of relying on self-certification from funds that they are eligible for recognition?*

We welcome HM Treasury's intention to make the regime more streamlined and less bureaucratic. This is consistent with the objectives of supervisory cooperation and deference.

6. *Do you agree that, where necessary, the FCA should require information from funds to ensure that they are satisfied that the funds comply with any additional requirements?*

We agree in principle with the approach proposed in the consultation which will require retail funds to self-certify their eligibility for recognition under the OFR. However, we would suggest that where a fund provider intends to market a number of eligible retail funds (*including retail MMFs*) under the OFR, the self-certification can be provided at entity level, rather than at fund level. We believe that such an approach would enhance the efficiency of the regime for the benefit of investors, fund providers and the FCA by avoiding unnecessary duplication.

We would encourage a consistent, transparent approach from the FCA.

7. *Are there any other circumstances, apart from those already listed in paragraph 4.14, in which funds should be refused recognition?*

We agree that it is important that the FCA have the ability to refuse recognition and we find the circumstances listed in 4.14 to be reasonable. We would add that the FCA should offer guidance on remedial action.

8. *Do you agree that MMFs targeting solely professional clients should only notify under the NPPR?*

As referenced above, it is not clear why a separate regime for MMFs available solely to professional clients is warranted, and we would, instead, support a streamlined, consistent approach for all MMFs.

We note that many MMFs have multiple share classes, some of which are restricted to professional clients and others which are more widely available. While MMFs are principally sold to professional clients the following should be taken into account:

- i. Funds are made available on a number of platforms for the clients of private wealth managers.
- ii. MMFs are also invested in by a number of DC pensions subject to the permitted links rules and as such it is preferable for these funds to have “recognised” status to ensure ongoing eligibility (see response 1 above).
- iii. Certain local authority clients can still be classified as retail investors (i.e. they have not opted up to professional).
- iv. Some clients such as public authorities may be designated as retail for regulatory purposes.

Members would welcome more clarity on the future client classification regime under the UK’s equivalent of MiFID.

Having detailed above some circumstances under which MMFs might be available to clients considered retail for regulatory purposes, we would add the following point. There is a risk that the OFR as currently proposed could lead to two different regimes for MMFs depending on how they are structured, even if their investment propositions and target markets are essentially the same. As such, we seek clarity from the government as to how it intends to ensure a level playing field between UCITS MMFs and AIF MMFs which are marketed solely to professional clients.

We also note that paragraph 4.15, referring to ‘Following an equivalence determination...’, appears to suggest that the equivalence determination is a condition for notifying under the NPPR. There is currently no equivalence determination of any form for funds to be registered under the UK NPPR, and if implemented in its current draft form there will be an additional unnecessary restriction for current funds that are registered under NPPR, and any future funds that wish to be so registered.

9. *Do you agree that MMFs eligible to be recognised under an equivalence determination for retail funds should follow the registration procedure for retail investment funds set out in paragraphs 4.6-4.14?*

As previously outlined, we recommend a streamlined, consistent framework for all UCITS MMFs.

Paragraphs 4.6-4.14 of the consultation set out the proposed registration process for retail funds under the OFR, **including any additional applicable requirements** which would be written into the statutory instrument giving effect to the equivalence determination under which those retail funds are being marketed in the UK. As previously detailed, IMMFA EU-domiciled MMFs are structured as UCITS and are marketed primarily, although not exclusively, to institutional investors designated as professional clients under COBS 3.5. *These MMFs are not marketed directly to individual retail investors.* We would therefore argue that any registration procedure for MMFs should be proportionate and appropriate to the intended investor. The application of paragraphs 4.6-4.14 therefore becomes problematic.

With regards to paragraph 4.25, 'Reason for suspending/revoking MMFs recognition', reference is made to one of the reasons being that it does not satisfy additional requirements. This further raises a concern about the appropriateness of additional requirements for MMFs. In addition, we note that with regards to paragraph 4.22, it is unclear whether the FCA would notify the NCA of the breach of any additional requirements as these are FCA requirements and not those set by the NCA. Conversely, it is not clear whether, where a fund is suspended by its NCA, there should be an automatic suspension.

Therefore, as set out in Q8 above, we seek clarity from the government as to the application of additional requirements set out in the equivalence determination for retail funds to MMFs which are structured as UCITS and marketed only to clients designated as professional clients, and how the OFR will ensure a level playing field for UCITS MMFs and AIF MMFs which are marketed solely to professional investors.

As noted above in responses 1 and 8, certain client types, such as those subject to the UK permitted links rules, will require MMFs to have recognised fund status.

10. *Do you agree with the circumstances in which the FCA would be able to suspend or revoke the recognition (or access to the market as an MMF) of a fund? Are there any other valid reasons for suspending or revoking a fund's recognition?*

Yes, in principle, we agree.

