167 Fleet Street, London EC4A 2EA, UK
+44 (0)20 7822 8380
info@aima.org

aima.org

Securities and Markets, Financial Services Group
HM Treasury
Horse Guards Road
SW1A 2HQ

By email: WholesaleMarkets.Review@hmtreasury.gov.uk

24 September 2021

RE: Wholesale Markets Review

Dear Sir or Madam,

The Alternative Investment Management Association ("AIMA")[1]and the Alternative Credit Council ("ACC")[2] appreciate the opportunity to submit comments to HM Treasury ("HMT") in response to its consultation on a Wholesale Markets Review (the "consultation")[3].

AIMA and the ACC support the objectives that underlie the UK's wholesale markets framework and welcome transparency and investor protection in the financial services sector. We appreciate HMT's willingness to review the UK's wholesale markets regime and support the growth of capital markets. We believe that a re-think of rules for UK-managed funds would help build a better regulated financial services industry and develop the UK's alternative investment management sector.

The consultation addresses many important issues, in particular the operation of the Systematic Internaliser ("SI") regime, improvements to pre- and post-trade transparency in derivatives markets, simplification of the commodity derivatives position limits regime, establishment of a

1 AIMA is the global representative of the alternative investment industry, with more than 1,900 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than $2 trillion in assets. AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programmes and sound practice guides. AIMA works to raise media and public awareness of the value of the industry.

2 The ACC currently represents over 200 members that manage over $450bn of private credit assets. The ACC is an affiliate of AIMA and is governed by its own board which ultimately reports to the AIMA Council. ACC members provide an important source of funding to the economy, providing finance to mid-market corporates, SMEs, commercial and residential real estate developments, infrastructure as well the trade and receivables business. The ACC's core objectives are to provide direction on policy and regulatory matters, support wider advocacy and educational efforts, and generate industry research with the view to strengthening the sector's sustainability and wider economic and financial benefits.

3 Available at: www.gov.uk/government/consultations/uk-wholesale-markets-review-a-consultation

consolidated tape and re-consideration of reporting requirements, which we comment on in detail in an annex to this letter.

in our detailed responses, we suggest that HMT considers the following:

Trading Venues

- Clarifying through FCA guidance the regulatory perimeter for trading venues, to ensure that all entities that carry out multilateral activities have a trading venue licence, and that internal crossing by Alternative Investment Fund Managers ("AIFMs") and Undertakings for Collective Investment in Transferable Securities Management Companies ("UCITS ManCos") do not create a multilateral system.

- Retaining the current restrictions on matched principal trading by a multilateral trading facility ("MTF").

- Removing the current restrictions on the operation of an SI within the same legal entity of an Organised Trading Facility ("OTF").

- Allowing OTFs to execute transactions in packages involving derivatives and equities under their rules and systems.

- Looking at the UK Long Term Asset Fund ("LTAF"), proposed UK Asset Holding Company ("AHC") regime and the UK Securitisation Regulation as three areas of reform which would substantially increase institutional investors' investment in small and medium-sized enterprises ("SMEs").

- Producing industry guidance – supported by regulatory guidance - about how venues should operate and what they should communicate during an outage.

- Supporting the delivery of a fail-safe mechanism to ensure that the market has access to the key closing benchmarks during an outage in a primary exchange.

SIs

- Making sure that it is clear from a client perspective whether a sell-side firm is acting as an SI for a given transaction, regardless of whether SIs are determined at entity level or on an instrument-by-instrument basis for reporting purposes.

- Deleting both the double volume cap ("DVC") single trading venue threshold of 4% and 8% threshold for trading in an instrument across all trading venues.

Equity Markets

- Thoroughly analysing the intended benefits and shortcomings of the Share Trading Obligation ("STO") and repealing the STO if necessary.

- Recalibrating the scope of the tick size regime so that trading venues can follow tick sizes applicable in the relevant primary market of a share where that share does not have its primary market in the UK.

Fixed Income and Derivative Markets

- Revising the scope of counterparties subject to the Derivatives Trading Obligation ("DTO") to bring it in line with the scope of counterparties subject to the Derivatives Clearing Obligation ("DCO").

- Exempting all post-trade risk reduction ("PTTR") services from the DTO and providing an aligned exemption from the DCO for trades resulting from PTTR services, subject to certain conditions.

- Granting the FCA the power to modify or suspend the DTO quickly, under certain circumstances, on a permanent rather than temporary basis.

- Removing the concept of traded on a trading venue ("ToTV") for Over-The-Counter ("OTC") derivatives and instead determining the scope of the transparency regime on the basis of whether a transaction involves an investment firm that is an SI in the relevant sub-asset class.

- Moving away from regular liquidity calculations towards a mix of qualitative and quantitative criteria and reducing the number of assessments to enable liquidity calculations to work effectively.

- Removing the practice of "post-trade name give-up" in the context of cleared OTC derivatives that are executed anonymously.

- Simplifying the deferral regime by reducing the number of deferrals; shortening the lengths of the two-day deferral period for price information and the four-week deferral period for volume information; and capping notionals.

Commodity Markets

- Narrowing the scope of the commodity derivatives regime to derivatives that are based on physical commodities.

- Removing from the commodity derivatives regime financial instruments which refer to commodities as a pricing element but are securities in their legal form, and economically equivalent OTC commodity derivative contracts.

- Transferring the responsibility for setting position controls from the FCA to trading venues.

- Limiting the scope of contracts that are automatically subject to position limits to contracts that are critical or significant, and excluding securitised derivatives from the regime and reporting requirements.

- Not allowing position limits exemptions for all liquidity providers.

- Introducing a "pass through" hedging exemption to enable investment firms to support a wider range of hedging practices.

Market Data

- Encouraging the development of a post-trade consolidated tape ("CT") for equities and non-equities that includes both on-venue and off-venue trading and provides data in real-time and at a low-cost, if not free of charge.

- Intervening legislatively to address the excessive pricing of market data and reflect changes proposed by the European Securities and Markets Authority ("ESMA") to ensure that market data is provided on a "reasonable commercial basis".

Reporting

- Removing dual-sided reporting requirements for derivatives transactions under the UK European Market Infrastructure Regulation ("EMIR") and introducing a single-sided reporting structure.

- Revising the 10% loss reporting rules for portfolios and contingent liability transactions.

- Removing ex ante costs and charges disclosure obligations in respect of professional clients and eligible counterparties, for services including investment advice and portfolio management.

- Alleviating ex-post reporting requirements for professional clients and eligible counterparties – in particular, the end-of day loss reporting requirement.

- Amending the scope of trade and transaction reporting requirements under the UK Markets in Financial Instruments Regulation ("MiFIR"), with the potential exclusion of buy-side participants from the regime.

Cross Cutting Issues

- Standardising the way that product cost information is calculated and presented across the Packaged Retail and Insurance-based Investment Products ("PRIIPs") Key information Document ("KID"), the UCITS KID and the Markets in Financial Instruments Directive II ("MiFID II") disclosure rules.

- The role of social media platforms and the way in which information disclosed under existing financial services legislation, such as the UK Short Selling Regulation ("SSR"), could be impacting their use by retail investors.

If you would like to discuss any aspect of our submission further, please contact Aniqah Rao (arao@aima.org) and Adam Jacobs-Dean (ajacobs-dean@aima.org).

Yours faithfully,

Jiří Król
Deputy CEO and Global Head of Government Affairs, AIMA
Global Head of the ACC

ANNEX

CHAPTER 2: TRADING VENUES

1. **Where do you think the regulatory perimeter for trading venues needs to be clarified?**

AIMA and the ACC believe that the definition of a "multilateral system" under MiFID II captures all ways of bringing together buying and selling interest. Nonetheless, we agree that some confusion might remain insofar that not all entities that carry out multilateral activities have a trading venue licence. We note that a number of systems operate in a similar way to trading venues but without proper authorisation, such as technology firms which bring buyers and sellers together on an informal basis.

