Response to FCA Discussion Paper 23/2

INREV

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Response to FCA DP23/2 Updating and improving the UK regime for asset management

Executive Summary

The European Association for Investors in Non-Listed Real Estate Vehicles (INREV)[1] welcomes the opportunity to respond to the FCA's Discussion Paper 23/2 on updating and improving the UK regime for asset management.

We support the objective of the discussion paper, and would like to briefly highlight some of the most important responses in our submission.

Separate chapters for professional investor funds and funds open to retail investors

With regard to a single common framework for rules for asset managers, we do not consider that wholesale revision to the rules for asset management firms is required. Instead, we would suggest two separate chapters be created that clearly distinguish and de-lineate rules for different types of firms. One would be rules for firms that manage unauthorised collective investment schemes and alternative investment funds that admit only professional investors. The other would be rules for unauthorised collective investment schemes and other alternative investment funds that admit retail investors.

Legacy EU legislation moved to relevant sourcebooks of FCA handbooks

We suggest that various statutory instruments which continue to implement EU secondary legislation could be repealed and that the identical text (subject to approved amendments) be

[1] INREV is the European Association for Investors in Non-Listed Real Estate Vehicles. We provide guidance, research and information related to the development and harmonisation of professional standards, reporting guidelines and corporate governance within the non-listed property funds industry across Europe, including the UK.

INREV has more than 500 members, comprised of institutional investors from around the globe including pension funds, insurance companies and sovereign wealth funds, as well as investment banks, fund managers, fund of funds managers and advisors representing all facets of investing into non-listed real estate vehicles in the UK and the rest of Europe. Our fund manager members manage hundreds of non-listed real estate investment funds, as well as joint ventures, club deals and separate accounts for institutional investors.

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included in the relevant sourcebooks of the FCA handbook.

Reserved Investor Fund

We strongly support the recently announced initiative for the Reserved Investor Fund (RIF) unauthorised contractual scheme. The RIF would enhance the UK fund offering and address a significant gap in that offering whereby currently UK fund managers are forced to consider offshore alternative structures. We are convinced that there is widespread support from UK real estate fund and asset/portfolio managers for this fund structure.

We advocate that, as soon as practicable after consideration of comments submitted in response to the consultation document released by HM Treasury in April, relevant primary tax legislation be introduced that will apply to the Reserved Investor Fund. In addition, secondary legislation which is needed so UK fund managers can then launch and operate Reserved Investor Funds should also be introduced.

Increasing threshold for full-scope AIFMs

With regard to the threshold at which AIFMs must apply the full-scope rules, we very much support increasing the threshold at which the full-scope regime applies to an AIFM. In our view, the current threshold has significantly impacted access to market entry for start-up managers of real assets. The small AIFM regime is very accommodating for asset managers looking to start up in the UK but there is a very significant increase in cost base to apply the full-scope regime.

External valuer liability

Furthermore, we strongly advocate the removal of the second paragraph of UK AIFMD 19(10) related to external valuers altogether.

Liquidity disclosure

Regarding the benefits or costs associated with public disclosure of fund liquidity (Question 8), institutional investors have long recognised the illiquidity of real estate as an asset class. Following the global financial crisis, real estate industry bodies, such as the Association of Real Estate Funds (AREF) and European Association for Investors in Non-Listed Real Estate Vehicles (INREV) undertook considerable work to ensure that lessons from the crisis were learnt. Industry guidance to member funds is already in line with the 2018 IOSCO recommendations and there is considerable disclosure to investors. We do not believe that further regulation is necessary and we believe that industry trade bodies are well-placed to set best practice for funds for professional investors. (see, e.g.,: https://www.inrev.org/guidelines/module/liquidity#inrev-guidelines).

Tokenisation

Regard tokenisation of units, we propose the FCA conduct a policy review of the nature of the token and the extent to which the token will be transparent as well as the policy expectation for transparency. In the context of such a review, we suggest tokenisation of UK real estate funds or other indirect vehicles should be acceptable, recognising that there may be challenges with tokenisation of direct UK real estate assets.