We would encourage the FCA to set out in more detail (either in technical standards or guidance) the circumstances under which a fund's recognition under the OFR could be suspended or revoked, beyond the high-level points laid out in the consultation.

Without greater clarity on the instances where temporary suspension by the FCA may be warranted, we object to the suggestion that only where the FCA considers it remains appropriate that the fund should continue marketing to the UK investor would a fund manager be offered the opportunity to rectify any breach. We recommend instead that where a fund is considered to be in breach, the default position be that the fund manager, within a defined time period, is directed to take specific actions to rectify the breach. Only after the conclusion of that period and where no action is taken to rectify a breach, or where the breach is resulting in material detriment to the interests of investors, should the fund's permission be suspended or revoked.

With regards to paragraph 4.25, 'Reason for suspending/revoking MMFs recognition', reference is made to one of the reasons being that it does not satisfy additional requirements. However, 3.16 is clear that additional requirements are not a feature of MMFs. In addition, we note that with regards to paragraph 4.22, it is unclear whether the FCA would notify the NCA of the breach of any additional requirements as these are FCA requirements and not those set by the NCA. Conversely, it is not clear whether where a fund is suspended by its NCA there should be an automatic UK suspension.

We understand that the HM Treasury will have the ability to modify or withdraw an equivalence determination, for example if there have been material changes to the regulatory regime in either the UK or the overseas country. The HM Treasury has noted that it will in the first instance attempt to engage in a dialogue in order to attempt to reconcile these changes in the context of outcomes-based equivalence. However, if this fails, then the fund's recognition would be revoked by the FCA. We understand that in this situation the existing UK investors could continue to hold their investments; however, no new UK investors would be able to invest. This uncertainty is troublesome, and we are concerned that it will mean that the regime is vulnerable to political agendas.

11. *Do you agree with the actions proposed to inform investors that a fund's recognition (or access to the market as an MMF) has been suspended or revoked? Are there any other factors that the government should consider?*

The approach seems reasonable and we agree with the proposal that fund operators inform investors and distributors in a timely manner and that the FCA publish such decisions on its website.

HM Treasury should, however, consider how this requirement will be enforced if the fund operator and Management Company are domiciled outside of the UK (as the CJEU will have no UK jurisdiction after the transition period ends).

To minimise the potential impact on investors (as set out in paragraph 4.26) we suggest FCA processes for suspending or revoking recognition are structured, consultative and offer guidance on remedial actions.

Where ultimately the FCA decides to suspend or revoke the recognition, or access to the market as an MMF, of a fund, it should be noted that the regulatory action could lead to significant investor outflows. As such, the FCA and the fund must ensure that, in advance of announcing such an action, the fund is adequately positioned and equipped to manage all investors' best interests during the proceeding period. Where a fund is suspended or its permissions revoked, we seek additional clarification under paragraph 4.27 as to the 'timeliness' of any notification to UK investors.

Obligations for retail funds in the UK

This section seeks member views on how various aspects of the UK regulatory framework relating to marketing and financial promotions will apply to overseas funds in the OFR.

12. *In your view, should the compulsory jurisdiction of the FOS be extended to cover funds recognised under the OFR, or should the OFR rely on investors having access to an ADR service in the fund's country? What are the advantages and disadvantages of each approach?*

We defer to the IA's response on this point.

13. *How common is it, under the passporting framework, for complaints from UK investors to be escalated to ADR services in the country where the fund is domiciled? What is the nature of these complaints?*

We defer to the IA's response on this point.

14. *Where UK investors access ADR services in an EU country as a result of complaining against a passporting fund, are the complaints dealt with within a reasonable timeframe, fairly, and in English?*

We defer to the IA's response on this point.

15. *Have any UK investors been disadvantaged by a lack of access to the FOS for complaints concerning passported EU funds? In what way?*

We have not seen any evidence of this.

16. *Are financial compensation schemes typically available to UK investors in overseas funds?*

We defer to the IA's response on this point.

17. *Are you aware of any examples of loss or harm to UK investors in passporting funds as a result of lack of access to financial compensation schemes?*

We are not aware of any such examples in the context of MMFs.

18. *Where overseas compensation schemes have been available to UK investors, are there examples of UK investors requesting compensation from the overseas compensation scheme, and have any successfully received compensation? What part does the overseas regulator play under such compensation arrangements?*

We defer to the IA's response on this point.

