5 December 2008

Jean-Paul Servais
MiFID Level 3 Expert Group
CESR
11-13 avenue de Friedland
75008 PARIS

By e-mail to:

Dear M. Servais

**CALL FOR EVIDENCE ON THE REVIEW OF THE SCOPE OF THE MIFID TRANSACTION REPORTING OBLIGATION**

The IMA represents the asset management industry operating in the UK. Our Members include independent fund managers, the investment arms of retail banks, life insurers and investment banks, and the managers of occupational pension schemes. They are responsible for the management of £3.4 trillion of assets, which are invested on behalf of clients globally. These include authorised investment funds, institutional funds (e.g. pensions and life funds), private client accounts and a wide range of pooled investment vehicles. The IMA's authoritative Asset Management Survey 2007 recorded that IMA member firms were managing 44% of the domestic equity market for clients and £1.1 trillion in fixed income instruments.

We welcome the opportunity to respond to this call for evidence. We are particularly concerned about the way in which the FSA has implemented the transaction reporting requirements in the UK, as they apply to asset management firms. Their approach appears to go against the notion of regulatory convergence and the achievement of a level playing field.

I look forward to hearing from you if there is any clarification that you would find useful on the points we have raised, particularly if you require direction to the rules referenced in the attachment.

Yours sincerely

Adrian Hood
Regulatory Adviser

65 Kingsway London WC2B 6TD
Tel: +44(0)20 7831 0898 Fax: +44(0)20 7831 9975

www.investmentuk.org

<u>**CALL FOR EVIDENCE ON THE REVIEW OF THE SCOPE OF THE MIFID TRANSACTION REPORTING OBLIGATION**</u>

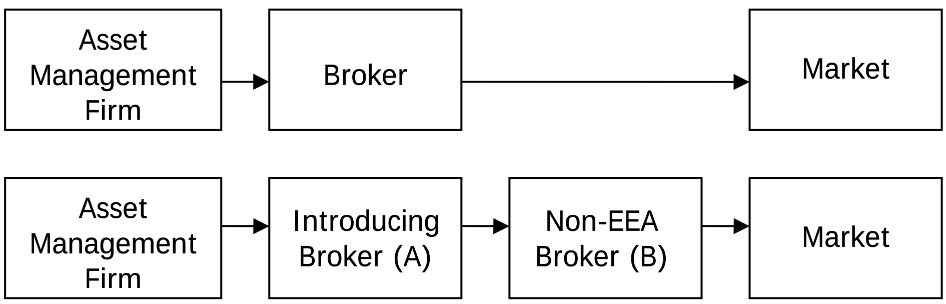
**We provide below answers only to those questions that fall within IMA's remit**

**Q.1 – Have the differences in the scope of the transaction reporting obligation between CESR Members caused problems for you? Please provide practical examples of any difficulties encountered.**

The lack of level playing field for transaction reporting has caused considerable difficulty for our member firms. The national differences make it unnecessarily difficult for firms to identify which transactions need reporting, by whom and to whom. The super-equivalent way in which the FSA has implemented the rules has caused firms numerous problems and considerable expense.

Examples would include the requirement that UK firms must report any transactions conducted on AIM stocks, even though these are not reportable under MiFID.

As set out more fully in our answer to Question 2, the FSA has chosen to impose the transaction reporting requirement generally on asset management firms, as well as on brokers who execute transactions against the market. We do not believe that this is consistent with MiFID, nor is it how the majority of EU countries have implemented the Directive (e.g. the approach of AMF in France to portfolio managers executing deals is consistent with the spirit of MiFID, as they need only report if they are members of an MTF and execute through that mechanism). This leads to considerable unnecessary cost and difficulty for UK asset management firms. We hold that the correct interpretation of MiFID is that only those firms who actually execute transactions (either against the market or internally on their own account) should be required to report them to their regulator, as set out in your paper.




