

ICI Global Response to FCA Discussion Paper on Implementing MiFID II Conduct of Business Requirements

26 May 2015

Q1: Do you agree that, in principle, we should look to ensure a consistent regulatory regime between insurance-based investment and pension products, and MiFID II investments? If not, please explain why.

ICI Global* agrees with the Financial Conduct Authority (FCA) that, in principle, a consistent regulatory regime should be maintained among MiFID II investments, which include collective investment schemes, and insurance-based investment and pension products. Insurance-based investments and pension products compete with, and in some cases are substitutable with, MiFID II investment products. Inconsistent treatment of these products with those covered under MiFID II could expose regulatory gaps and increase opportunities for regulatory arbitrage, leading to competitive distortion among substitutable products. Further, different or uneven treatment could result in unequal protection for investors and cause confusion and possible misunderstanding.

* The international arm of the Investment Company Institute, ICI Global serves a fund membership that includes regulated funds publicly offered to investors in jurisdictions worldwide, with combined assets of US\$19.4 trillion. ICI Global seeks to advance the common interests and promote public understanding of regulated investment funds, their managers, and investors. Its policy agenda focuses on issues of significance to funds in the areas of financial stability, cross-border regulation, market structure, and pension provision. ICI Global has offices in London, Hong Kong, and Washington, DC.

Q7: Should we develop rules to ban rebating of third party payments altogether by DIM firms to clients?

We believe that the FCA should not ban rebating of third party payments altogether by discretionary investment management (DIM) firms to clients and should instead adopt rules for DIM firms that are not more restrictive than the provisions in MiFID II. Stronger alignment of the UK rules with those in other Member States will help foster a single European market, and will reduce potential investor confusion resulting from different treatment based on jurisdiction.

We are concerned that investment options for clients of DIM firms may be reduced if rebating is banned in the UK, while it is permitted by firms providing the same investment management service outside the UK. Specifically, product providers, such as UCITS fund managers, may currently or in the future choose to distribute a fund on an EU-wide basis that does not have a completely commission or fee-free share class. A UK DIM firm will be unable to invest in that UCITS on behalf of its client, which can ultimately disadvantage the DIM firm's client. For example, a UK DIM firm may wish to invest a portion of a client's portfolio in a UCITS with an emerging markets equity strategy and, based on its research, have identified a particular UCITS as the best investment option for that client. If,

however, that UCITS does not have a fee-free share class, the DIM firm will need to forego investing in that fund and will need to seek a second (or third, etc.) investment option, which may not be as desirable, in the judgment of the DIM firm acting in its client's best interest.

As the FCA recognized, some firms may choose to currently apply RDR standards to their DIM activities and, even if it is permitted, some firms may choose not to purchase shares that would require rebating because of the potential regulatory and operational complexity involved. We feel, however, that it is appropriate to afford firms the flexibility to make this determination based on the nature and scope of their business.

With this concern in mind, we believe that, on balance, consumer outcomes will likely not be improved by banning the acceptance of commissions, fees, and benefits by DIM firms.

Q8: Should we develop rules to ban cash rebating of third party payments by DIM firms to clients, but allow other types of rebating?

See response to Question 7 above.

Q25: Do you agree that we should continue to have a consistent inducements regime for sales of MiFID II products and insurance-based investments and pensions? If not, please explain why.

As we stated in our response to Question 1, we believe that, as a general matter, a consistent regulatory regime should be maintained between MiFID II investments and insurance-based investment and pension products because such products compete with one another and are substitutable with, in some cases, MiFID investment products.

Divergence in treatment of these products could lead to regulatory arbitrage. Because the scope of the Insurance Distribution Directive (IDD) is still unsettled, including with respect to potential inducements provisions, we believe it is appropriate for the FCA not to wait for finalization of the IDD, but rather to continue to have a consistent inducements regime for sales of MiFID II products and insurance-based investments and pensions. If needed, the FCA can revise these provisions after the finalization of the IDD.