14 February 2025

By e-mail: dp24-2@fca.org.uk
Markets Reporting Team
Financial Conduct Authority
12 Endeavour Square
London
E20 1JN

Re: Improving the UK transaction reporting regime: Discussion Paper

Dear Sir/Madam,

MFA[1] appreciates the opportunity to represent the views of the global alternative investment industry in this written response to the Financial Conduct Authority's ("**FCA**") discussion paper on improving the UK transaction reporting regime (the "**Discussion Paper**"). We have set out our responses to the relevant questions of the Discussion Paper in the Annex hereto.

MFA is fully supportive of the FCA's primary objectives of improving data quality and supporting the competitiveness of UK markets by ensuring requirements remain proportionate for firms. Noting the UK Government's decision to prioritise the growth and competitiveness of its asset management industry in recognition of its valuable contribution to the UK economy, reform of the UK's MiFID transaction reporting regime offers a prime opportunity to further enhance the attractiveness of the UK as a destination for global alternative asset management firms and facilitate its contribution to economic growth.

Executive Summary

MFA believes[2] that the current period of reforms of UK financial services law, including the repeal and replacement of EU law ("**REUL**"), presents an opportunity for pragmatic changes to be made to the UK asset management regulatory framework, in a manner that will ensure that the UK remains a world-leading centre for asset managers and investors, and facilitates financial markets that are both fair and predictable.

MFA and member firms have long been concerned with the overly complex, duplicative, and burdensome nature of the UK transaction reporting framework. The requirements are costly and burdensome, result in data with a high error rate, and deter asset managers from launching or trading in the UK markets. The FCA should reform the UK transaction reporting framework by eliminating

[1] Managed Funds Association ("**MFA**"), based in Washington, D.C., New York City, Brussels, and London, represents the global alternative asset management industry. MFA's mission is to advance the ability of alternative asset managers to raise capital, invest it, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 180 fund manager members, including traditional hedge funds, private credit funds, and hybrid funds, that employ a diverse set of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors diversify their investments, manage risk, and generate attractive returns throughout the economic cycle.

[2] MFA response letter to the FCA's discussion paper on updating and improving the UK regime for asset management ("**DP23/2**"): https://www.mfaalts.org/wp-content/uploads/2023/05/MFA-Response-Asset-Management-Discussion-Paper-FINAL-.pdf

dual-sided reporting to remove redundancy and substantially reduce costs and burden without compromising data quality.

With the above context, and as relevant to the Discussion Paper, MFA firmly believes that UK buyside firms should be removed from the scope of the transaction reporting regime. More precisely:

- investment firms carrying out the activity of portfolio management, including the activities of reception and transmission of orders on behalf of clients and/or execution of orders on behalf of clients, where carried out in the context of a discretionary client mandate ("**UK Portfolio Managers**"), should be removed from the scope of the transaction reporting regime;

- neither collective portfolio management investment ("**CPMI**") firms (as raised in the Discussion Paper), nor UK alternative investment fund managers ("**AIFMs**") or UK Undertakings for Collective Investment in Transferable Securities ("**UCITS**") management companies (together, "**UK Fund Managers**" and, together with UK Portfolio Managers, "**UK Buyside Firms**") should be brought into scope of the transaction reporting regime; and

- transaction reporting should apply to the remainder of UK firms currently in scope that are not UK Buyside Firms—that is, primarily, UK investment firms and credit institutions that execute transactions in the context of dealing on own account and/or execution of orders on behalf of clients (together, "**UK Sellside Firms**").

Details of the supporting factors for the above approach, and the means of implementing this, are set out in response to Question 6 in the Annex hereto.

However, if the FCA does not adopt the above approach, MFA would support a number of revisions being made to ensure the transaction regime applies more proportionately to firms, including certain improvements to the usability of the transmission regime in Article 4 of Regulatory Technical Standard ("**RTS**") 22, and certain other targeted changes to help mitigate the more challenging areas of the regime.

We have set out our detailed comments on each of the above matters in the Annex hereto.

* * * * *

MFA appreciates the opportunity to provide these comments to the FCA in response to the Discussion Paper. If you have any questions about these comments, or if we can provide further information, please do not hesitate to contact the undersigned at rhailey@mfaalts.org or 020 3585 2300.

Respectfully submitted,

/s/

Rob Hailey
Managing Director, Head of EMEA Government Affairs
Managed Funds Association

ANNEX

CHAPTER 3. THE SHAPE OF THE REGIME

Q1 How should we balance alignment between international transaction reporting regimes with the benefits from a more streamlined UK regime? Are there particular areas where divergence would result in more significant operational challenges or costs? These could be specific to field content, trading scenarios, reporting arrangements or any other area.

MFA Response

MFA notes that, at present, the greatest degree of international alignment of the UK transaction reporting regime is with the corresponding regime in the EU, given the UK transaction reporting regime has remained largely unchanged since the relevant legislation was transferred into the UK statute book following the UK's exit from the EU. Accordingly, for the purposes of this question, we have focussed on the question of remaining aligned with the EU regime.

