Alternative Investment Management Association

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Dear Minouche,

The Alternative Investment Management Association[1] (AIMA; we) welcomes the opportunity to provide comments on the joint Consultation Document[2] published by the Bank of England, HM Treasury and Financial Conduct Authority as part of their Fair and Effective Markets Review (FEMR). We believe that it makes sense to consider how to improve effectiveness and fairness of fixed income, currency and commodity (FICC) markets, with a view to bolstering their reputation and investor confidence in those markets. Ultimately, fair and effective markets are important to economic prosperity.

AIMA welcomes the recognition in the Consultation Document that significant and transformative regulatory reforms are currently being implemented for many sectors within the FICC market, through regulation of benchmarks, MiFIDII/MiFIR and the review of the Market Abuse Directive. Given these ongoing changes, we are of the view that it is too early to consider where regulatory gaps might exist and believe that there is no compelling case for further regulation of these markets at this stage.

On the other hand, we believe that the role of market standards could be bolstered. In our submission, we describe AIMA's own work to develop Sound Practice Guidelines for participants in the hedge fund industry. We note that codes are at their most valuable when they set out sound behaviours to be adopted on a voluntary basis (rather than minimum required behaviours), given that this makes for richer guidance material and can provide regulators with a way of better understanding the nuances involved in the application of legal principles to complex situations arising in market practice. .

It is also worth noting that many participants in FICC markets have a global footprint and will be subject to many codes, both voluntary and mandatory, such that voluntary sound practice standards can be more easily implemented on a global basis, taking account of variations within jurisdictions and implementing them in a way that is compatible with a firm's specific business structure.

In this submission, we also comment on a number of other issues, including:

- The need for effective cooperation between regulators globally to ensure that market effectiveness and fairness is not compromised by conflicting regulatory regimes. This is particularly pertinent in the context of OTC derivatives market reforms and in the

[1] Founded in 1990, the Alternative Investment Management Association (AIMA) is the global representative of the hedge fund industry. We represent all practitioners in the alternative investment management industry – including hedge fund managers, fund of hedge funds managers, prime brokers, legal and accounting firms, investors, fund administrators and independent fund directors. Our membership is corporate and comprises over 1,500 firms (with over 8,000 individual contacts) in more than 50 countries. Collectively they manage more than $1.5 trillion in assets.
[2] See http://www.bankofengland.co.uk/markets/Documents/femr/consultation271014.pdf

development of a European regulation on benchmarks. Specifically, we highlight the risks associated with a framework that would make it difficult, if not impossible, for non-EU benchmark administrators to provide benchmarks within the EU.

- The risk that insufficient attention is devoted to the cumulative operational and cost impact of new rules, as well as their effectiveness as regards the public policy goals they were intended to further - something that is apparent in the increasingly complicated and fragmented regulatory and public reporting requirements that exist in the financial services sector.
- The tendency for increased regulation to run counter to the desire to foster competition, something illustrated by increased concentration among those firms that service the hedge fund industry (prime brokers; custodians; administrators).
- The potential value of further bond market standardisation.
- Our view that the Senior Managers and Certification (SMC) regime should not be extended beyond the banking sector.
- The need to develop greater fairness in secondary market trading of FICC products, by ensuring that venues are not able to exclude particular categories of participant.

We would be happy to discuss further any of the issues raised in this response.

Yours sincerely,

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Annex 1

What does 'Fair and Effective' mean for FICC markets?

Q1: The Review would welcome respondents' views on the definition of 'fair and effective' FICC markets proposed in Section 3. Does it strike the right balance between safeguarding the interests of end-users without unnecessarily impeding the effectiveness of FICC markets? Are the concepts of transparency, openness and equality of opportunity appropriately specified? And how does the definition compare with those used in other markets, jurisdictions, organisations or legislation?

While AIMA generally supports the definitions of 'fair and effective', we believe that is important to adopt a sufficiently broad understanding of 'end user' that recognizes the variety of actors who are present in FICC markets and who contribute to the price formation process.

In 2014, AIMA published academic research on the role of capital markets in supporting economic growth.[3] The research found that capital markets support economic growth by providing new sources of funding for long-term investment and facilitating improvements in corporate governance. It went on to link activities by pension funds, non-bank lenders and active investors such as hedge funds to growth in the real economy, illustrating the importance of maintaining a diverse financial market ecosystem – something we believe is important from the point of view of considering who is an 'end user' in the context of the FEMR.

In terms of making an explicit link to the concept of 'fair and effective' markets and regulatory reform, we note that measures that seek to enhance the fairness and effectiveness of European financial markets form a prominent strand in the regulatory measures that have been put in place in Europe following the financial crisis. This broad agenda has been pursued in a variety of ways, with measures that seek to enhance market transparency; increase the openness of and access to market infrastructure; improve the availability of market data.