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Responses to questions:

Q1: Do you think that we should aim to create a common framework of rules for asset managers? What benefits would you see from this? What costs might this create?

If you do not think we should do this, are there any areas discussed above where we should consider taking action, even if we do not create a common framework of rules?

What would we need to consider around the timing of implementing a change like this?

We welcome the FCA's consideration of rationalising rules for asset management firms and seeking to create more consistency and common ground between firms. We consider that a single common framework may be a goal too far at the present time, though we set out below our thoughts for achieving a more streamlined and consistent approach.

We do not consider that wholesale revision to the rules for asset management firms is required for two reasons. First, the sunk cost that firms have already invested in implementing the current regime and, second, the importance to UK asset managers in being considered for "equivalence" for the purposes of access to professional investors in EEA member states under both AIFMD and MIFIR, which remains a key goal and potential benefit to the UK asset management industry. However, we have set out in our response some areas where we think changes would allow UK firms to remain broadly equivalent while gaining operating efficiencies and promoting market access to new entrants.

For example, we consider the current, hard-wired distinction between fund managers that are required to be separately licensed as UCITS management firms, alternative investment fund managers, MIFID firms and/or operators of collective investment schemes to be unwieldy and excessively costly for firms to implement, particularly new entrants and smaller firms into the market. A regime which focuses on the Part IV permissions that an asset management firm holds, and under which the requirements for prudential capital, conduct of business rules and systems and controls relate and attach to such permissions, would seem to capture all of the protections of the current regime, while allowing fund managers to operate out of a single operating entity. In other words, a firm would be able to hold permissions which would currently have to be divided between a UCITS management firm/full-scope alternative investment fund manager and a separately licensed MIFID affiliate. A single prudential capital regime would then apply in proportion to the relevant Part IV permissions held.

Regarding conduct of business and product rules set out in the FCA handbook, we believe it is unrealistic to achieve a common framework for fund/asset management firms within a single sourcebook without unjustified effort and delay in implementation.

However, some reorganisation of sourcebooks for ease of use and consistency would be worth considering. For example, COLL could remain as a single sourcebook for all rules applicable to authorised fund managers (those firms, as now, which hold permissions to manage the various categories of authorised collective investment schemes) and would continue to contain the product rules applicable to retail authorised collective investments schemes and qualified investor schemes.

FUND might then be expanded to contain all the rules that apply to "fund management firms" which

are not authorised fund managers. In other words, firms with permissions to manage or operate unauthorised collective investment schemes and alternative investment funds other than NURS or QIS.

Separate chapters would clearly distinguish and de-lineate the rules for firms that manage unauthorised collective investment schemes and alternative investment funds which admit only professional investors from unauthorised collective investment schemes and other alternative investment funds which admit retail investors. Certain rules currently set out in SYSC or PROD, which relate to conduct obligations of asset management firms, might sensibly find their way into FUND, COLL or COBS and some rules in COBS, for example governing operation of collective investment schemes, would be moved to FUND.

We suggest that various SIs that continue to implement EU secondary legislation could be repealed and the identical text (subject to approved amendments) would be legislated for and drafted into the relevant sourcebooks of the FCA handbook instead.

As far as possible, the amendments to the sourcebooks would simply involve movement and insertion of new chapters rather than wholesale rewriting, with the exception of a targeted exercise to rationalise inconsistencies between the rules governing fund management firms, such as those governing conflicts of interest highlighted in the Discussion Paper, and those changes to the rules that are promoted in response to the Discussion Paper. As such, we are hopeful that such an exercise would not lead to a significant delay in implementation.

We also suggest the revised FUND sourcebook would be appropriate for the inclusion of new rules in relation to the new Professional Investor Fund (as an additional “Specialist AIF Regime”), which we understand that the FCA continues to explore with the Treasury. We set out further thoughts on this topic, and proposed amendments to the Financial Services and Markets Bill for this purpose, below.