As a general principle, where a given improvement could be made to the UK transaction reporting regime, and this cannot be achieved without divergence from the EU, MFA considers that the benefits of improving the UK regime will outweigh those of remaining aligned with the EU, and the FCA should therefore not consider continued alignment with the EU as a barrier to improving the UK regime. A key example in this regard is the removal of UK Portfolio Managers from the scope of the transaction reporting regime, as discussed below, which is a change whose benefits would outweigh the value of remaining aligned with the EU regime. If the FCA is concerned that this would create a divergence from the EU regime, we believe that such a change would not raise the same concerns that other departures from UK/EU alignment potentially raise. Whereas other departures from UK/EU alignment may result in firms needing to comply with two different regimes, de-scoping UK Portfolio Managers from transaction reporting would on the contrary simplify the position for groups that include both UK and EU buyside investment firms, as such groups would be required to transaction report in the EU only.

However, other than in the case of any such improvements, MFA believes that alignment with the EU transaction reporting regime should be maintained, where this is possible, and would encourage the FCA to continue to engage closely with the EU policymakers and regulatory leaders to find opportunities for continued alignment of the UK transaction reporting framework with that of the EU in a way that allows opportunities for reporting efficiencies in groups operating investment firms in both jurisdictions.

Q2 What changes could we make to the UK's transaction reporting regime now to remove duplication or provide synergies with requirements in other UK wholesale market reporting regimes?

MFA Response

MFA supports the principle of removing duplicative requirements, and providing synergies, across the wider set of UK wholesale market reporting regimes discussed in paragraph 3.11 of the Discussion Paper. However, we consider this to be a matter that is best considered holistically, as part of a comprehensive review, together with any future reforms of such other reporting regimes.

Notwithstanding the general principle above, alignment of the definition of complex trades (and its application) across multiple regimes – including UK European Market Infrastructure Regulation ("**EMIR**") and Markets in Financial Instruments Directive ("**MiFID**") – would help to ensure that data is being reported in a consistent manner across both the regimes.

Q3 Which areas of the transaction reporting regime do you find most challenging? Please explain why?

<u>**MFA Response**</u>

In addition to the examples raised by the FCA in paragraph 3.18 of the Discussion Paper, MFA wishes to highlight the following areas of challenge.

- **Complex trades**

  Our members note that they have encountered challenges with the reporting of complex trades, as defined in Article 12 of RTS 22, in particular, the requirement to link the transaction report for each leg of the trade by way of a complex trade component ID in Field 40.

  The requirement to link separate legs of a transaction in this manner is inconsistent with booking practices in certain asset classes, such as FX swaps, where distinct legs of the trade would be booked separately without firms needing to identify a linkage. The additional process required to identify and report such linkages is a significant challenge for firms.

  MFA would therefore ask the FCA to consider disapplying the requirement to report a complex trade component ID in respect of complex trades that comprise FX swaps or other asset classes which are in practice booked as separate transactions.

- **Trading time**

  Our members encounter challenges in identifying and reporting the time at which a transaction occurred at the level of precision required for the purposes of Field 28, given the technical system requirements needed to track the timing of transaction to the required level of timestamp granularity. Where UK Portfolio Managers transact with UK Sellside Firms, it should be sufficient for the UK Sellside Firm only to provide the required level of timestamp granularity for the trading date time, rather than requiring this of both firms. This is an issue that MFA considers would be addressed by improving the usability of the transmission regime, as discussed in subsequent questions (as this would, in effect, allow UK Sellside Firms to report on behalf of both firms in such cases).

- **Errors and omissions notifications and back-reporting**

  MFA notes that, in their current form, the requirements to submit errors and omissions notifications to the FCA ("**E&O Notifications**") under Article 15(2) of RTS 22, and the back-reporting process contemplated in Article 26(7) of UK Markets in Financial Instruments Regulation ("**MiFIR**"), are areas of significant operational challenge for firms. Firms require substantial technical, human and financial resources to comply with these requirements.

  MFA is of the view that these requirements are particularly disproportionate in instances where the nature of any errors or omissions in a given report is immaterial for the purposes of providing an understanding of the overall transaction and its key features for market monitoring purposes. While MFA notes and is supportive of the

FCA's intent to remove certain fields from the reporting template that are considered redundant in all circumstances (such as the 'indicator fields' discussed in Question 32 of the Discussion Paper), MFA would note that certain fields may be relevant in some circumstances, but in other cases immaterial, and the potential for immateriality of certain reporting fields is at present not reflected in the E&O Notification and back-reporting requirements.

For example, the use of a second or third priority identifier (as determined by RTS 22 Annex II: National client identifiers for natural persons to be used in transaction reports) should not be considered an error. The key requirement is that the individual responsible for the investment decision or execution is identifiable from the national identifier that has been prioritised, regardless of whether a second or third priority identifier (such as a national passport or CONCAT number) has been used. However, at present, issues in respect of such identifiers would still require the submission of an E&) Notification and a back-reporting exercise to be conducted.