Most important in this regard is the reform of the Markets in Financial Instruments Directive (MiFID) through adoption of MiFID II and the accompanying Markets in Financial Instruments Regulation (MiFIR). This will significantly enhance transparency of bond and derivative markets; improve access to post-trade data; and further strengthen the role of organized trading platforms.

Given the scale and coverage of the changes, and the fact that they are still being implemented, we believe that any debate regarding additional regulation to ensure fairness and effectiveness would be premature.

Market microstructure

Q4: Does the market microstructure of specific FICC markets — including trading structures, transparency, asset heterogeneity or market access — enhance or diminish fairness and effectiveness? Where there are deficiencies, will recent or in-train regulatory or technological changes improve the situation, or are further steps needed? How do these answers vary across jurisdictions, or specific markets within FICC?

In our response to Q.5, we explore how the trading functionality of FICC markets, specifically the migration to electronic execution platforms, could have a positive impact on the fairness and effectiveness of FICC markets. We also note the reference in our response to Q.1 to MiFIDII transparency measures, which are likely to have a profound impact on the functioning of FICC markets. Given the extent of these reforms, we believe it is prudent to wait until their implementation is complete and their impact can be properly assessed, before contemplating further regulatory intervention.

[3] See http://www.aima.org/en/education/research-into-capital-markets-and-economic-growth.cfm

In fixed income:

Q5: Is greater use of electronic trading venues for a wider range of market participants possible or desirable? Are there barriers preventing a shift to a more transparent market structure?

AIMA believes that electronic trading can play an important role in fostering competition in fixed income markets, improving pricing and liquidity, and facilitating direct interaction between end users in secondary markets.

A key prerequisite to electronic trading is sufficient standardization of products, encompassing various aspects of those products, including their economic characteristics, their legal structures and the operational processes required to support trading in those instruments. A greater degree of standardization across these areas can support the migration of trading from an OTC environment to trading on venues, including in electronic environments, and can also enhance the likelihood of successful migration to new trading protocols (e.g. moving from an RFQ market structure to an order book structure).

Indeed, new regulatory reforms in the OTC derivatives markets have explicitly sought to promote advancements in market structure, via a move to centralized execution and clearing of sufficiently standardized and liquid OTC derivatives contracts. This has seen the introduction of the Swap Execution Facility (SEF) construct in the US and an overhaul of the existing MiFID 1 market structure in the EU, including the introduction of the Organised Trading Facility (OTF) market category.

In this context, it is worth highlighting the fact that regulatory reform has not yet managed to change historical trading patterns, in that a two-tier market persists:

- A small group of dealers are able transact with each other on exclusive "dealer-only" trading platforms, commonly referred as the "inter-dealer" or "D2D" market. These platforms deny access to all other types of market participants, including investors (e.g., investment funds, insurance companies, corporations, etc.).

- For investors, the only way to transact with that group of dealers is either bilaterally or on a limited number of "dealer-to-customer" or "D2C" trading platforms.

This market structure is suboptimal in a number of respects, as it restricts the ability of investors to execute freely with any other counterparty, limits investors' choice of trading protocols, compromises investors' ability to execute the most favourable prices, inhibits new liquidity providers from entering the market, and engenders concentration of risk in the dealer community.

We believe that authorities should use the implementation of MiFIDII as an opportunity to address this situation. Specifically, it is important that non-discriminatory access requirements are applied across all trading venues to ensure that the largest incumbent dealers are not in a position to push venues to maintain historical market structures that advantage the dealer community at the expense if investors.

Q6: Is standardisation of corporate bond issuance possible or desirable? Should standardisation be contemplated across a broader range of fixed income products? How could that be brought about?

AIMA appreciates that issuers have an interest in issuing instruments whose maturities and coupon structures match their cash-flows, particularly where their borrowing relates to a specific purpose and term. This has led to a market structure in which a prolific number of fixed income securities can be traded, with many instruments from the same issuer bearing strong similarities, and yet sufficient differences so as not to be fungible.

While idiosyncratic bond issuance might be favourable from the point of view of individual issuers, the consequences of this for the functioning of the overall market are not welcome. In particular, the diversity of fixed income instruments that can be traded on the secondary market is a barrier to market liquidity and could also discourage investment in primary market issuance. We therefore support efforts on the part of supervisory authorities to support and advance market-led initiatives

that seek to promote standardization and the eligibility of products for electronic trading; examples of such initiatives include the ODRG oversight of ISDA's work to increase standardization of particular OTC derivatives asset classes in support of central clearing.

While the investor demand for standardization is probably greatest for larger issuers (given the depth of secondary market trading of their securities), we also believe that greater standardization could greatly improve the attractiveness of primary issuance to smaller issuers, by demystifying the issuing process and creating greater visibility as to the possibilities inherent in this type of financing.