Q2: Do you think we should change the boundary of the UK UCITS regime? If so, do you think we should take any of the three approaches set out here? Should we consider any alternative approaches?

What timeframe would be needed to allow firms to change their existing product offering or to develop new products?

We consider that changes to the UK UCITS boundary should be considered with caution (although we do not express a view as to any re-branding). We should like to see a much clearer boundary between collective investment schemes and alternative investment funds that are restricted to professional investors and those that may admit retail investors, thereby creating an environment in which both categories of investors can invest with confidence.

However, we are wary of unintended consequences in terms of changing the boundary between UCITS and NURS products. For example, many investment products will make reference to one or other of these categories in their own universe of permitted investments. In addition, many different types of financing arrangement will refer to one or other of these categories as permitted collateral. A change to the boundary might lead to significant cost across financial markets of reconsidering these arrangements compared to the potential benefit.

Q3: Do you think we should work with the Treasury to amend the threshold at which AIFMs

must apply the full-scope rules? If so, do you have any comments on the options described above?

Are there any other areas we would need to consider if we were to do this?

We support increasing the threshold at which the full-scope regime applies to an AIFM, which in our view has significantly impacted access to market entry for start-up managers of real assets. The small AIFM regime is very accommodating for asset managers looking to start up in the UK but there is a very significant increase in cost base to apply the full-scope regime.

We agree with the FCA considering one of these options:

DP 3.48 *"…one option would be to change the size threshold at which firms must apply the full-scope UK AIFM regime. This could for example reflect the growth in markets since the threshold was originally set"*

DP 3.49 *"An alternative option would be to allow firms that meet criteria other than their size to use the small authorised UK AIFM exemption. For example this could relate to the types or strategies of AIF that they manage, or the types of clients they have. This is already a feature of the current regime to an extent. The size threshold is higher for AIFMs who manage AIFs that meet conditions around leverage and redemption rights".*

We would be pleased to engage with the FCA and consider the practicalities of each option.

In keeping with the above, we suggest, at least for fund managers of unauthorised collective investment schemes or alternative investment funds which invest in immovables and which are restricted to professional investors, the appropriate threshold for the full-scope regime to apply would be the point at which a firm manages a single AIF with AUM in excess of £1 billion or an aggregate threshold of AUM £3 billion.

As now, it should remain optional for a firm to opt-in and seek to change its permissions to comply with the full-scope rules at any point.

Q4: Are there aspects of the current AIFM regime that professional investors do not value? Would there be benefit in us removing any of these?

We welcome a separate regime for fund managers of professional funds, and would be pleased to engage with the FCA on the details of this regime. In particular, we suggest a less-regulated sub-regime applying to AIFMs managing AIFs which are restricted to professional investors.

We, of course, envisage the Reserved Investor Fund structure will be classified like those envisaged in DP paragraph 3.42 *"Many AIFs are operated exclusively for professional investors. Most AIFs are not FCA authorised funds".*

In relation to Reserved Investor Fund and other AIFs operated exclusively for professional investors, we would like to comment on the following statements:

DP 3.46 *"...we have had feedback that, in some areas, the full-scope AIFM standards go beyond what professional investors consider enough to protect their interests".* We very much endorse this

feedback.

DP 3.47 *"We do not plan to significantly change the rules derived from AIFMD".* With one notable exception, with agree with the plan not *to "significantly change the rules derived from AIFMD"*. We support this position, with one notable exception, which relates to UK AIFMD 19(10).

There is a particular issue relating to the rules on external valuers that causes an issue for real estate funds, which the FCA is aware from previous discussions with the industry. This issue is set out again below.