We believe that any system that allows third party trading interests in financial instruments to interact, including information exchange between parties on essential terms of a transaction with a view to dealing in those financial instruments, is sufficient to require authorisation as a trading venue. Currently, some firms that are not authorised as trading venues provide arrangements that permit investment firms to exchange trading interest and execute transactions with clients.

We believe that FCA guidance clarifying the regulatory perimeter for trading venues in the way set out above would prove helpful and provide competitive and transparent execution to buy-side clients.

2. **Do you think it would be more appropriate for changes to be made to the definition of a multilateral system in legislation, or for the application of the existing definition to be clarified through FCA guidance?**

AIMA and the ACC believe that given the technical nature of necessary clarifications to the definition of a "multilateral system", which needs to consider a range of different trading venues and protocols across asset classes, FCA guidance would prove more helpful.

Further to our response to Question 1 of the consultation, where we note that the regulatory perimeter for trading venues should be clarified through FCA guidance to ensure that all entities that carry out multilateral activities have a trading venue licence, we also believe that the FCA should clarify that internal crossing by an AIFM or a UCITS ManCo does not create a multilateral system.

By way of context, many large AIFMs and UCITS ManCos employ the technique of centrally managing trading flow of individual funds and accounts. This might entail combining all trading instructions centrally, identifying which trades can be crossed between funds, and then executing all remaining trades on the market. Such crossing can reduce the need to execute with external counterparties, saving significant execution costs for investors and thereby enhancing return potential. Crossing practices are typically explained to investors prior to the commencement of the investment mandate to ensure that they understand the controls that are in place to achieve consistency and fairness across funds and accounts.

We believe that where an AIFM or UCITS ManCo crosses financial instruments between the funds that it manages or funds managed by a group entity there is no "substantive" third party, due to the funds being under the common control of the fund manager, and therefore no multilateral activity. We believe that the FCA should clarify that the definition of a multilateral system does not apply to AIFMs and UCITS ManCos operating internal crossing systems.

3. Should the current restrictions on matched principal trading by a multilateral trading facility (MTF) be retained?

AIMA and the ACC believe that the current restrictions on matched principal trading by a MTF should be retained.

While we support greater flexibility in market structure and recognise that the current restrictions may impact the ability of firms to enter and compete in markets and innovate, we believe that HMT should be mindful of the conflicts of interest that would be generated through lifting restrictions on matched principal trading by an MTF. We believe that trading venues should operate in accordance with high governance standards and that, even if conducted in accordance with clear, transparent and non-discretionary rules, the removal of restrictions increases the risk of operators of a trading venue dealing on their own account and/or front running client orders.

4. Should the current restrictions on the operation of an SI within the same legal entity of an organised trading facility (OTF) be retained?

AIMA and the ACC do not believe that the current restrictions on the operation of an SI within the same legal entity of an OTF should be retained.

We believe that the restrictions distort market structure and that investment firms should be allowed to operate an SI and an OTF within the same legal entity, particularly where the two activities are clearly segregated.

5. If you answered no to question 4: Should new rules and disclosures be introduced to address the specific conflicts that MTFs and OTFs would be exposed to when providing matched principal trading (MPT) or operating a systematic internaliser (SI)?

6. Do you think that OTFs should be allowed to execute transactions in packages involving derivatives and equities under their rules and systems?

AIMA and the ACC believe that OTFs should be allowed to execute transactions in packages involving derivatives and equities under their rules and systems.

We believe that the current prohibition on OTFs executing transactions in equities when dealing in packages does not serve any meaningful regulatory objective and places an unnecessary burden on firms. Separate trading and execution of the components of a packaged transaction increases market and operational risks and inefficiencies in execution cost. It prompts the market to move between the execution of each component as executions cannot be precisely time-matched and induces differences in contract specifications, clearing/settlement workflows and relative liquidity.

7. What would be the risks and benefits of allowing this approach?

8. Do you agree that the existing regulatory requirements for disclosure at admission to trading (for MTFs and SME Growth Markets) are disproportionate for small-sized issuers?

9. What principles and/or types of information should be considered when developing requirements for disclosure at issuance to ensure requirements are proportionate?

10. How far should these be determined by the venue operator versus regulation, and what other features may provide proportionate assurances around the quality of issuers admitted to a venue (e.g., role of advisors in process)?

11. Would the creation of a new category of trading venue be an appropriate means to facilitate access to public markets for very small firms? What size of firms would be appropriate for a new trading venue?

12. If you answered no to question 11: Would the facilitation of the creation of new market segments be a more suitable intervention?

13. If you answered yes to question 11 or 12: What should the market cap of companies that can trade on the new trading venue and/or segment be?

14. Do you believe intermittent rather than continuous trading would increase liquidity?

15. Do you think that additional measures, such as new fund structures, are needed to stimulate institutional investors to invest in SMEs?

The ACC and AIMA would encourage HMT to look at the LTAF, proposed UK AHC regime and UK Securitisation Regulation as three areas of reform which would substantially increase institutional investors' investment in SMEs.

In the private finance markets, there are few vehicles which can support investment from UK defined contribution pension schemes and retail investors into private credit. The LTAF that is currently being developed by the FCA offers a potential solution to this challenge. Successful implementation of the LTAF will establish these investors as a new and dependable source of capital for UK businesses, while also providing UK pension funds and retail investors with new opportunities to access illiquid investments that offer potentially higher returns and help to diversify their portfolios.

The ACC and AIMA have supported the work of the Productive Finance Working Group[4] in developing the LTAF to ensure that it supports greater investment in the UK economy. We believe that the LTAF must be aligned with the needs of investors and the existing market for illiquid and private assets if it is to succeed. Private credit represents one of the fastest growing asset classes within the alternative investment industry. Our own research indicates that nearly 70% of private credit fund managers expect to increase the amount of credit that they provide to SMEs over the coming years[5] and that private credit is now a

[4] See https://www.bankofengland.co.uk/financial-stability/working-group-on-productive-finance.

[5] See *Financing the Economy 2019 – the future of private credit*, page 14. Available at: www.aima.org/uploads/assets/083f8b56-2636-4b88-a300a2c612f775ae/20112019-FINAL-FTE-Paper-Single-Page-High-Res.pdf

permanent fixture of the capital allocation models employed by investors of all types across the world.

We believe that a number of areas are vital to the success of a UK LTAF and its use as a vehicle to invest in private credit markets. These include eligible assets; asset composition; conflicts of interest rules; valuation; liquidity and redemptions; borrowing; second schemes; authorisation and distribution. For example, greater flexibility around borrowing, subject to proportionate safeguards around the way that borrowing is facilitated, will make it easier for LTAFs to leverage their capital, provide more finance to SMEs and deliver better returns for their investors. We propose that LTAF borrowing limits are set at 100% of Net Asset Value. Our detailed recommendations around the structure of the LTAF can be found in our response[6] to the FCA's recent consultation, *CP21/12: A new authorised fund regime for investing in long-term assets*[7]. The approach we have proposed would allow the LTAF to achieve a similar scale to US Business Development Companies, which have a similar policy objective to LTAFs and also primarily invest in private markets, which now provide more than $100bn of finance to US small and mid-market businesses.

Further to establishing a UK LTAF, the ACC and AIMA believe that it is necessary to provide credit managers with viable UK structuring options to support their investment strategies. A UK AHC regime suitable for credit investment strategies would enhance the UK's position as a leading hub for private credit managers and increase the UK's competitiveness with other investment fund domiciles. We commend HMT's initiative to establish a UK AHC regime and its engagement with industry to date. It is essential that the UK regime is simple to operate and aligns with existing processes as much as possible. This will allow it to compete with established alternatives and structuring options available in Luxembourg, Ireland and the US.