Accordingly, MFA believes that the E&O Notification and back-reporting requirements could be made more proportionate for firms by introducing a materiality threshold. Such a threshold might be based on factors such as: the number of fields in which errors or omissions are identified in a report or set of reports, the specific fields concerned and the error or omission type(s) (e.g. whether it is the reported value , or the format of the value, that is inaccurate). The materiality threshold could be set out in the form of FCA guidance, outlining the factors that firms should consider, together with worked examples, to assist firms in determining whether issues identified internally rise to the level of an "error or omission" that would trigger the E&O Notification and back-reporting requirements. This could include guidance to the effect that firms remain responsible for the materiality assessment, and should document and be able to provide their rationale to the FCA on request where the determination is made in respect of an issue where an E&O Notification and back-reporting are not required.

- **Clarity on IDM vs EDM**

  Clarity is needed on the difference between nationality and citizenship given it is interpreted differently in different parts of the world. The FCA should simplify the requirements and request passport information instead of national IDs for all non-UK Investment Decision Makers ("**IDM**") / Execution Decision Makers ("**EDM**").

- **Reliance on sellside firms**

  Buyside firms are reliant on sellside firms to provide accurate data in order to populate their transaction reports. This includes:

  - Systematic Internaliser market identifier codes ("**MICs**") are often not provided resulting in firms onboard external vendors.
  - More cross-field validations are needed to improve data quality and accuracy, and allow firms to build controls around these validations. For example, the requirement to populate the Upfront Payment field as zero, even when there is no change in notional, to provide positive confirmation of nil upfront payment could be addressed by cross-field validations.
  - Retrieving reference data from the Association of National Numbering Agencies' Derivatives Service Bureau ("**ANNA-DSB**") for some of the reference data fields is not straight-forward. For example, inflation swaps have different

International Securities Identification Numbers ("**ISINs**") generated by different counterparties depending on how the Reference Rate Term Unit is defined by a user when generating the ISIN from ANNA-DSB. This results in rejections by the FCA where the ISIN that is generated and reported by the buyside firm is not in FCA FIRDS (which may occur where a trading venue has generated a different ISIN from ANNA-DSB, and submitted this to FCA FIRDS).

Q5 Do you use FCA FIRDS? If so, do you access via the GUI or through file download and what is your predominant reason for using FCA FIRDS?

MFA Response

Our members' predominant uses of FCA FIRDS are for determining whether issuers or financial instruments are in scope of the UK Market Abuse Regulation, transaction reporting and post-trade transparency requirements under UK MiFIR and net short position reporting requirements under the UK Short Selling Regulation ("**UK SSR**"). Members use both available modes of access: the GUI and file download.

MFA has observed that the information on FCA FIRDS is not always up-to-date when compared with other public sources setting out details on listings of securities on UK and EU trading venues.

Additionally, while the present discussion relates to the transaction reporting regime, a related issue we have identified is that FCA FIRDS is often not aligned with the UK list of exempted shares for the purposes of the net short position reporting requirements under the UK SSR. While we intend to discuss this issue in any future engagement on the UK short selling framework, we wish to highlight this point at this stage, as we believe this is a relevant consideration for the FCA to consider in its development of the instrument reference data regime more broadly.

CHAPTER 4. SCOPE

Q6 Should CPMI firms be subject to UK MiFIR transaction reporting requirements for MiFID activity they conduct? Please explain why.

MFA Response

Removal of UK Portfolio Managers from the scope of the transaction reporting regime

As noted in the main body of this letter, MFA is firmly of the view that all UK buyside firms should be excluded from the scope of the transaction reporting regime. More precisely:

- UK Portfolio Managers (as defined in the main body of this letter) should be removed from the scope of the transaction reporting regime;
- neither CPMI firms (as raised in the Discussion Paper), nor UK AIFMs or UCITS management companies should be brought into scope of the transaction reporting regime; and
- transaction reporting should apply to the remainder of UK firms currently in scope that are not UK Buyside Firms (UK Sellside Firms, as defined in the main body of this letter).

MFA notes that such a change would represent a reversion to the "firm scope" of the transaction reporting regime under the UK implementation of MiFID I. Under UK rules implementing MiFID I, UK Portfolio Managers were generally able to rely on an exemption from transaction reporting in the course of discretionary management activities, provided they had reasonable grounds to be satisfied that their counterparty would report the transaction to the FCA (or to another competent authority) and that such report would include all such information as would have been contained in a transaction report by the firm (other than as to the identity of the firm's client).[3]

MFA has welcomed the FCA's recent efforts to scale back MiFID II requirements, where these have been found to have harmed firms (notably, the recent relaxation of the MiFID II research unbundling requirements, via the introduction of a new payment option[4]). The removal of UK Portfolio Managers from the transaction reporting regime and reverting to the same overarching principles that applied under MiFID I would be a welcome continuation of this approach.

MFA is of the view that the following factors support the removal of UK Portfolio Managers from the transaction reporting regime:

- **Various types of buyside firms trade on UK trading venues, or trade ToTV instruments, without being subject to transaction reporting**.