Further, we should like to see further rationalisation of the rules, particularly in relation to rules that have been designed for open-ended funds and which really have no relevance for closed-ended funds, such as the requirement to calculate and disclose leverage on a periodic basis and following both the gross and commitment methods. We would also welcome clarification that limited borrowing, such as facilities that are restricted to a minor proportion of total commitments and/or are short-term time limited, are not considered to make a closed-end fund into a leveraged fund.

We should also like the FCA to comment on whether it perceives any value in the on-going obligation of AIFMs to provide it with periodic reporting and, if so, which items and their relevance to which strategies. This reporting remains a significant burden and cost for AIFMs and the benefits should be justified if it is retained.

UK AIFMD 19(10) – External Valuers

UK AIFMD 19(10) states:

"AIFMs [alternative investment fund managers] are responsible for the proper valuation of AIF assets, the calculation of the net asset value and the publication of that net asset value. The AIFM's liability towards the AIF and its investors shall, therefore, not be affected by the fact that the AIFM has appointed an external valuer."

"Notwithstanding the first subparagraph and irrespective of any contractual arrangements providing otherwise, the external valuer shall be liable to the AIFM for any losses suffered by the AIFM as a result of the external valuer's negligence or intentional failure to perform its tasks."

Many valuers, including RICS-regulated firms, are required to hold professional indemnity insurance (PII). However, such cover is not available with unlimited liability. Even where PII is not mandatory, many reputable valuation providers will not accept unlimited liability. If they do, they demand a significantly higher fee to compensate for the risk. As a result, many fund managers are unable to find external valuers to provide the required independent valuations, or can only do so at a significant additional cost.

We suggest the removal of the second paragraph of UK AIFMD 19(10) altogether.

Contractual liability limits are commonplace in the legal and auditing professions. A prudent fund manager will ensure that the limit agreed with any professional adviser is proportionate to the risk of receiving incorrect advice. This will protect the positions of fund investors, fund managers and professional advisers. It makes little sense to restrict a fund manager's discretion to make appropriate arrangements with an external professional.

We note that FCA PS 21/14 stated:

"2.35 Several respondents noted that, although AIFMD provides for external valuers, in practice few firms are prepared to act as an external valuer because they are subject to unlimited liability if they are found to be negligent in their valuation. Respondents reported that this is widely interpreted as 'simple' negligence, which could be the result of an error made in good faith. Several respondents suggested that we should change the AIFMD wording to state that liability would only be in cases of gross negligence, covering serious errors or an intentional failure to perform the valuation appropriately. Respondents noted that valuers need professional indemnity insurance, but it would not be possible to get this to cover simple negligence…."

We are encouraged by the FCA response:

"We note the points raised around the potential liability for external valuers. We consider independent valuation of illiquid and hard-to-value assets to be an important control to protect consumers. We would like the market for external valuers to work better, so that all managers of LTAFs can access their services on reasonable terms. The liability standard comes from the AIFMD and was transposed through the Treasury's secondary legislation as part of implementing the Directive. We are unable to change the requirement at this stage, but are considering the function of external valuer together with the Treasury."

We suggest that the DP is an opportunity for the FCA to continue to consider with the function of external valuer together with the Treasury and to explore legislative options including the removal of the second paragraph of UK AIFMD 19(10).

Q5: Do you think that we should amend our fund rules or add guidance either to make clearer the requirements on portfolio managers of funds, or to set minimum contractual requirements between host AFMs and portfolio managers?

Do you think this would lead to any other consequences that we need to consider?

As stated in our response to question 1 above, we do not think there should be specific rules that govern how a firm with permission to "manage investments" should have to carry out that activity differently under a contract from a fund management firm than it would for any other type of client.

To the extent that the FCA continues to have concerns about "hosted" fund platforms, we suggest that any such rules should focus on delegation of the portfolio management function by the fund management firm and should be constrained to arrangements where the end investors might be retail clients (rather than professional only products).

Q6: Do you have any comments on us potentially amending the rules and guidance around liquidity stress testing?

We do not have any comments on this issue.