Securitisation is another area where reforms could be introduced to boost the role of institutional investors in the financing of SMEs. The ACC and AIMA note that HMT recently published a *Call for Evidence on the UK Securitisation Regulation*[8]. Our complete response to this call for evidence is available on AIMA's website[9] but our key messages include:

- Clarifying the "institutional investor" definition in the UK Securitisation Regulation to confirm that the definition only covers authorised AIFMs;
- Extending the definition of "sponsors" to AIFMs and to third-country investment firms;
- Not introducing any additional environmental, social and governance disclosure requirements for securitisation that are not required in other investment capital raising structures;
- Introducing Simple, Transparent and Standardised certification for collateralised loan obligations;
- Maintaining the existing and proportionate approach towards disclosure for private securitisations; and

[6] See www.aima.org/article/acc-and-aima-submit-response-to-the-fca-s-consultation-on-ltafs.html.
[7] See www.fca.org.uk/publications/consultation-papers/cp21-12-new-authorised-fund-regime-investing-long-term-assets.
[8] See https://www.gov.uk/government/consultations/securitisation-regulation-call-for-evidence
[9] See https://www.aima.org/resource/aima-and-acc-response-to-hmt-call-for-evidence-securitisation-regulation.html

- Amending the risk retention calculation for non-performing exposures so that this is assessed on the transaction price rather than the nominal amount.

The ACC and AIMA believe that these proposals would significantly increase the opportunity for institutional and, in some cases, retail investors to play a larger role in the financing of UK SMEs.

16. What, if any, further forms of investor protection do you deem appropriate for this proposed new category of trading venue?

17. Do you believe that regulatory or industry guidance about how venues should operate and what they should communicate during an outage would be useful?

AIMA and the ACC believe that industry guidance – supported by regulatory guidance - about how venues should operate and what they should communicate during an outage would be useful.

Trading venues are part of the core infrastructure of financial markets. They are designed to help investors make well-informed decisions and increase market transparency, through communicating price information for the instruments that they trade. Technical outages are highly disruptive, particularly during official opening and closing auctions as they prevent market participants from either trading affected stocks all that day due to lack of initial price formation prior to continuous trading or achieving the official closing price. Outages also have an impact on price formation and settlement in other assets, including index calculation and derivatives.

We believe that industry guidance – supported by regulatory guidance - which sets out a minimum set of standards that venues should adhere to for the handling and communication of trading outages should be provided. Standards should include, for example, a requirement for venues to provide, where possible, estimates of time to resolve issues and a last known good reference price/ trade timestamp to allow for more accurate position reconciliation. We believe that these minimum standards should clearly identify communication processes and responsible individuals tasked with responding to IT incidents and outages. Clear policies as to how orders and trades that are pending will be treated are also necessary.

18. Do you have views on a fail-safe mechanism to ensure that the market has access to the key closing benchmarks during an outage in a primary exchange? What role do you see UK authorities playing to deliver this?

AIMA and the ACC believe that trading venues and market participants, supported by regulators, should ensure that an auction generation a closing-price is always available, and this this auction should occur via a “fail-safe” channel.

We believe that UK authorities should play a role in monitoring the fail-safe mechanism to ensure that the substitute pricing mechanisms are reliable. Alternatively, an agreed price amongst the industry that would act as the closing price and is accessible to market participants would prove helpful.

19. What other steps do you think UK authorities could take to ensure market resiliency in the event of an outage?

CHAPTER 3: SYSTEMATIC INTERNALISERS

20. Do you agree that the definition for SIs should be based on qualitative criteria?

21. If you answered no to question 20: Do you think the definition should be amended in another way?

22. If you answered yes to question 20: Do you think that regulatory guidance should be used to support the definition in legislation?

23. Do you currently opt-in to the SI regime?

24. Should SIs be determined at entity level instead of on an instrument-by-instrument basis, for reporting purposes?

AIMA and the ACC believe that regardless of whether SIs are determined at entity level or on an instrument-by-instrument basis for reporting purposes, a key focus for any potential changes to the SI framework should be to ensure that clients have certainty as to the capacity in which a sell-side counterparty is acting for a given transaction.

At present, buy-side firms can struggle to ascertain the status of counterparties in respect of a particular instrument, leading to challenges in terms of knowing with certainty whether a reporting obligation arises for the buy-side firm. Existing central source information on SI status is not sufficiently granular and does not provide information down to entity level, as is required to manage operational processes.

Accordingly, as HMT considers changes to the way in which SI status operates, AIMA and the ACC believe that it should focus on making sure that it is clear from a client perspective whether a sell-side firm is acting as an SI for a given transaction. This could be achieved through better golden source material that is collated and published by the FCA.

We note that this question focuses specifically on post-trade reporting obligations, but it is unclear to us whether an entity-level approach could cause challenges in terms of an overly broad application of other obligations that are associated with being an SI, notably those on the pre-trade side.

25. What would be the risks and benefits of adopting such an approach?

26. Do you agree with the government's proposal to allow SIs to execute at the midpoint for all trades, provided the executed price is within the SI's quoted price?

27. Do you think any other changes are needed to increase the effectiveness of the SI regime?

28. Do you think that the double volume cap (DVC) should be deleted?

AIMA and the ACC believe that the DVC should be deleted - both the trading venue threshold of 4% and the 8% threshold on usage of the Negotiated Trade Waiver.

29. Do you think alternative incentives are needed to encourage lit trading?

30. Should reference price systems be able to match orders at the mid-point within the current bid and offer of any UK or non-UK trading venue that offers the best bid or offer, to aid best execution?

31. Do you consider SIs quotes useful?

32. Do you think that the ability of SIs to execute clients' orders at mid-point would incentivise SIs to provide meaningful quotes?

33. If you answered yes to question 32: What incentives could UK authorities introduce to encourage you to report more trades, while maintaining fair competition with market operators?

CHAPTER 4: EQUITY MARKETS

34. Do you think that the share trading obligation (STO) should be removed?

AIMA and the ACC believe that there are practical difficulties in constructing a STO that achieves the objectives of greater transparency and best execution for investors. We believe that the intended benefits and shortcomings of the STO should be thoroughly analysed and that the STO should be repealed if necessary.

In our view, if the STO is not facilitating best execution for investors, HMT should reconsider whether a robustly enforced best execution principle would be more effective than retaining the STO. We also note that the STO lacks a mechanism to identify "third country" shares comprehensively and accurately and would welcome the deletion of the extra-territoriality component of the STO.

35. Do you think that the requirements for algorithmic liquidity providers and trading venues to enter into binding market making agreements should be removed?

36. What would be the impact of such a removal for you and/ or the market you operate in?

37. Do you think the scope of the tick size regime needs to be recalibrated for overseas shares to ensure that firms can trade at the best prices in the UK?

AIMA and the ACC believe that the scope of the tick size regime should be recalibrated for overseas shares.

We believe that trading venues should be able to follow tick sizes applicable in the relevant primary market of a share where that share does not have its primary market in the UK and where that relevant primary market is also the most liquid market. This would ensure that firms can trade at the best prices in the UK.

The current methodology delivers unnecessarily large tick sizes for overseas shares, subjecting investors in the UK to uncompetitive prices compared to those who have access on the share's primary market.

38. Do you think trading venues are better placed to establish tick sizes for new shares until sufficiently robust data is available?

39. What are the potential benefits and risks of delegating the setting of tick sizes, in general, to trading venues? What safeguards would be needed to avoid arbitrage issues?

40. Are there any other parts of the equity regime that you think could be operated more effectively by the market, while upholding high standards?

CHAPTER 5: FIXED INCOME AND DERIVATIVES MARKETS

41. Do you agree that the scope of the derivative trading obligation (DTO) should be revised to bring it in line with the scope of the clearing obligation following the changes introduced by the European Market Infrastructure Regulation (EMIR) REFIT? What risks/ benefits do you see with this approach?