We note that fostering standardization should not necessarily imply that issuance outside a standardized framework would no longer be possible; instead the focus as an initial step should be on supporting market-led initiatives that seek to promote standardized issuance.

Q7: Should the new issue process for bonds be made more transparent through the use of auction mechanisms, publication of allocations or some other route?

We believe that further work on this question is warranted.

Issuers frequently take a selective approach to distribution of debt and security, given that distribution decisions have a strong bearing on the performance of those products in the secondary market immediately after their issue. Similarly, the composition of bond holders is an important aspect of restructuring events when an entity faces financial difficulties.

That said, we believe that the degree of discretion that currently exists on the part of issuers can lead to unfair outcomes, particularly for smaller market participants who are less likely to be given allocations when those allocations are made through non-transparent processes.

Accordingly, we would encourage the authorities to explore further how auction mechanisms could be used to promote fairness, whilst not undermining issuers' ability to raise finance.

In foreign exchange:

Q8: Are there risks associated with internalisation and last look practices? Are there barriers preventing increased pre and post-trade transparency in foreign exchange markets?

We believe that there would be merit in exploring further the impact that enhanced transparency could have on the FX market. In principle, there are benefits to increased transparency. On the pre-trade side, improved transparency could enable participants to better identify available liquidity. On the post-trade side, it could serve to strengthen the value of market analytics. However, it would be important to proceed with caution, given that the FX markets generally functions well at present.

In commodities:

Q10: Are there any material barriers preventing greater transparency in OTC commodity derivatives markets? If so, what could be done to remove them?

AIMA notes that the regulatory reforms that are currently being implemented – notably MiFID II – will have a significant impact on the degree of transparency in FICC markets, as mentioned in our response to Question 1. Authorities will also have a clearer insight into the dynamics of market trading, through data gathered via trade repositories and position reporting of commodity derivative positions.

However, despite the extent of reform in financial markets, standards of transparency remain weaker in physical commodity markets. This complicates the process of calibrating transparency for associated derivatives products and risks creating competitive distortions between different markets and their participants.

We would therefore support further attention at the G20 level of transparency in agricultural and energy markets.

Regulatory measures:

Q11: Are there any areas of FICC markets where regulatory measures or internationally co-ordinated regulatory action are necessary to address fundamental structural problems that exist?

Whilst it is helpful to consider the extent to which regulatory intervention could be used to address structural problems, it is important not to lose sight of the fact that regulation itself can create barriers for firms seeking to operate in multiple markets globally.

A stark example of this can be seen in OTC derivatives markets reform, which has been characterized by disjointed implementation in the EU and US, leading to overlap of – and fundamental contradiction between – requirements that stem from the same initial political mandate. These issues are particularly pertinent in the funds context, as explained at length in previous AIMA submissions.[4]

Indeed, data compiled by ISDA suggests that over-the-counter derivatives markets have fragmented along geographical lines since the start of the swap execution facility (SEF) regime in the US on October 2, 2013. That trend has been especially notable for euro interest rate swaps, with European dealers opting to trade with other European parties.[5]

Similarly, we note a clear risk that insufficient attention is devoted to the cumulative operational and cost impact of new rules, as well as their effectiveness as regards the public policy goals they were intended to further - something that is apparent in the increasingly complicated and fragmented regulatory and public reporting requirements that exist in the financial services sector. Increased regulation can also run counter to the desire to foster competition, something illustrated by increased concentration among those firms that service the hedge fund industry (prime brokers; custodians; administrators).

Conflicts of interest and information flows

Q12: Where do potential conflicts of interest arise in the various FICC markets, and how do they affect the use and potential abuse of confidential information, both within and between firms?

Significant attention has been paid in the context of the MiFIDII reforms to issues of regulatory scope, particularly when it comes to physical commodity producers who are also active in financial markets. While the implementation of the new regulatory perimeter under MiFIDII is likely to change the existing dynamic, we believe it is worth noting the competitive distortions that exist due to the fact that the trading units of physical producers are not necessarily in-scope of the same set of regulation today as their financial entity competitors. This has implications both for the conduct obligations that apply and the capital treatment of those entities.

Q13: How can the vulnerabilities posed by such conflicts be reduced? Are existing internal structures and control procedures sufficient? Where they are not, are further internal management controls required (such as better trading floor design and/or closer monitoring of electronic communications within and between firms) or is more radical action required to remove conflicts altogether?

As noted in our earlier responses, where existing regulatory reform is still being implemented, then we believe it sensible to wait until implementation is complete before considering further reform measures.