This imposition of the transaction reporting requirement on asset managers is exacerbated as, although they can, in certain circumstances rely on a broker to report on their behalf, the FSA has created a special class of brokers, 'Introducing Brokers', that are allowed to avoid reporting responsibilities in the UK (see diagram above). The FSA has decreed that a UK broker (Broker A), when passing an order in a reportable instrument to a connected broker outside the EEA (Broker B) does not have any duty to report the resulting transaction, and so the asset manager cannot rely on them to do so. The FSA considers that, in this situation, the duty should be solely on the client. This could be understood if the asset manager was merely redirected to Broker B and submitted their order direct to them, but this is not the case. The asset manager will place their order with Broker A; this order is passed internally to Broker B, who completes the deal. The asset manager is informed of the deal details by Broker A.

On many occasions the existence of Broker B is unknown to the asset manager until they contact them regarding settlement. The upshot of the FSA view appears to be that the asset manager executes, Broker A receives and transmits and Broker B also executes, but outside the EEA, so that only the asset manager reports. As the asset manager is unable to know whether the broker is an IB than this results in a lack of clarity as to who should be reporting, and causes unnecessary expense to asset managers, in that they commonly have to choose to report everything.

This issue does not adversely affect Trade Reporting as the IB is happy to trade report, given that there is commercial advantage to them in doing so.

**Q.2 – Please provide information on your practical experiences in reporting transactions that fall under each of the items (a)-(c) above? Is the difference between these three categories sufficiently clear? Do the competent authorities interpret the scope of these categories in the same way? If not, where in particular have you encountered problems?**

While the three categories are clear, given the way in which CESR sets them out, the way in which the FSA transaction reporting rules apply in the UK is less clear. Asset managers will very rarely either conduct an equity transaction directly with an execution venue (they will invariably go through a broker) or take it on its own account. However the FSA rules require them to transaction report, unless they are able to rely on the broker to report on their behalf. This has resulted in firms having to put expensive and complicated systems in place to ensure that they are in compliance with the rules. It is our understanding that this approach is not taken generally in other EU countries.

*Transactions conducted directly with an execution venue*
Asset managers will rarely, if ever, transact directly with an equity execution venue. It should be noted that DMA (Direct Market Access) will still result in the asset manager passing the deal to a broker (in this case the one who operates the DMA system), albeit on a more automated basis.

*Transactions undertaken on a firm's own account*
Asset management companies would never trade on their own account, as they do not have the necessary permissions to do so.

They may, however occasionally arrange for two of their clients to engage in an agency cross (or internal cross trade), where this can be shown to be to the advantage of both parties. Would this type of trade fall within this category? The FSA rules, as they currently stand, require any firm conducting such a transaction to report it to the FSA.

We think that it is important that all countries have a common view on 'execution', and that this should only be seen as occurring when the events set out in (a) and (b) in your paper occur. As such, asset managers, as they currently operate, would rarely be required to transaction report. Indeed in MiFID terms, asset managers generally follow the Article 45 of the Implementing Directive approach as opposed to the Level One Article 21 approach which would result in transaction reporting being required. The FSA accepts this difference when applying the best execution rules, as can be seen in their rulebook: COBS 11.2.30.

*Information to identify the ultimate client or investment firm*
The FSA currently requires all transaction reports to contain this information.

**Q.4 – On the basis of their pros and cons, what would be the preferred solution in relation to the possible convergence of the scope of the transaction reporting obligation (regarding what constitutes 'execution of a transaction')? Please provide justifications for your choice. When analysing the pros and cons, please consider also whether there is a danger of regulatory arbitrage if the scope of the transaction reporting obligation is not harmonised between Member States, as well as the implications for transparency calculations on shares considering that in the future these calculations will be conducted on the basis of the transaction reporting data?**

We would strongly support a harmonised and consistent scope to the transaction reporting obligation. It is important that the economic reality of a transaction is considered, so that the relevant information for a transaction is reported only once. Transaction reporting is an area where detailed maximum harmonisation rules are warranted, rather than relying on high level rules with room for national interpretation. Consistency is necessary so that firms can build systems capable of taking advantage of the single European market.

We understand that Article 11 of the Implementing Regulation requires all competent authorities to establish and maintain a list of financial instruments for their country. We ask CESR to consider how best to ensure that all member states meet compliance with Article 11.  It would help firms identify the full range of the financial instruments which are transaction reportable if the CESR database of listed equities could be extended to cover all financial instruments.