AIMA and the ACC believe that the EMIR REFIT has led to a misalignment between the scope of counterparties subject to the clearing obligation under EMIR and the DTO under MiFIR, creating operational complexity. We agree that the scope of *counterparties* (not financial instruments) subject to the DTO should be revised to bring it in line with the scope of *counterparties* subject to the DCO.

42. Do you think that all post-trade risk reduction services should be exempt from the DTO?

AIMA and the ACC believe that all PTTR services should be exempt from the DTO.

Exempting all component derivatives that result from non-price forming and PTTR services, such as rebalancing exercises, would help to increase the use and efficiency of technical trades and reduce counterparty and systemic risk.

43. If you answered yes to question 42: a) Do you think that there should also be an aligned exemption from the EMIR clearing obligation for trades resulting from post-trade risk reduction services? b) What conditions do you think should be met for the exemption to be applicable?

AIMA and the ACC would support any aligned exemption from the EMIR clearing obligation for trades resulting from PTTR services, subject to certain conditions.

We believe that the positive effects of exempting trades generated as part of post-trade risk reducing initiatives, such as bilateral and multilateral portfolio compression runs or counterparty risk rebalancing, could outweigh any increased operational burden on market participants and regulators. It could allow risk in portfolios to be offset with standardised contracts which would otherwise fall under the DCO, and which are less risky than those instruments currently used, in turn reducing the risk of compressed or rebalanced uncleared portfolios.

However, we believe that a number of conditions should be met for the exemption from the clearing obligation to be applicable. Firstly, we do not believe that cleared derivatives should be included in the PTTR exercise; and secondly, we believe that transactions must only be entered into for the sole purpose of reducing operational burden of counterparty risk. Without these conditions, we believe that a broad exemption could allow for circumvention of the DCO and a transfer of risk away from central clearing counterparties to uncleared derivatives.

44. Do you think the FCA should be given the power to modify or suspend the DTO quickly under certain circumstances, on a permanent rather than temporary basis?

AIMA and the ACC believe that the FCA should be given the power to modify or suspend the DTO quickly under certain circumstances on a permanent basis.

The FCA's use of its temporary transitional powers to amend the scope of the UK DTO during the Brexit transition period limited disruption for market participants and prevented liquidity fragmentation that would have arisen from conflicting UK and EU DTOs.

We believe that granting the FCA such a power on a permanent rather than temporary basis, with its use dependent on consultation with HMT, would improve the functioning and resilience of UK markets.

45. Do you think that the current transparency requirements support price formation and open, competitive and fair markets? Please separate your answers by fixed income (please treat sovereign bonds, high-yield bonds and investment-grade bonds separately) and derivatives (please distinguish between OTC and exchange-traded derivatives (ETDs) where relevant).

AIMA and the ACC do not believe that the current transparency requirements have delivered meaningful transparency to clients and supported price formation. We believe that the requirements should be revised materially to achieve their desired outcome.

46. Do you think that using traded on a trading venue (ToTV) is a useful criterion for determining the scope of transparency requirements for non-equity instruments, and in particular OTC derivatives? Please separate your answers by fixed income (please treat sovereign bonds, high-yield bonds and investment grade bonds separately) and derivatives (please distinguish between exchange treaded and OTC derivatives).

AIMA and the ACC do not believe that the concept of ToTV is a useful criterion for determining the scope of transparency requirements for non-equity instruments.

We believe that the MiFID II post-trade transparency framework for non-equities has yet to deliver meaningful transparency. Currently, due to the interpretation of ToTV, most off-venue derivatives transactions are considered not to be "ToTV" and therefore excluded from the transparency regime. We note that only around 5% of off-venue trading activity in OTC derivatives is subject to post-trade transparency.

The very granular approach developed in the ToTV assessment has created an incentive for certain market participants to duplicate International Securities Identification Number codes for economically equivalent derivatives in order to engage in bilateral OTC trading which remains outside the MiFID II transparency regime. As a result, many derivatives continue to be traded in the OTC space, undermining the intention of the DTO.

AIMA and the ACC believe that instruments that are economically identical to derivatives traded on MTFs and OTFs should be subject to the MiFID II transparency regime, though urge HMT also to consider the effectiveness of the post-trade transparency regime for non-equities itself.

47. If you answered no to question 46: Do you think the concept of ToTV should be removed for OTC derivatives, and the scope of the transparency regime determined

on the basis of whether the instrument is cleared? If so, what definition of 'cleared' should be used?

AIMA and the ACC believe that the concept of ToTV should be removed for OTC derivatives and that the scope of the transparency regime should be determined by a structure that assumes that a transaction which involves an investment firm that is an SI in the relevant sub-asset class would be reported under MiFIR. We do not believe that the scope of the transparency regime should be determined on the basis of whether the instrument is cleared – we are concerned that purely linking transparency to clearing could result in some clients being treated differently than others, depending on whether they are subject to the DCO.

We believe that the approach that we suggest above should apply regardless of whether a firm is an SI on a voluntary or mandatory basis, as we believe that the extension in reportability of trades would not fundamentally undermine the franchise benefits to brokers of opting into the SI regime. Opting-into the SI regime means that a firm is agreeing to comply with the requirements associated with being a registered SI, including any transaction reporting and transparency requirements.

AIMA and the ACC believe that this approach would improve greatly the degree of post-trade transparency available in respect of OTC derivatives, helping to support liquidity and price formation for the benefit of all market participants.

48. Do you think there is another option to determine the scope of the fixed income and derivatives transparency regime? Please separate your answers by fixed income (please treat sovereign bonds, high-yield bonds and investment-grade bonds separately) and derivatives (please distinguish between exchange traded and OTC derivatives).

As set out in our response to Question 47 of the consultation, AIMA and the ACC believe that the scope of the fixed income and derivatives transparency regime should be determined by a structure that assumes that a transaction which involves an investment firm that is an SI in the relevant sub-asset class would be reported under MiFIR.

49. What instruments do you think should be in scope of the fixed income and derivatives transparency regime? Please consider fixed income (please treat sovereign bonds, high-yield bonds and investment-grade bonds separately) ETCs, ETNs, structured finance products, emission allowances and derivatives (please distinguish between exchange traded and OTC derivatives).

Further to our response to Question 47 of the consultation, where we recommend that the scope of the fixed income and derivatives transparency regime be determined on the basis of whether a transaction involves an investment firm that is an SI in the relevant sub-asset class, AIMA and the ACC believe that an SI should be required to report quotes and transactions undertaken in any derivatives belonging to the same sub-asset class of the derivative contracts for which that investment firm qualifies as an SI. We believe that this would maximise the degree of post-trade reporting, while operationally being the most straightforward to implement.

We believe that it is important, however, to ensure that rather than following the current hierarchy, rules are written in such a way that it is always the firm that is the SI that would discharge the post-trade transparency requirement, regardless of whether it is an SI for the specific instruments within the sub-asset class in question.

50. What changes do you think are needed to enable liquidity calculations to work effectively? Please separate your answers by fixed income (sovereign bonds, high-yield bonds and investment-grade bonds) and derivatives (ETDs and OTC derivatives).

AIMA and the ACC believe that the following changes are needed to enable liquidity calculations to work effectively: (1) reducing the number of assessments and (2) conducting more holistic assessments based on both quantitative and qualitative criteria. We believe that factors such as the number of market participants, number of trading venues and availability of streaming quotes should all be relevant.

51. Do you think it would be preferable to move away from regular liquidity calculations towards a mix of qualitative and quantitative criteria? For example, on a sectoral basis? Please separate your answers by fixed income (sovereign bonds, high-yield bonds and investment-grade bonds separately) and derivatives (ETDs and OTC derivatives).