  While the Discussion Paper identifies CPMI firms as one such type of firm, further examples include UK AIFMs and UK UCITS management companies, as well as non-UK buyside firms. Any such firms may trade financial instruments that are Traded on a Trading Venue ("**ToTV**") and hence reportable instruments for UK transaction reporting purposes. Several points arise out of this:

  - *First*, the fact that the FCA has historically conducted its market surveillance duties without receiving transaction reports from any buyside firms other than UK Portfolio Managers is indicative that, where UK Sellside Firms act as brokers for buyside firms, the model of receiving transaction reports from the relevant UK Sellside Firm only is sufficient for market monitoring purposes.

  - *Secondly*, even if CPMI firms were made subject to transaction reporting, UK AIFMs and UCITS management companies that are not CPMIs (that is, those that do not hold portfolio management or other MiFID "top-up" permissions) would still not be required to report. This would result in an arbitrary distinction between UK Buyside Firms, depending on their authorisation type.

  - *Finally*, CPMI firms would only be required to report in respect of transactions executed in the course of their MiFID business, and not any transactions executed in the course of their AIF or UCITS management business, as appropriate. This would result in very limited incremental data for the FCA (as the FCA notes in paragraph 4.5 of the Discussion Paper). Furthermore, this would be highly complex for CPMI firms to implement. For example, CPMI firms would need to carefully track whether a given transaction occurred in the context of a MiFID or AIF/UCITS mandate, and ensure this regulatory distinction is coded into

[3] This was set out in SUP 17.2.1R and SUP 17.2.2G of the FCA Handbook at the time, which were deleted as part of the UK's implementation of MiFID II.
[4] PS24/9: Payment optionality for investment research.

transaction reporting systems, to avoid the inadvertent reporting of AIF/UCITS transactions.

Regarding the second and third points above, introducing additional complexity based on the distinct regulatory frameworks derived from retained EU law structures would be contrary to the FCA's objective of simplifying and rationalising the investment management framework, as set out in DP23/2.

- **The complexity and financial and human resource cost of transaction reporting compliance is substantial.**

  Substantial financial and human resources must be deployed for transaction reporting compliance. This typically includes developing and maintaining coding rules, monitoring, deploying health checks or building inhouse diagnostic tools, and employing sufficient human resources in operations and compliance to monitor and supervise accurate transaction reporting. Additional costs typically incurred include quality assurance and legal advice to aid rule interpretation when engaging in new trading flows or when new guidance is issued by the FCA.

  The significant complexity of the regime is evidenced in a number of publicly available statistics on the extensive rate of errors in transaction reports. For example, 97% of firms in one study were found to have submitted MiFIR reporting that contained material inaccuracies[5], while in another 2023 study, 89% of transaction reporting data tested contained one or more errors.[6]

- **The substantial cost deters new buyside firms launching in the UK.**

  From our engagement with the broader investment management industry, we note that the burden of transaction reporting is considered so onerous that it often acts as a deterrent to new investment management firms launching in the UK. In light of the FCA's international competitiveness objective, as well as Prime Minister Sir Keir Starmer's request of 24 December 2024 to the FCA to introduce reforms to drive business growth, MFA believes this should be a key consideration in developing the UK's future transaction reporting framework.

  With specific regard to the suggestion of bringing CPMI firms into scope of the regime, this could hinder the UK's competitiveness as a jurisdiction in which to establish an AIFM. MFA notes that no equivalent proposal has been made by EU policymakers to date to require EU AIFMs that conduct MiFID activities under Article 6(4) of the EU Alternative Investment Fund Managers Directive to comply with MiFID transaction reporting requirements. Imposing such a requirement on CPMI firms could further strengthen the competitive advantage of common EU AIFM jurisdictions, such as Luxembourg and Ireland, to the detriment of the UK. This would be contrary to the FCA's objective of supporting the competitiveness of UK markets.

- **The cost burden of transaction reporting needs to be considered in the context of wider obligations on UK Portfolio Managers.**

[5] https://www.acaglobal.com/aca-regulatory-reporting-monitoring-assurance-support-arrma

[6] Kaizen Accuracy Testing, 2023.

Since the exemption from transaction reporting on which UK Portfolio Managers previously relied was removed in 2018, the broader market abuse regulatory framework within which such firms operate has been clarified and enhanced significantly, notably through FCA guidance publications in the form of its periodic Market Watch newsletters. Over the course of the period since 2018, the FCA has continued to set out its expectations of firms in this regard, including comprehensive documentation detailing Market Abuse Risk Assessments, Suspicious Transaction and Order Reporting, market observation reports, order and trade surveillance, electronic communication reviews, policies and procedures around the receipt and management of inside information, and comprehensive training programmes aimed at assisting with UK market cleanliness. These requirements are costly, both in terms of their initial deployment and ongoing utilisation. They also serve to ensure firms operate a comprehensive set of systems and controls to manage market abuse risks, and in that regard represent a more proportionate way in which firms can support UK market cleanliness, compared to the current buyside transaction reporting requirements.

- **UK Sellside Firms have more extensive resources for establishing appropriate compliance systems and controls**.