Q7: Do you have any comments on whether we should make our rules on liquidity management and anti-dilution clearer?

We do not have any comments on this issue.

Q8: Do you have any comments on the benefits or costs associated with public disclosure of fund liquidity?

Institutional investors have long recognised the illiquidity of real estate as an asset class. Following the global financial crisis, real estate industry bodies, such as the Association of Real Estate Funds (AREF) and European Association for Investors in Non-Listed Real Estate Vehicles (INREV) undertook considerable work to ensure that lessons from the crisis were learnt. Industry guidance to member funds is already in line with the 2018 IOSCO recommendations and there is considerable disclosure to investors. We do not believe that further regulation is necessary and we believe that industry trade bodies are well-placed to set best practice for funds for professional investors. (see, e.g.: https://www.inrev.org/guidelines/module/liquidity#inrev-guidelines).

Given the importance of allowing UK firms to remain broadly equivalent for the purposes of wider market access and operating efficiencies, we would want to recognise the AIFMD liquidity management provisions being proposed under the current EU legislative review. A pragmatic approach for the FCA could be as follows:

- Require fund managers of open-ended funds that admit retail investors to make available at least two liquidity management tools (LMTs) (and implement detailed policies and procedures to operate, administer, activate and deactivate such tools) from a specified list in addition to any other liquidity management provisions set out in the fund rules/constitutional documents). Please see further comments below on funds for retail investors;

- Fund managers of open-end funds that admit only professional investors to retain the discretion and flexibility to choose what is most appropriate for their specific investment strategy, but should be expected to make available at least one LMT from the specified list;

- The LMTs to be chosen from could include: redemption and subscription suspensions, redemption gates, notice periods, redemption fees, swing pricing, anti-dilution levies, redemptions in kind, and side pockets.

Funds for retail investors that invest in real estate need to be a non-UCITS retail scheme (NURS). For a NURS investing in real estate, specific rules already exist as such a fund would now be regarded as a fund investing in inherently illiquid assets (FIIA). Proposals for addressing liquidity arrangements for such funds were set out in FCA Consultation Paper CP20/15 *Liquidity mismatch in authorised open-ended property funds.* The outcome of this is still outstanding. Our comments are as follows:

- We continue to express serious concerns regarding the introduction of mandatory notice periods as this adversely impacts investor choice and has the potential to cause poor customer outcomes. The daily dealt open-end property funds continue to provide investors with much needed income and capital diversification and are easily understood by the investor base. We believe that different liquidity tools are appropriate in different circumstances, and a “one-size-fits-all” approach does not deliver the best outcome for retail investors. This is also more consistent with the 2018 IOSCO recommendations. If change is considered necessary, although notice periods may be appropriate for some

funds and investors, a deferral mechanism will be more appropriate for others. Both are valid liquidity management tools.

- Prior to any new regulations being proposed, as an absolute minimum, there needs to be a corresponding change to the ISA rules to permit longer-term notice periods and widespread platform development ensuring any notice periods can be operationally supported by an evolved platform ecosystem. Only at that stage, and not prior, should any new regulation be considered post a review of the success of the embryonic LTAF regime and its take up by wealth managers. This considered approach aligns and is consistent with the "call to action" recently made by the PFWG in their publication "Investing in Less Liquid Assets – Key considerations" and provides a consistent and joined up approach.

- We do not believe that a grandfathering provision for existing ISA investors will be sufficient to prevent poor customer outcomes. This will be made considerably worse for funds with a high proportion of ISA investors if the ISA rules are not amended to allow investment in such funds.

We have not commented on the specific proposal on COLL 6.12.11R(2), as this only applies to UCITS funds and real estate is not an eligible asset for such funds. This does not therefore apply to real estate funds. In respect of dilution adjustments, UK funds for professional and for retail investors investing in real estate as an asset class generally use dual pricing with a bid/offer spread to reflect the cost of transacting in the underlying property, particularly Stamp Duty Land Tax. In Europe, capitalisation and amortisation is more common. AREF and INREV have recently updated and coordinated their guidance in this area, cited above. We do not believe that further regulation is necessary. In the past, additional dilution adjustments have been used to reflect the additional discount for forced sale of real estate assets in stressed situations. In practice, fund managers would generally seek to use other LMTs to avoid this scenario arising.