AIMA and the ACC think it would be preferable to move away from regular liquidity calculations towards a mix of qualitative and quantitative criteria. For example, we believe that all OTC derivatives subject to the DCO should be considered liquid for transparency purposes.

52. How do you currently use pre-trade transparency? Is pre-trade information on bonds and derivatives valuable? Please differentiate between fixed income (sovereign bonds, high-yield bonds and investment-grade bonds separately) and derivatives (ETDs and OTC derivatives), and each trading method (for example RFQ, and order book).

AIMA and the ACC believe that pre-trade information on bonds and derivatives is valuable. Pre-trade transparency can assist clients in assessing execution quality and current market dynamics in fixed income markets.

53. Is there a case for removing MiFID II pre-trade transparency requirements for any asset class? Please separate your answers by fixed income (sovereign bonds, high-yield bonds and investment-grade bonds separately) and derivatives (ETDs and OTC derivatives).

AIMA and the ACC believe that the current MiFID II pre-trade transparency regime has not delivered any material benefits and should either be modified or supplemented by other measures to increase pre-trade transparency and price competition, such as incentivising more firm pricing on trading venues.

54. If you answered yes to question 53: Do you think that RFQ, bilateral negotiations and indications of interest provide sufficient information for markets to function effectively? Please separate your answers by fixed income (sovereign bonds, high-yield bonds and investment-grade bonds separately) and derivatives (ETDs and OTC derivatives).

AIMA and the ACC believe that Request for Quotes, bilateral negotiations and indications of interest do not provide sufficient information for markets to function effectively. We believe that additional pre-trade transparency can assist clients in fixed income markets and would caution against only subjecting certain trading protocols to enhanced requirements.

55. How do you use pre-trade quotes streamed by SIs? Please separate your answers by fixed income (sovereign bonds, high-yield bonds and investment-grade bonds separately) and derivatives (ETDs and OTC derivatives).

56. For SIs, what impact do you think removing pre-trade transparency requirements would have on your business? Please separate your answers by fixed income (sovereign bonds, high-yield bonds and investment-grade bonds separately) and derivatives (ETDs and OTC derivatives).

57. Do you have any other comments on the pre-trade transparency regime?

AIMA and the ACC believe that pre-trade transparency and price discovery could also be improved by removing the practice of "post-trade name give-up", a practice that involves the disclosure of counterparty identities post-trade after a transaction has been executed anonymously.

The practice of "post-trade name give-up" occurs in the context of cleared OTC derivatives that are executed anonymously, even though the two trading counterparties do not have any credit, operational or legal exposure to each other. It is a discriminatory practice that impedes market participant access to trading venues for a number of reasons –

Firstly, it functions as a source of uncontrolled information leakage since a market participant has no control over who it will be matched with when executing through an anonymous trading protocol, such as an order book (in contrast to a request-for-quote, where a market participant will carefully choose which firms to disclose trading information to). Therefore, before using an anonymous order book with "post-trade name give-up", a buy-side firm (such as an asset manager, insurance company or pension fund) must be comfortable potentially sharing its trading activity with every other participant on the trading venue, including other buy-side firms. This is an unattractive proposition for buy-side firms that completely undermines the anonymous nature of the trading protocol and deters access and participation.

Additionally, the practice allows dealers to monitor whether buy-side firms have started to transact in anonymous order books. This information can be used as a policing mechanism by dealers to deter buy-side access and participation. There is no legitimate justification for the continued use of the practice for centrally cleared instruments. Straight-through-processing rules ("STP") ensure that a cleared transaction is immediately submitted to a clearinghouse, resulting in each trading counterparty facing the clearinghouse and having no credit, operational or legal exposure to the other trading counterparty. Even in the rare event that a transaction is rejected from clearing, the STP rules provide that the transaction either is void or is to be resolved by the trading venue, meaning that there is still no reason to disclose trading counterparty identities to each other. This is why "post-trade name give-up" is not used by trading venues in other asset classes where financial instruments are centrally cleared and traded anonymously, such as equities and futures.

Due to the discriminatory nature of "post-trade name give-up", non-dealer market participants (such as asset managers, hedge funds, insurance companies and pension funds) have been unable to join the trading venues offering anonymous execution of cleared OTC derivatives. This reduces pre-trade transparency regarding available bids and offers, limits choice of trading protocols and creates information asymmetries, as only dealers have full access to all of the available trading venues in the market.

For these reasons, the US Commodity Futures Trading Commission ("CFTC") last year prohibited "post-trade name give-up" for OTC derivatives that are centrally cleared and executed anonymously. This action was specifically based on the equivalent CFTC requirement for trading venues to provide market participants with non-discriminatory /impartial access. The CFTC engaged in market outreach prior to taking this step and the feedback received was 13-1 in favour of prohibiting the practice, with all of the buy-side trade associations in support of prohibiting the practice and only a trade association representing the dealer community dissenting.

AIMA and the ACC recommend that MiFID II also be amended to prohibit specifically the practice of "post-trade name give-up" for financial instruments that are executed anonymously and centrally cleared. Further to improving pre-trade transparency, it would help new liquidity providers to enter the market more easily, diversify sources of liquidity and increase competition.

58. How do you currently use deferrals? Please separate your answers by fixed income (sovereign bonds, high-yield bonds and investment-grade bonds separately) and derivatives (ETDs and OTC derivatives).

AIMA and the ACC believe that the current deferral framework is impairing post-trade transparency and should be simplified. Further comments can be found in our response to Question 60 of the consultation.

59. Which asset classes should deferrals apply to? Please separate your answers by fixed income (sovereign bonds, high-yield bonds and investment-grade bonds separately) and derivatives (ETDs and OTC derivatives).

AIMA and the ACC support a size-based deferral across all asset classes.

60. Do you agree that the deferral regime would benefit from being simplified?

AIMA and the ACC agree that the deferral regime should be simplified.

We believe that the current deferral framework is impairing post-trade transparency. Around 90% of on-venue activity in OTC derivatives is being granted a four-week deferral and around 85% of trading activity in bonds is not being published in real-time. Moreover, full transaction details are not published for the vast majority of activity due to indefinite deferrals.

AIMA and the ACC suggest reducing the number of deferrals; shortening the lengths of the two-day deferral period for price information and the four-week deferral period for volume information; and capping notionals (in lieu of deferring publication of uncapped notionals).

Further to supporting broader post-trade transparency, simplifying the deferral regime in this way would ensure the availability of data that is of a sufficient quality and support the creation of a consolidated tape for bonds and derivatives.

61. What do you think the optimum deferral length is? Please separate your answers by fixed income (sovereign bonds, high-yield bonds and investment-grade bonds separately) and derivatives (ETDs and OTC derivatives).

AIMA and the ACC would note that the US post-trade transparency framework for bonds and derivatives utilises a 15-minute deferral for large trades.

62. What are your views on the government's proposal to delete the size specific to the instrument (SSTI), package order, and EFP deferrals? Do you think it would lead to more meaningful transparency? Please separate your answers by fixed income (sovereign bonds, high-yield bonds and investment-grade bonds separately) and derivatives (ETDs and OTC derivatives).

AIMA and the ACC support the Government's proposal to delete the Size Specific to the Instrument, package order and Exchange for Physicals deferrals, to simplify the deferral regime.

63. Do you think volume masking and/or aggregation helps to encourage real time publication? Please separate your answers by fixed income (sovereign bonds, high-yield bonds and investment-grade bonds separately) and derivatives (ETDs and OTC derivatives).

AIMA and the ACC believe that volume masking provides appropriate protections to liquidity providers and allows for real-time (or close to real-time) publication of transaction-level information.

64. What are the risks and benefits of allowing trading venues to calculate LIS thresholds for ETD post-trade reporting?

CHAPTER 6: COMMODITY MARKETS

65. Do you think that the scope of the 'commodity derivatives' regime should be narrowed to derivatives that are based on physical commodities?