  UK Sellside Firms are typically of a size that enables the deployment of more extensive infrastructure, systems and human resources for compliance purposes. In contrast, UK Buyside Firms, including UK Portfolio Managers, tend to be smaller in size and, consequently, as a commercial necessity, are constrained to less extensive infrastructure and a much smaller compliance headcount. MFA believes this imbalance in the operational and reporting capacity of UK Buyside Firms and UK Sellside Firms, respectively, supports the other factors in favour of transaction reporting requirements applying to UK Sellside Firms only.

- **UK Sellside Firms are obliged to report all trading activities across relevant UK markets and trading venues, irrespective of the corresponding counterparty profile.**

  The transaction reports submitted by UK Portfolio Managers are duplicative of what is already required to be reported by UK Sellside Firms. The majority of the fields contained in the transaction reports for UK Portfolio Managers and UK sellside firms are identical – UK Portfolio Managers' reports contain only two additional fields: the identity of the IDM and EDM.

  The information contained in these two additional fields is required to be recorded and retained by UK investment firms, and made available to the FCA upon request across as a mandatory component of UK investment firms' record-keeping obligations under UK rules implementing MiFID.[7]

  In theory, there would be a reduction in data available to the FCA in descoping UK Portfolio Managers from reporting if it were common practice for UK Portfolio Managers to engage non-UK brokers to execute their trades on UK markets (given such non-UK brokers would not be subject to transaction reporting in the UK). However, in practice, UK Portfolio Managers are unlikely to use non-UK brokers for such purposes, due to factors such as UK licensing requirements for the relevant broker. As such, UK Portfolio Managers will typically engage a UK Sellside Firm for such purposes, and that UK Sellside Firm will be required to transaction report.

[7] See Annex IV of the UK retained law version of Commission Delegated Regulation (EU) 2017/565 (https://www.legislation.gov.uk/eur/2017/565/annex/IV).

It is therefore unclear what additional value is provided by UK Portfolio Managers' transaction reports, since all the information they contain is either reported by other firms, or is subject to record-keeping requirements and available to the FCA upon request.

Accordingly, removing the obligation on UK Portfolio Managers to submit transaction reports would not result in any meaningful reduction in the extent and quality of data available to the FCA to support its market monitoring, supervisory and enforcement functions.

- **UK Portfolio Managers will generally effect transactions in equity shares on swap rather than as a series of underlying individual trades.**

  Recent data published by the FCA shows that the overwhelming majority of Suspicious Transaction and Order Reports ("**STORs**") relate to transactions in equity instruments, compared to other asset classes (commodities, fixed income and FX).[8] This is an indicator of market abuse behaviours being most prevalent on equity markets.

  UK Portfolio Managers will generally trade equities on swap, rather than as a series of underlying cash trades. As a result, the details contained in a UK Portfolio Managers' transaction report for such transactions may not be useful for the purposes of marshalling market cleanliness. In particular, the details reported in respect of swap transactions may be aggregated, and the transaction execution times will reflect the execution of the swap rather than the market execution. Conversely, any corresponding execution time for the market transaction (which is more useful data for the purposes of market monitoring) would be included in any STOR submitted in respect of that market transaction.

- **The current UK regime is out of step with other significant financial markets.**

  Compared to other significant financial markets, the UK and EU are outliers in requiring buyside firms to report transactions. The position in certain key markets is discussed below.

  In the **US**, transaction reporting for equity securities is governed by rules of the Financial Industry Regulatory Authority ("**FINRA**") and the Securities and Exchange Commission ("**SEC**"). For OTC equity securities, FINRA rules provide that (i) in transactions between two broker-dealer members, the executing party shall report the trade and (ii) in transactions between a broker-dealer member and a non-member or customer, the broker-dealer member shall report the trade. A fund manager providing asset management services does not need to report under the FINRA rules unless it is dually-registered as a broker-dealer. Similarly, only FINRA-regulated firms report fixed income security transactions to the Trade Reporting and Compliance Engine ("**TRACE**"). Exchange-traded equity securities are reported by national securities exchanges according to FINRA and SEC Rules. The trade reporting obligation, therefore, does not lie with asset managers.

[8] According to the FCA's published data on STORs received in 2023 (www.fca.org.uk/markets/how-report-suspected-market-abuse-firm-or-trading-venue/number-stors-received-2023).

In **Hong Kong**, discretionary investment managers are not subject to transaction reporting. Reporting requirements can apply to 'relevant regulated intermediaries' ("**RRIs**"), i.e. persons who, for Hong Kong-listed securities, (i) submit on-exchange orders for execution, or (ii) conduct off-exchange trade reporting. Fund managers would only be considered RRIs (and therefore be subject to the reporting regime), if they provide certain services, such as brokerage services. By doing so, the fund manager is acting in a 'securities broker' role. However, if the fund manager were providing asset management services instead, the executing broker would instead be responsible for such identification/tagging. A licenced manager of a fund or investment account would only be providing brokerage services (and therefore be considered an RRI subject to reporting) by executing trades on a non-discretionary basis (e.g. where it acts as a central dealing desk to execute trades on behalf of offshore affiliate that makes the investment decision). However, a discretionary manager would not be considered an RRI and would therefore not be subject to reporting.