We have not commented on the proposal for public disclosure of liquidity "buckets" as separate and specific rules already apply to funds investing in commercial and residential real estate, as outlined above.

Q9: Do you have any comments on us making our expectations on investment due diligence clearer for all asset managers?

We do not have any comments on this issue.

Q10: Do you agree that we should make our expectations of depositaries clearer?

Do you have any comments on the areas where greater clarification would be desirable?

Are there any areas where we should consider removing oversight functions from depositaries? Are there areas where the contribution of depositaries is particularly valuable for the interests of investors?

We do not have any comments on this issue.

Q11: Do you have comments on the analysis of the eligible assets rules for UCITS set out here? Do you think we should update or provide guidance on these rules?

If we did so, what impact would this have for managers of UCITS funds?

We do not have any comments on this issue. Real estate is not an eligible asset class for a UCITS fund.

Q12: Do you have any comments on whether we should consider removing or modifying detailed or prescriptive requirements in the rules on prudent spread of risk?

We do not have any comments on this issue.

Q13: Are there any other areas where you think we should consider removing or modifying prescriptive requirements in the retail fund rules?

We do not have any comments on this issue.

Q14: Do respondents agree that we should work towards consulting on rules to implement the

'Direct2Fund' model?

We do not have any comments on this issue.

Q15: What benefits would tokenised units in authorised funds provide for investors? What regulatory changes would be needed to enable tokenised units to be issued?

How much of a priority should we put on enabling tokenisation of units?

As a starting point, we propose there should be policy review of the nature of the token and the extent to which the token will be transparent as well as the policy expectation for transparency.

In the context of such a review, we suggest that tokenisation of UK real estate funds or other indirect vehicles should be acceptable; however, we recognise that there may be challenges with tokenisation of direct UK real estate assets.

Industry may be advocating the token functioning more as a method of ownership rather than a token be a securitised or consolidated version of an asset or collection of assets, and for the tokenisation sector to benefit from economies of scale.

In this scenario:

- The issues to be addressed for real estate assets include those issued relating to on-going maintenance/custody/management.

- If a real estate asset were tokenised a token holder would then own a fractional share of that asset and hence in principle should be liable for Stamp Duty, other taxes and liabilities arising from partial ownership of the asset. In addition, each fractional share would need to be registered with the Land Registry.

It may be that tokenisation for equities, bonds or fund/indirect vehicle units is quite easy to conceptualise; however, for assets like real estate, the real estate tokens would be challenging to create and manage and give rise to legal and tax considerations which need to be better

understood.

Subject to this starting point (and in the case of equities and bonds), we welcome the fact that the FCA is open to examining the rules how units are created, transferred, registered, and ultimately cancelled to ensure that they are flexible enough to allow firms to operate a digital register. We note, however, that managers already operate digital registers, albeit that these are not distributed registers or registers that otherwise use blockchain or distributed ledger technology.

The key consideration and priority for any regulatory rules connected with tokenisation is that the rules should not discriminate on the basis of technology, either to the disadvantage or advantage of those using blockchain or distributed ledger technology to operate and/or market funds. In particular, a firm using blockchain or distributed ledger technology to give investors access to investments in property, should not have burdens placed on it that would not apply if it were giving investors via a non-blockchain or distributed ledger structure. That firm should also not be given an advantage through reduced regulatory requirements that would otherwise apply if the firm used a non-blockchain or distributed ledger structure.

Q16: Are there specific rules that could impact firms' ability to invest in tokenised assets, where the underlying instrument is itself an eligible asset?

How much of a priority should we put on enabling investment in tokenised assets?