AIMA and the ACC believe that the scope of the commodity derivatives regime should be narrowed to derivatives that are based on physical commodities.

We believe that the current definition of "commodity derivative" in MiFID II is too broad, complex and does not link strongly to the MiFID II definition of a "commodity". The current scope of the regime includes a number of instruments which do not relate to physical commodities, such as derivatives which are intangible, and makes application of some elements of the regime redundant or difficult to achieve. As such, we believe that derivatives that are not based on physical commodities should be removed from the scope of the regime.

66. Do you think that financial instruments which refer to commodities as a pricing element but are securities in their legal form, should be removed from the regime?

AIMA and the ACC believe that financial instruments which refer to commodities as a pricing element but are securities in their legal form should be removed from the regime.

We believe that these instruments have a weak link to the underlying market for physical commodities and that their inclusion within the commodity derivatives regime subjects them to unnecessary and burdensome requirements. Removing the instruments from the regime would support their growth in UK markets.

67. Do you think economically equivalent OTC commodity derivative contracts should be removed from the commodity derivatives regime?

AIMA and the ACC believe that economically equivalent OTC commodity derivative contracts should be removed from the commodity derivatives regime.

68. Are there any other instruments that you think should be deleted from the commodity derivatives regime?

69. What would be the risks and benefits of transferring responsibility for position limits from the FCA to trading venues?

AIMA and the ACC support HMT's proposal to transfer the responsibility for setting position controls from the FCA to trading venues.

We find that the commodity derivatives position limit framework is largely ineffectual in that it does little to support proper market functioning and stifles contractual innovation, while creating an ongoing monitoring burden for firms that must track the size of their portfolio relative to limits.

We believe that the existing framework should be replaced with a clear, harmonised position management framework at the level of trading venues. Transferring responsibility for position limits to trading venues would reduce the compliance burden on commodity market participants and foster innovation, without compromising market soundness. Trading venues have exceptional knowledge of individual contract markets to enable them to implement the most appropriate position limits and exemptions.

AIMA and the ACC believe that any complexity for firms in not being able to implement a single monitoring framework for commodities trading is likely to be outweighed by the positive impact associated with transferring monitoring duties to trading venues.

70. What specific factors do you think should be addressed in the framework of requirements that UK authorities would provide for trading venues?

AIMA and the ACC believe that trading venues should be permitted to establish position limits or accountability levels using a methodology based on their market experiences, as opposed to applying the same generic methodology to all core referenced futures contracts, whose underlying commodities possess very different characteristics.

71. Do you think that the scope of contracts that are automatically subject to position limits should be limited? If yes, do you think that it should be limited to contracts that are critical or significant, which includes those that are physically settled, and agricultural?

AIMA and the ACC believe that the scope of contracts that are automatically subject to position limits should be limited.

We do not find the current scope of the position limits regime to be appropriate and believe that limits should be placed on a narrower range of contracts. Position limits can have a negative impact on the viability of new and illiquid contracts. This has broader consequences for innovation and competition in commodities markets. The number of participants that enter new commodity derivative contracts tends to be low in the period soon after their launch and position limits are more likely to restrict participants in their trading activities, causing a reduction in open interest.

We believe that implementing limits on a narrower range of contracts will greatly reduce the compliance burden associated with the rules, while improving the position for new contracts and liquidity in new commodity markets. AIMA and the ACC strongly support the suggestion that limits should be limited to contracts that are designated as critical or significant. We believe that this would be straightforward from both a supervisory and compliance standpoint and recognises that, in practice, position limits are not effective in mitigating the potential for market disorder or abusive behaviour.

In determining whether a contract qualifies as a critical or significant contract, we believe that the framework should also consider whether similar contracts have limits in other key jurisdictions, to advance regulatory consistency when it comes to the imposition of position limits. We believe that a designated list of critical or significant contracts akin to the US regime is most appropriate.

Separately, AIMA and the ACC also believe that securitised derivatives should be excluded from the position limits regime and reporting requirements. We believe that their inclusion is consistent with the treatment of commodity Contract for Differences and Exchange Traded Commodities.

72. Do you think that the UK commodity derivatives regime should allow position limits exemptions for liquidity providers?

AIMA and the ACC believe that the UK commodity derivatives regime should not allow position limits exemptions for all liquidity providers.

73. Do you think that the UK commodity derivatives regime should introduce a 'pass through' hedging exemption to enable investment firms to support a wider range of hedging practices?

AIMA and the ACC believe that the UK commodity derivatives regime should introduce a "pass through" hedging exemption to enable investment firms to support a wider range of hedging practices.

Position limits in commodities markets have the potential to distort price formation, dampen liquidity and undermine firms' hedging activities. We believe that the current lack of flexibility in the position limit framework for commodity hedging contracts (notably for new contracts covering natural gas and oil) is a constraint on the emergence of sterling-denominated commodity markets that allow hedging of the increasing risk resulting from climate change.

74. Do you think any other activities should be exempt from the regime?

75. **Are there areas of the UK's position reporting regime which could be improved?**

76. **Do you think that the ancillary activities test (AAT) should revert to a qualitative assessment of the activities performed by a market participant?**

77. **Do you think that the basis of the AAT should be expected activity, rather than historic activity?**

78. **Do you agree that the annual notification requirement should be abolished?**

79. **Does the continued existence of the separate Oil Market Participant (OMP)and Energy Market Participant (EMP) regimes for commodity derivative market participants serve any meaningful purpose?**

80. **Do you think that the OMP and EMP regimes should be removed as particular regulatory statuses from the UK's regulatory perimeter?**

81. **Do you think any changes would need to be made to the MiFID II regime, if the OMP and EMP regimes are removed as particular regulatory statuses?**

CHAPTER 7: MARKET DATA

82. **Do you agree that the government should take action to encourage the development of a CT?**

AIMA and the ACC support the development of a CT and believe that the Government should take action to encourage its development.

A CT would create a single point of access to a broad dataset at lower cost for data users instead of requiring users to source data via multiple feeds. We believe that this has the potential to be of great benefit to the market, through levelling the playing field with respect to access to information and removing existing information asymmetries.

In particular, AIMA and the ACC believe that the Government should encourage the development of post-trade CTs for shares; exchange-traded funds; corporate bonds; government bonds, interest rate swaps and credit default swaps. Post-trade CTs would provide investors with a reliable source of the current traded price and a view into trading activity across the market, which would increase investor confidence, facilitate compliance with best execution and help investors to hold liquidity providers accountable. We note that a post-trade CT exists in a wide variety of asset classes in the US, including equities, corporate bonds, municipal bonds, and OTC derivatives. In each, academic research has found that greater transparency has resulted in real benefits for market participants in terms of better liquidity and more competition.

AIMA and the ACC believe that CTs should include all trading in the relevant instrument, with mandatory contribution from trading venues and Approved Publication Arrangements ("APAs"). We believe that limiting the instruments that are subject to a CT to only those that are admitted to trading on UK trading venues could limit the potential benefits of the CT. APAs would, in effect, be required to segregate post-trade data for instruments that are admitted to trading on UK trading venues and subject to the CT from data for those instruments that are only traded on UK trading venues. This additional requirement would likely lead APAs to object to providing post-trade data free of charge to CTs, which we believe is critical for a low-cost comprehensive and real-time CT.

While AIMA and the ACC support the development of CTs, we do not believe that policymakers should mandate consumption of CT data, particularly if this leads to a situation in which market participants carry costs for consuming data that they do not require. Many firms may already have access to all necessary price data and, therefore, mandatory consumption would lead to an unnecessary increase in costs. We believe, in practice, that the expectations placed on firms by other regulatory requirements will mean that demand for and usage of the data will be sufficiently widespread even without a mandate requiring its use. Mandating consumption of CT data would also detract from effective CT provider governance, as it would fundamentally diminish the incentives for a CT provider to offer a high-quality service to users.