In the UK, a MiFID firm is able to provide such an 'execution' service to affiliates (alongside discretionary management). We are aware that, for some member firms, such execution services do form a (generally small) part of their activities. In other words, the majority of trades executed by the UK firm would result from investment decisions made by UK personnel, but on occasion, a trade may be executed on the instruction of an investment decision-maker at an affiliated US entity. Under the Hong Kong regime, those occasional non-discretionary trades would be subject to reporting, but the majority of trades, as they arise from investment decisions made by UK portfolio managers, would not be reportable (and would instead be reported by the broker). This is therefore a significantly narrower scope of reporting for buyside firms than currently applies in the UK.

In **Singapore**, there are no equivalent transaction reporting requirements analogous to those under MiFID. Instead, the Monetary Authority of Singapore ("**MAS**") relies on the Singapore Exchange to conduct market surveillance, monitor for market manipulation, and report suspicious trading behaviour to the MAS as necessary.

In the Abu Dhabi Global Market ("**ADGM**") and Dubai International Financial Centre ("**DIFC**"), there are no equivalent transaction reporting requirements on buyside firms that are analogous to those under MiFID. In these jurisdictions, a combination of reporting from trading venues, suspicious transactions and order reporting from authorised firms, and other monitoring tools provide a framework to support the regulators' market monitoring capabilities.

These examples demonstrate support internationally for the notion that buyside firm reporting is not a necessary component of regulators' market monitoring tools, and that sellside reporting is a more appropriate means of providing this data.

<u>Proposed solution</u>

The removal of UK Portfolio Managers from the scope of the transaction reporting regime could be implemented relatively simply, by amending the definition of "execution" in RTS 22 to:

- remove its application to transactions that result from "*making an investment decision in accordance with a discretionary mandate given by a client*"; and
- qualify its application to transactions that result from the following activities: "*reception and transmission of orders in relation to one or more financial instruments*", "*execution of orders on behalf of clients*" and the "*transfer of financial instruments to or from accounts*"

to exclude circumstances where such activities are conducted in the course of a mandate given by a client that includes the provision of portfolio management services.

The purpose of such changes would be to remove the application of transaction reporting in respect of transactions executed in the context of MiFID portfolio management, or to certain related MiFID activities that may be performed in the course of portfolio management services. The changes to Article 3 RTS 22 are shown in below (deleted text in red, strikethrough, added text in blue).

> *"(1) An investment firm shall be deemed to have executed a transaction within the meaning of Article 2, where it provides any of the following services or performs any of the following activities that result in a transaction:*
>
> > *(a) reception and transmission of orders in relation to one or more financial instruments;*
> >
> > *(b) execution of orders on behalf of clients;*
> >
> > *(c) dealing on own account;*
> >
> > ~~*(d) making an investment decision in accordance with a discretionary mandate given by a client;*~~
> >
> > *(de) transfer of financial instruments to or from accounts.*
>
> *(2) An investment firm shall not be deemed to have executed a transaction where it has transmitted an order in accordance with Article 4.*
>
> *(3) An investment firm shall not be deemed to have executed a transaction where it provides any of the services or performs any of the activities in paragraph (1)(a), (b) or (d) in the course of a mandate given by a client that includes the provision of portfolio management services."*

Consequential changes to historical guidance (most notably, the relevant European Securities and Markets Authority ("ESMA") Guidelines[9]) would in due course need to be updated to remove reference to the application of the transaction reporting requirements to portfolio management services.

Application to CPMI firms

If the FCA does not adopt the approach outlined above, then as a next best option, we would support CPMI firms remaining outside the scope of the transaction reporting regime, for the reasons outlined above in relation to such firms.

Reform of the transmission regime

Should any UK Buyside Firms remain in, or be brought into, scope of the transaction reporting regime, we would support the FCA improving the usability of the transmission regime in Article 4 of RTS 22, such that UK Buyside Firms can in effect delegate transaction reporting to UK Sellside Firms. Further detail on this topic is set out in response to the questions on the transmission regime below.

Q7 What difficulties do you have in determining whether a financial instrument is ToTV, if any? Please make your response asset class specific, if applicable.

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[9] ESMA Guidelines on Transaction reporting, order record keeping and clock synchronisation under MiFID II, 10 October 2016 (ESMA/2016/1452).

MFA Response

MFA agrees with the FCA's observations in the Discussion Paper that due diligence in respect of whether a financial instrument is ToTV is particularly challenging in relation to OTC derivatives, including credit default swaps traded OTC.

More broadly, however, we consider that the concept of ToTV could be made more proportionate by excluding financial instruments in respect of which the main pools of liquidity are outside the UK and EU.

For example, many of our members trade in US equities, for which the main pools of liquidity are in the US. In certain cases, a given US equity may (without the relevant issuer's knowledge) be traded on a UK or EU multilateral trading facility ("**MTF**"). Irrespective of the extent of liquidity on such UK or EU MTF, the instrument would then be deemed ToTV and hence a reportable instrument. MFA considers the application of transaction reporting requirements to such instruments to be a technicality, which does not provide useful data to the FCA for market monitoring purposes.