As indicated in our response to question 15, we accept that tokenisation of UK real estate funds or other indirect vehicles should be acceptable; however, there may be challenges with tokenisation of direct UK real estate assets.

We understand that the main rules associated with underlying assets, e.g. property laws, as well as the implications in terms of Stamp Taxes and otherwise protecting the Exchequer are outside the jurisdiction of the FCA. In terms of Stamp Taxes and otherwise protecting the Exchequer, we expect that the FCA will be consulting with HM Treasury and HMRC.

Q17: How important do you think the different kinds of 'fund tokenisation' discussed above are for the future of the industry?

Are there examples from other jurisdictions that could be models for UK fund regulation?

Please see our comments in response to question 15 above.

Q18: What other regulatory changes, if any, would you like to see to enable fund managers to make wider use of advances in technology without weakening investor protection?

We do not have any comments on this issue.

Q19: Do you agree that improving the content and readability of the prospectus will improve investor engagement?

What specific changes would you like to see?

We do not have any comments on this issue.

Q20: What changes to the rules for managers' reports and accounts could enable firms to make best use of technology to meet investors' information needs?

How else could disclosure of ongoing information to fund investors be improved?

For example would there be benefit in us consolidating ongoing annual disclosure reports for funds?

We do not have any comments on this issue.

Q21: Do you agree we should review the rules for unitholder meetings? What changes should we make so that these meetings maximise the participation of fund investors?

We do not have any comments on this issue.

Q22: How could the relationships between fund manager, intermediary and investor be better reflected in rules for authorised funds?

Should the FCA do more to enable investors to engage with the manager of their fund?

We do not have any comments on this issue.

Q23: Do you have any comments on the relative benefits of the topics raised in this paper which you think we should consider as part of prioritising our work?

How would you rank the areas covered in this paper in terms of priority?

We are mindful that any changes should, as a priority, have clear benefits and be proportional and not unduly burdensome. Our members' businesses are cross-border in nature and competitive internationally. It is vital that the UK asset management regime supports and complements the global frameworks in which our members operate, and provides a robust but flexible environment which protects investors and encourages innovation.

Accordingly, we rank simplifying/standardising the rules for asset managers and developing a regime for professional fund managers as the two most important issues under consideration.

Q24: Do you have any comments on potential reform of the UK regulatory regime for asset managers and funds in areas that are in scope of this paper but have not been discussed in detail?

While this Discussion Paper is a useful occasion to consider opportunities for the future UK asset management framework, we note some key issues are excluded from the scope which are of significant importance to our members. For example, what approach will the UK take to future alignment with EU AIFMD and EU UCITS Directive? Is there any intention to maintain a framework which aligns with EU rules (with a view to benefitting from any potential future third country passport in AIFMD, for example) alongside any separate UK regimes which might be more appropriate for those firms which do not operate in the EU? We appreciate this is not just an FCA decision, but we would welcome the opportunity to discuss this with both the FCA and the government. You will note we have highlighted, in response to question 1, the importance to UK asset managers being able to be considered for "equivalence" for the purposes of access to professional investors in EEA member states under both

AIFMD and MiFIR.

We also highlight, as indicated in our response to question 4, that the Discussion Paper is an opportunity for the FCA to continue to consider with the function of external valuer together with the Treasury and to explore legislative options like the removal of the second paragraph of UK AIFMD 19(10).

We would also like to comment on the practical experience of some of our members when using FCA Connect to make applications and notifications, including notifying to market non-UK funds in the UK under NPPR. For those firms, who do not need to frequently use FCA Connect, it would be valuable to be able to have a soft copy form of all of the documents, so that they can obtain relevant advice on what is required to complete the process in advance. In addition, the lack of an adviser-only access level to FCA Connect is a hindrance to this process. It would be very useful if some simple but practical changes could be made to the application process and FCA Connect itself to address these challenges. We would be happy to discuss in more detail.