AIMA and the ACC encourage HMT to consider if and how the CT will exist alongside any siloed alternatives and note that it is crucially important that work to develop a CT is not seen as obviating the need for overhaul of rules on the pricing of market data – we believe that it is important to progress the two in tandem.

83. If you answered yes to question 82: Do you think a fixed income tape should be prioritised?

AIMA and the ACC believe that both a non-equities tape and equities tape should be developed simultaneously, but that developing a post-trade equities CT is the most readily achievable first step and would help pave the way for additional CTs to be established for other asset classes.

Indeed, AIMA and the ACC recognise that the use-case of a CT is potentially greater for asset classes that are less standardised and more fragmented in their trading profile, such as fixed income products. For such asset classes, CTs could provide a valuable consolidated view of market activity that is not available today. Though, we believe that the same lack of standardisation makes it more difficult to deliver an effective CT.

The successful development of a CT for non-equities requires addressing underlying shortcomings in the implementation of the MiFID II post-trade transparency framework. For a CT to be attractive to market participants, it needs to be comprehensive and provide timely information (which contrasts sharply to conditions today, where 90% of on-venue trading activity in OTC derivatives is being granted a four-week deferral and around only 5% of off-venue trading activity in OTC derivatives is subject to post-trade transparency). Further AIMA and ACC commentary on the deferral regime can be found in our response to Question 60 of the consultation.

84. Do you think that it would be beneficial for a fixed income CT to include post-trade data only, or would there be value in a tape covering pre-trade data too?

As mentioned in our response to Question 82 of the consultation, AIMA believes that HMT should target post-trade CTs for all key equity and non-equity classes.

We believe that a CT is more likely to be useful in the context of post-trade and operational processes rather than sourcing liquidity. Post-trade CTs will deliver the most tangible benefits to investors in the near-term and with the least start-up costs. They can also be set up independently and separately for different asset classes and in parallel.

For post-trade data to be valuable, it is important that all trading activity in the relevant instrument is included, both on-venue and off-venue. Without this, market participants no longer have a reliable source of the current traded price and a view into trading activity across the entire market, which undermines the benefits of a post-trade CT.

To ensure that a post-trade fixed income CT will be successful, we believe that deferral periods should be significantly shortened; dissemination of the notional amount of large-size trades should be capped; and publication of post-trade price data on an aggregated basis across multiple transactions should be removed.

85. Is there any value in a delayed data CT for fixed income markets?

AIMA and the ACC do not find value in a delayed data CT for fixed income markets. We believe that it is important that any post-trade CT publishes data in real-time, or as close to real-time as possible.

Real-time data is necessary to provide market participants with a current snapshot of market trading activity and deliver benefits to investors. We note that all the CTs established in the US, whether in equities, bonds or OTC derivatives, provide data in real-time, as opposed to a delayed or tape-of-record CT.

86. Is it valuable for an equity CT to include pre- and post-trade data?

AIMA and the ACC do not believe that it is valuable for an equity CT to include pre-trade data. Rather, we believe that a post-trade equity CT would be valuable.

In our view, a pre-trade CT for equities would not be useful for sourcing liquidity as firms already have access to price data. We believe that CTs could be helpful for firms in relation to post-trade and operational processes.

87. Is there any value in a delayed data CT for equity markets?

As mentioned in our response to Question 85 of the consultation, AIMA and the ACC do not find value in a delayed data CT for equity markets. We believe that it is important that any post-trade CT publishes data in real-time.

Real-time data is necessary to provide market participants with a current snapshot of market trading activity. We note that all the CTs established in the US, whether in equities, bonds or OTC derivatives, provide real-time data, as opposed to a delayed or tape-of-record CT.

88. Should the government amend legislation to enable a market-led private sector CT to develop, or do you think UK authorities should be actively involved in creating a CT?

AIMA and the ACC believe that the Government should amend legislation to enable a market-led private sector CT to develop though believe that clear FCA guidance will be necessary with respect to data standards.

We strongly encourage the FCA to prioritise work to develop the role that it plays in respect of data standards. The absence of a central source of instrument-level firm SI status, for example, detracts from the goal of ensuring that data that is provided to the market is consistent and comprehensive.

89. What are the legislative barriers for a private sector-led CT to emerge? Do you agree with the legislative changes identified above? Are there additional changes that UK authorities should be considering?

AIMA and the ACC agree with the legislative changes identified for a private sector-led CT to emerge – namely, that the Government should make it mandatory for trading venues and APAs to submit their data to a CT and simplify and standardise fixed income deferrals to allow effective consolidation. However, as detailed further in our response to Question 92 of the consultation, we believe that the Government should intervene legislatively to address the excessive pricing of market data.

Our members have serious reservations about the provision of and access to market data. Market data prices have significantly increased since the passage of MiFID II. The price for Level 1 equity market data charged by the London Stock Exchange Group ("LSE"), Nasdaq Nordic, Euronext, and Deutsche Börse was estimated to have increase by 11% net of inflation between 2004-2006 and 2018.[10] In the UK, the LSE's revenues from market data were estimated to have increased by 7% net of inflation between 2017 and 2018 alone.[11] In addition, the numerous fees attached to accessing data, have grown increasingly complex. The number of different fees charged by the LSE, for instance, doubled in the decade leading to 2018.[12]

Price increases have a deleterious effect on investment management in general. Investment managers have no choice but to purchase market data (often from a variety of trading venues and data providers). As the price for data increases, the greater the risk it will cut into investment returns—meaning that the price may ultimately be borne by end investors. Rather than invest in new technology or risk management infrastructure, investment managers are compelled to spend increasing amounts of money on market data that has not materially changed or improved.

We believe that it is crucially important that work to develop a CT is not seen as obviating the need for overhaul of rules on the pricing of market data – we believe that it is important to progress the two in tandem.

90. Do you see any risks with removing the obligation for CTs to provide data for free after 15 minutes?

AIMA and the ACC believe that CT providers should deliver low-cost, if not free of charge, post-trade data to market participants.

We believe that this should be supported by a mandatory submission obligation on trading venues and APAs to submit data to CTs free of charge. Mandatory contribution from trading venues and APAs is one of the most important elements in establishing a CT. We

---

[10] See https://www.copenhageneconomics.com/dyn/resources/Publication/publicationPDF/6/466/1543587169/pricing-of-market-data.pdf
[11] Ibid.
[12] Ibid.

believe that the obligation would address concerns around financial incentives, regulatory requirements and competition by non-regulated data vendors and would avoid problems associated with the current "reasonable commercial basis" approach, which could make CTs uneconomical and therefore commercially unattractive. We note that mandatory contribution features in the CTs for equities, corporate bonds, municipal bonds and OTC derivatives that exist in the US.

91. What are the potential advantages and disadvantages of multiple private-sector CTs for each asset class?

AIMA and the ACC believe that one private-sector CT should be developed per asset class in order to maximise the benefit of a CT.

92. Do you have any suggestions on further areas that UK authorities should be considering when making changes to market data, especially in relation to requirements that are set out in legislation?

Further to establishing CTs, AIMA believes that the UK should support and reflect changes proposed by ESMA to ensure that data is provided on a "reasonable commercial basis".

There is broad recognition at European level that existing MiFID II rules on data provision by trading venues have failed to address the excessive cost of market data that shuts smaller firms out of the market and disincentivises firms that might be considering expanding the range of instruments that they trade (noting the central importance of trade data in the context of designing an investment strategy and fulfilling regulatory reporting obligations).

While the establishment of CTs will help standardise reporting practices and address data quality issues, AIMA and the ACC believe that the UK should create a published production cost benchmark; standardise cost disclosures; and take a more assertive supervisory stance vis-à-vis trading venues when it comes to their pricing schedules for market data. This would have a strong positive impact for firms that obtain market data from UK trading venues.