We believe that one means of addressing this issue could be by restricting the concept of ToTV to financial instruments which are traded or admitted to trading (or for which a request for admission to trading has been made) on a UK, EU or Gibraltar trading venue, pursuant to a request for admission that has been made by or on behalf of the issuer itself, with equivalent changes made to the concept of ToTV. Such a change should ensure that ancillary listings of which the issuer itself may not even be aware, are not captured for the purposes of determining reportability of an instrument.

An alternative option could be to introduce an exclusion from the ToTV definition for instruments, the principal venue for the trading of which is located in a third country. This could be based on the equivalent exemption from the net short position reporting regime for shares in article 16 of the UK SSR, which underlies the UK exempted shares list. As noted in response to Question 5, however, given issues in relation to the consistency of FCA FIRDS and the UK exempted shares list, MFA would support information on financial instruments exempted due to their principal trading being on a third country trading venue being publicised by alternative means (such as by means of an indicator incorporated into FCA FIRDS database itself, rather than a separate list).

Q8 Does the daily rolling ISIN issue impact your firm? If so, please explain for which asset classes and sub-asset classes. We would welcome any data you can provide on associated costs.

MFA Response

MFA's preference is to maintain the ISIN field as it is.

Q9 Would reporting the UPI for instruments in scope under UK MiFIR Article 26(2)(b) and (c) require firms who would not otherwise have to obtain UPIs to do so?

MFA Response

The Unique Product Identifier ("**UPI**") is derived from ANNA-DSB only if the ISIN and underlying ISIN are not available. This represents a significant additional burden for firms who delegate their reporting under UK EMIR.

Q11 Would you support a change to the scope of reportable instruments to align with UK EMIR?

MFA Response

No. This would result in duplication of data reported for UK EMIR and transaction reporting purposes. It would also increase the complexity of the ToTV definition, since it would then bring all derivatives in scope of transaction reporting (as opposed only to those derivatives that are ToTV or whose underlying is ToTV).

Q18 Do you support removing the obligation for SIs to report instrument reference data? Please explain why.

<u>MFA Response</u>

MFA is of the view that the obligation for Systematic Internalisers ("**SIs**") to report instrument reference data should remain unchanged.

As the FCA notes in the Discussion Paper, at present, when an investment firm executes a transaction in a financial instrument for which SI reference data exists, only an ISIN is required to be reported in Field 41, and Fields 42 to 56 do not need to be completed. Were the FCA to remove the obligation on SIs to report reference data, RTS 22 Fields 42 to 56 would become reportable by investment firms trading with SIs who were previously able to rely on the SI reference data.

Removing this requirement would extend the reporting burden applicable to buyside firms and other non-SI investment firms that trade with UK SIs, and would require both SIs and non-SI investment firms that trade with them to incur the cost and time-consuming process of changing their systems and procedures to implement this change.

Q19 Would you support the introduction of an opt-in register of UK investment firms willing to act as a receiving firm? Are there any other challenges associated with the transmission mechanism that limit the potential effectiveness of this solution?

<u>MFA Response</u>

MFA has observed that, in practice, the uptake of the transmission regime set out in Article 4 of RTS 22 has been very limited since its introduction.

MFA believes the main reason for its limited uptake is that, as one of the conditions for reliance on the regime, the transmitting firm is required to provide various order details (such as the identification code of the financial instrument, the price and quantity of the order and details of the natural person or algorithm responsible for the investment decision) to the receiving firm. Certain of these details may include sensitive data, such as details of individuals, which a UK Portfolio Manager may be reluctant to share with a UK Sellside Firm. Due to the extensive details that must be provided on a transaction-by-transaction basis to the receiving firm, and considering that a buyside firm may be dealing with several receiving firms, there is currently little benefit to firms in seeking to rely on this regime, as opposed to submitting their own transaction reports. Accordingly, our members have generally taken the latter approach.

MFA believes that the transmission regime could be of more practical use to buyside firms if the requirement for the transmitting firm to provide the order details in Article 4(2) of RTS 22 were removed. In the case of a UK Portfolio Manager, this would allow the use of the transmission regime in circumstances where they transmit an order to another UK investment firm, such as a UK Sellside Firm, provided simply that the receiving firm has agreed to report the transaction (or transmit it to another UK investment firm). In practice, the UK Sellside Firm could rely on the information already provided by the UK Portfolio Manager under the trade and include those details in the transaction report it would be required to submit upon executing the transaction.

We would also support the FCA's proposal of an opt-in register for receiving firms, as a means of giving firms greater transparency about their reporting options.

MFA believes that, with these changes, the transmission regime could be transformed into a more practical exemption that would help make the transaction reporting regime more proportionate in its application both to smaller firms, as well as to buyside firms more generally.

Q21 Would you support UK MiFID investment firms (including a UK branch of a third country investment firm) being able to act as a receiving firm for non-MiFID investment firms (which are not subject to transaction reporting obligations)?

MFA Response

Yes. For the reasons outlined in the previous responses, we would support such a change as a means to expand the scope of the transmission regime and support its uptake going forward.

CHAPTER 5. CONTENT OF TRANSACTION REPORTS

Q25 Do you have a preferred option for improving the usefulness of the TVTIC? Are there other options we should consider?