19. *In your view is it necessary to extend the scope of FSCS to apply to funds recognised under the OFR? What are the advantages and disadvantages of this approach?*

- 20 *Assuming the scope of the FSCS and the FOS remain unchanged, should funds be required to seek acknowledgement from investors about the availability of compensation schemes and ADR? If yes, what form should this take to be most effective?*
- 21 *Would the PRIIPs disclosures on redress and complaints ensure that investors are in an informed position as regards the availability of such schemes, in the event that the scope of FOS and FSCS remain unchanged?*
- 22 *Do you agree with the government's proposed approach to financial promotions set out in paragraph 5.30-5.31? To what extent are the operators of EU funds already relying on UK authorised entities to make or approve financial promotions?*

We defer to the IA's response on points 19 to 22.

Amendments to section 272

This section seeks member views on the proposed changes to section 272 to make it more efficient.

- 23 *Do you agree with the proposed changes to the individual fund recognition process (i.e. section 272) set out in paragraphs 7.3-7.5?*

We generally support the proposed changes to the existing section 272 of FSMA which we believe will help establish a more timely and streamlined process.

We only expect Section 272 to be used in exceptional circumstances and do not envisage it being used to market EU domiciled funds in the UK.

- 24 *Are there any other aspects of the individual fund recognition process which could be improved? Please give specific suggestions and explain how.*

With respect to local facilities, we see little justification for this proposal in the Consultation Paper. We believe it should be sufficient to have a dedicated section on a website and contact details as to where people can raise queries and make complaints via an e-mail address or weblink.

Requirements to maintain a physical address or agent are superfluous. Based on the experience of our members in other jurisdictions as noted in the recent European Regulation of the Cross-Border Distribution of Funds, local paying agents are very rarely used as a communication channel.

Questions 25 to 29 have been deleted as not applicable to an IMMFA response.

Information Gathering

30. *How many MMF funds (including sub-funds) does your firm operate which market in the UK and what is the total AUM?*

IMMFA member firms have 30 umbrella funds with a total of 79 sub funds

€785bn (as of 24th April 2020)

31. *In relation to your response to question 30, what is the total AUM and number of MMFs that are:*

a) structured as UCITS?

All 79 which totals €785 bn in AUM

b) structured as AIFs?

None

c) marketed to retail investors?

MMFs are marketed primarily but not exclusively to professional clients. They may be distributed over platforms which include Private Wealth Managers and may also be held by certain institutional clients such as public authorities that may be classified as retail for regulatory purposes. See Q8 above.

d) UK-domiciled, and portfolio managed in the UK?

2

e) UK-domiciled, but portfolio managed overseas?

None

f) domiciled in the EU, but portfolio managed in the UK?

As noted above all IMMFA MMFs except for those of one member are EU domiciled.

All member firms' portfolios are managed in the UK with the following exceptions:

i) 3 member firms' portfolios are managed in Europe

ii) Where members manage USD denominated funds, these are EU domiciled like the other funds, but usually portfolio managed from the USA or through a combination of US and European management.

32. *In relation to your response to question 30, do all the MMFs that your firm operates have UK investors?*

Yes. The IMMFA 2018 year-end investor survey showed that the UK was the largest investor sector, at 41 %. We anticipate this percentage to be similar in 2019.

33. In relation to your response to question 30, how many of these MMFs have you notified (or intend to notify) under the TMRP?

All 79

34. For funds which you market in the UK, how many have their management company function undertaken in another country via the EU UCITS management passport?

35. How many funds (including sub-funds) do you expect to register or notify under the OFR? What is their approximate AUM?

All 79. €785bn

36. In relation to your response to question 35, of those funds and sub-funds that you expect to register or notify under the OFR, how many are structured as:

- a) MMFs? All
- b) ETFs? None
- c) UCITS (including MMFs and ETFs structured as UCITS)? All

37. In relation to your response to question 36, what is the total AUM of the funds under each of these categories?

All are both Category a) MMFs and Category c) UCITS Total AUM €785bn

38. Could you outline the steps for an individual fund required on your part, and the estimated time taken, and costs incurred, to gain recognition under section 264 for a UCITS?

39. Could you outline the steps for an individual fund required on your part, and the estimated time taken, and costs incurred, to market an EU MMF in the UK under the EU MMF passporting regime?

40. Could you outline the steps for an individual fund required on your part, the estimated time taken, and costs incurred, to carry out a section 272 application process? Please indicate the amount of costs that would be charged to the fund itself.

- 41.** *Given the information set out in this consultation document, could you estimate, for an individual fund, the time and costs likely to be incurred under the OFR to gain recognition for a fund? Or to gain market access as a non-retail MMF*

We think it is important that this should take no longer and be no more expensive than the current application process for approving a UK domiciled fund. We note that in point 4.26 and 4.27 of the consultation paper that the OFR 'relies on supervisory deference' and that 'it is not necessary or appropriate to apply the full suite of FCA supervisory and enforcement powers to funds recognized under the OFR.' On this basis, the process should be no more onerous than current arrangements.