Further AIMA and ACC messaging around changes to market data can be found in our response[13] to the FCA's recent *Call for Input on Accessing and Using Wholesale Data*[14].

CHAPTER 8: REPORTING

93. Where do the current regulatory reporting regimes for wholesale markets contain duplicative reporting requirements?

AIMA and the ACC believe that dual-sided reporting requirements for derivatives transactions under EMIR create unnecessary duplicative obligations.

Dual-sided reporting obligations create a large additional burden on market participants to report and maintain transaction data that is already being reported by their counterparty. This duplicative data undermines rather than enhances use of the data by

[13] See https://www.aima.org/resource/aima-and-mfa-response-accessing-and-using-wholesale-data-call-for-input.html
[14] See https://www.fca.org.uk/publications/calls-input/accessing-and-using-wholesale-data-call-input.

regulators, as it falsely implies the parties have material discrepancies. The cost and effort for both end-user counterparties and dealers to comply with these requirements are significant.

AIMA and the ACC believe that the UK should introduce a single-sided reporting structure for derivatives transactions and focus on data quality. We believe that an entity-based reporting framework – where sole responsibility for the accuracy of the reported data is assigned to one counterparty via an automated hierarchy system – is an essential counterpart to high-level harmonisation of data reporting standards. A streamlined approach to reporting would significantly reduce the operational complexity currently associated with reporting requirements, reduce costs and, in almost all cases, eliminate the reporting burden for non-dealer derivatives users. Entity-based reporting would also eliminate the duplication and replication of other regulatory requirements.

In terms of identifying the reporting party under a single-sided reporting structure, we believe that the reporting party should be the counterparty with the most robust existing reporting infrastructure and with the timeliest access to the complete data. This is most likely to be the clearing house for cleared trades and the dealer for bilateral transactions. Where the two counterparties have equal capabilities, we believe that they should agree in advance which party will report, based on existing industry standards. We believe that the party with the reporting obligation for a transaction should be directly responsible for the accuracy of the data, and the non-reporting party should not be obligated to verify the data or confirm it is not required to report the transaction.

The existence of single-sided reporting frameworks in other key jurisdictions, notably the US, indicates that there is a strong argument that the additional regulatory “benefits” associated with dual-sided reporting – principally, that it provides a means to validate data that has been reported to trade repositories and identify counterparties that might be reporting wrongly - are not commensurate with the costs that arise for industry participants in discharging the rules, particularly on the buy-side where reporting infrastructure is more incidental to firms’ operations. As a general point, AIMA and the ACC do not believe that trade reporting is an effective nor necessary additional tool to verify or match transaction terms between parties.

94. Is intervention needed to mitigate against duplicative reporting for firms undertaking securities financing transactions (SFTs) with members of the European System of Central Banks?

95. Do you think the 10% loss reporting rules for portfolios and contingent liability transactions offer effective investor protection? If not, how do you think the rules in this area should be revised?

AIMA and the ACC believe that the 10% loss reporting rules for portfolios and contingent liability transactions do not strengthen investor protection in a meaningful way.

96. Do you think electronic communication should become the default means of communication for disclosures and reporting to retail clients, and, if so, what protections are needed for retail clients around such a change?

97. Are there any other changes to the conduct rules in the MiFID delegated regulation that you think could be made to reduce costs whilst continuing to offer meaningful investor protection?

AIMA and the ACC believe that changes should be made to costs and charges reporting under MiFID II.

We believe that the current MiFID II framework does not recognise the distinct information needs of professional and retail clients. MiFID II investor disclosure requirements are currently prescriptive and often not appropriately designed for professional client relationships. We, therefore, believe that the UK should move towards principles-based disclosure.

In moving towards principles-based disclosure, the UK should, for example, remove ex ante costs and charges disclosure obligations in respect of professional clients and eligible counterparties, for services including investment advice and portfolio management. Ex ante costs and charges disclosures are regularly singled out by members as being poorly designed for sophisticated products that include performance-related fees. Exempting professional clients and eligible counterparties from ex ante cost information obligations would ensure that clients receive the information that they need and want and reduce the burden on firms producing the information.

Institutional investors already undertake extensive due diligence of potential investment managers as part of the allocation process, including detailed examination of costs, thus the explicit regulatory requirements generate unnecessary costs and provide no extra protection. We believe that it would be acceptable from an investor protection standpoint to abandon these requirements, given that professional investors in any case will ensure their information needs are met in their negotiations with intermediaries.

AIMA and the ACC also believe that HMT should alleviate ex-post reporting requirements for professional clients and eligible counterparties – in particular, the end-of day loss reporting requirement. End-of-day loss reporting promotes a short-term view among inexperienced investors and fosters “herd behaviour” which is not conducive to taking informed views of the market. We believe that professional clients should instead be allowed to opt-in to the requirements.

98. Do you think other changes are needed to ensure that the reporting regime correctly balances investor protection and transparency?

AIMA and the ACC believe that changes are needed to the scope of MiFIR trade and transaction reporting requirements.

Buy-side firms that are subject to MiFID II routinely single out trade and transaction reporting on individual transactions in financial instruments as the most burdensome aspect of MiFID II from a compliance perspective. Firms note that it creates major one-off systems build costs and generates significant on-going costs associated with making reports and validating reporting processes. These costs reflect the fact that buy-side entities do not have the same operational and reporting capacity as large sell-side institutions, something that we believe should be considered when designing reporting obligations.

AIMA and the ACC believe that a fundamental re-think of who is subject to reporting rules is required, with the potential to exclude buy-side participants from the regime on the basis that their sell-side counterparties will typically report the trades. At a minimum, we believe that the reporting regime and data requirements should be simplified, particularly for buy-side firms, and that a clear materiality threshold for reporting of errors and omissions should be introduced.

We also believe that the short sale indicator field should be removed from the transaction reporting framework, given that the SSR is the more appropriate regulatory framework for the FCA to obtain information on the net short positions of market participants.

99. Have you experienced any issues with the utilisation of International Securities Identification Number (ISINs) as identifiers?

100. Do you have any suggestions on how the use of identifiers could be improved?

CHAPTER 9: CROSS CUTTING ISSUES

101. What further steps can UK authorities take to enable firms to take advantage of technological innovation in capital markets?

102. What further steps can UK authorities take to support the wholesale markets sector as we move towards a low carbon economy?

103. How do companies harness retail investment whilst ensuring investor protection?

104. How do companies take advantage of the globalisation of information to reach investors?

105. Is there a role for UK authorities to play to facilitate retail access to capital markets, while continuing to offer high standards of investor protection?

AIMA and the ACC believe that there is a role for UK authorities to play to facilitate retail access to capital markets and that any effort should be underpinned by measures to ensure that investor protection requirements achieve their intended policy goals.

We believe that greater alignment between financial services regulation, namely MiFID II, the UK PRIIPs Regulation, the UCITS Directive and the Alternative Investment Fund Managers Directive with respect to the way that product cost information is calculated and presented, and more accommodating frameworks for investor categorisation and information disclosure would help to improve market outcomes, empower retail investors and enhance their participation in capital markets.

We also believe that UK authorities should consider the role of social media platforms and the way in which information disclosed under existing financial services legislation, such as the SSR, could be impacting their use by retail investors.

Indeed, the case of GameStop illustrates the potential for information on short trading interest to become the basis for coordinated retail trading activity, noting that this ultimately led to significant losses not just for hedge funds with short positions but also for retail investors who entered the market when GameStop's share price was trading at a highly inflated level.

We believe that rules concerning the public disclosure of net short positions by investment managers should be re-evaluated to ensure that they serve their intended purpose. While we fully support transparency of short positions to regulators, we do not believe that public transparency of individual short positions above a set threshold is warranted or beneficial to market functioning and could prove counterproductive in the context of increased retail trading activity due to information disseminated via social media.