MFA Response

The FCA should consider removing this field for firms that do not operate as a trading venue. This data is available from trading venues and is a duplication of data. Currently, firms need to maintain complicated logic to derive TVTIC from different trading venues and implement relevant controls around it.

Q28 Would you support simplification of the requirements for the buyer and seller field when trading on a trading venue where the counterparties are not known at the point of execution?

MFA Response

MFA supports simplification of all on-venue scenarios i.e. trading on a regulated market, MTF and organised trading facility should all be reported with the buyer/seller set to the venue MIC. In the event that the investment firms get the venue field incorrect, the FCA would be able to identify whether it is a venue trade using the buyer/seller field.

Q29 Do you have any suggestions for how data quality could be improved for transactions involving transmission?

MFA Response

MFA proposes that the guidance for UK firms on transmission scenarios (which is currently set out in the ESMA Guidelines) should be clarified. In particular, the first trading scenario from section 5.25 of the ESMA Guidelines (whereby both firms are executing and will be transaction reporting) should be removed to clarify the transmission of order indicator (field 25) should not be applied to these firms.

The second trading scenario in section 5.25 states that the transmitting firm is not deemed to be executing and does not have transaction reporting obligations. Field 25 should be applied only for this second trading scenario (and therefore it should remain in any future guidance on transmission scenarios).

In general, buyside firms do not currently use the transmission regime and therefore this field should not generally be applicable in reports submitted by buyside firms. Sellside firms involved in the trading scenario where transmission takes place should be required to populate this field.

The FCA could provide different examples, by way of an updated, revised set of guidelines superseding the ESMA Guidelines, to provide more clarity on this field.

Q30 What challenges do you have reporting the quantity type and price type tags for particular asset classes, if any? What further guidance could we issue to help firms?

MFA Response

MFA members would welcome guidance on exotic derivatives products which are not covered by the original ESMA Guidelines.

Q31 Do you anticipate any challenges with aligning the reporting of the price for single name equity swaps with the reporting of forwards with a CFD payout trigger? Could this be applied to swaps with multiple underlying instruments?

MFA Response

The FCA should align these requirements with other regulations such as UK EMIR for equity derivatives with single underlying instruments.

In the case of swaps with multiple underlying instruments, the calculation of price is complicated by every single underlying equity having an associated price and reporting each relevant price per ISIN in line is not straightforward. Likewise, providing a single price will also be a challenge, as a formula will be required – for example a weighted average price which may not be a meaningful price.

Q32 Would you support removal of the indicator fields from the transaction reporting regime? Please explain why.

MFA Response

Yes. Removal of the indicator fields is justified by:

- Waiver Indicator – this is reported by the trading venue.
- OTC Post Trade Indicator – firms are dependent on approved publication arrangements and brokers to provide this data and do not always get the required information from the brokers.
- Short Sell Indicator – this field is covered by other regulations such as the UK Short Selling Regulation.
- Securities financing transaction indicator – this field has also become redundant since the introduction of reporting under the Securities Financing Transactions Regulation.

Q33 What difficulties, if any, would you anticipate in being able to provide a linking code for aggregated transactions? Which of the options outlined would you prefer and why? Do you have alternate suggestions to improve data quality for transactions which use INTC?

MFA Response

Providing a linking code poses new challenges from an implementation perspective, as there could be a large volume of trades that would need to be linked together. A new field in trade booking systems may also be required. Additional guidance would be required from the FCA on handling amendments/cancellations when a link code is involved. In any event, Option 2 is simpler as INTC will be replaced by a link code and no additional field will be required

Q35 Do you support the inclusion of a new client category field? Please explain why.

MFA Response

No. Any new fields (whether optional or mandatory) increase the complexity of existing processes.

Q36 Would you support either of the above options to enhance our oversight of DEA activity? If so, do you have a preference?

MFA Response

Option 2 is preferred.

Q37 Would you support the inclusion of two price fields? Please explain why.

MFA Response

Leg level price fields may not be available for all scenarios. This information is already provided for trades in scope of post-trade transparency ("**PTT**") reporting. The FCA should simplify the requirements by sourcing the information on leg level pricing as well as complex price within transaction reporting and exclude packages from the PTT regime.

Q38 Would you have concerns with providing full names and dates of birth for the individuals within the firm responsible for investment decision or execution decision? Please explain why.

MFA Response

We have concerns on GDPR and data privacy grounds. The FCA could consider simplifying this requirement by asking for passport information for all non-UK IDMs/EDMs. For UK IDMs/EDMs, firms can continue to provide the National Insurance number of the relevant individual. This would reduce the burden on firms since passport information can be used to identify further information of a trader, should there be a need for more detailed investigation by the FCA. It would also help avoid the ambiguity raised by different understanding of nationality/citizenship across the globe. Finally, it would eliminate the need to concatenate data for certain countries where no national IDs are available.

Q39 What difficulties, if any, do you encounter when submitting transaction reports for transactions in FX derivatives? Please provide details on how data quality could be improved in this area.

MFA Response

The FCA should provide clear guidance on FX Swap booking and trading to avoid different treatment of the same instrument across the industry.