[4] See http://www.aima.org/download.cfm/docid/64772F11-F066-414B-974E5CC984BEAE42
[5] See http://www2.isda.org/attachment/NjY0NQ==/Fragmentation%20study%20FINAL.pdf

Competition and market discipline

Q14: Is there a relationship between the level of competition in FICC markets globally and the fairness and effectiveness of those markets? What risks are posed by the increase in concentration seen in some FICC markets? In answering this, please have regard to the geographical scope of any relevant markets.

We believe that competition generally makes a positive contribution to the fairness and effectiveness of FICC markets and that the removal of barriers to geographical integration of markets is a positive development.

As noted in our response to Q.11, however, the implementation of certain aspects of the regulatory reform agenda has actually had an adverse impact on competition, increasing fragmentation of markets, and increasing regional concentration. This is particularly true when it comes to OTC derivatives reforms.

Promoting effective competition through market forces

Q15: To the extent that competition is currently ineffective in any of the FICC markets, are there market-led initiatives, technological or structural changes that may remedy this situation?

As noted in our response to Q.5, we believe that regulation could be used to support market-led initiatives to increase levels of standardisation in the bond market. We believe that increased standardisation would have a positive impact on levels of competition in the market.

Q16: Are there any lessons that can be drawn from experiences in other financial markets (or indeed other markets) about the ways that alternative or evolving market structures could impact on competition in FICC markets?

As noted elsewhere in this submission, the structure through which foreign market participants access a market can have a significant impact on competition.[6] We believe that IOSCO could play a role in ensuring that overlap and conflict between rules is minimized as far as possible, by: developing standards governing the scope of rules in different contexts; giving due consideration to cross-border issues in the development of sector-specific standards; and by developing formal hierarchies to specify which jurisdiction's rules should apply in a given situation.

Q17: How effective is market discipline in enforcing sound market practices in each of the key FICC markets? What could be done to strengthen it?

We note that the policy objectives inherent in regulation don't necessarily seek to reinforce market discipline to the extent that would be desirable. For example, restrictions on sovereign CDS trading put in place by the European Short-selling Regulation have drastically curtailed trading in a product that has an important risk management use, whilst also contributing to a more healthy market assessment of individual countries' fiscal and economic plans. Accordingly, we believe that when new regulation is being elaborated greater weight should be placed on an assessment of whether it serves to enhance market discipline.

Promoting effective competition through regulatory and legislative initiatives

Q18: In what ways might competition in any of the key FICC markets usefully be addressed by competition authorities (eg by assessing the state of competition in relevant markets)?

To provide a specific example, we note that clearing membership rules that have been put in place by CCPs according to EMIR requirements effectively exclude the vast majority of buy-side entities from becoming clearing members. This has a number of implications: for one, it means that buy-side entities remain reliant on sell-side entities for access to central clearing infrastructure, such that the sell-side have greater bargaining powers. Secondly, it lessens the degree to which buy-side entities are able to participate in the governance of a CCP and ensure that governance and loss allocation structures reflect their interests.

[6] See http://www.iosco.org/library/cross-border-taskforce/pdf/AIMA-written-submission.pdf

Benchmarks

Q21: Do current domestic and international initiatives by industry and regulators to improve the robustness of benchmarks go far enough, or are further measures required?

AIMA is supportive of efforts to ensure that critical benchmarks are protected from manipulation, given their vital role in terms of the functioning of financial markets. We therefore believe that the UK has taken a sensible approach in terms of developing a comprehensive regulatory framework in respect of benchmarks.

We are concerned, however, that the nature of reforms being finalized at European level through the Benchmarks Regulation is such as to undermine the likelihood that those regulatory measures will be effective in their goals. Specifically, the proposal is excessively broad in reach, such that it could ultimately capture a vast range of entities that generate indices in the course of their business.

It is also not sufficiently refined in terms of its approach to benchmarks administered by entities outside of the EU; while it does establish an equivalence framework, this supposes that other jurisdictions will implement rules in this area, which is clearly not a given. To fail to develop alternative mechanisms that are fully workable by which third-country administers could provide benchmarks in the EU risks fundamentally hurting the European financial industry.

Industry-level measures

Q23: What additional changes could be made to the design, construction and governance of benchmarks?

Far-reaching reforms of the benchmark setting process have already been put in place in the UK and will be extended in scope; at the same time, European-level reforms are close to being finalised. At this stage, therefore, we believe that sufficient attention has already been devoted to this area, and suggest that those reforms first be fully implemented before contemplating further change.

Regulatory action

Q25: What further measures are necessary to ensure full compliance with the IOSCO Principles for financial benchmarks by all benchmark providers?

In the first instance, we believe that it is important not to base any assessment of whether entities comply with the IOSCO Principles on an assessment of foreign jurisdictions' rules in this area – or at least not exclusively. Other jurisdictions have not necessarily sought to formalise the IOSCO principles in detailed regulatory standards, meaning that an equivalence framework based solely on an assessment of foreign rules would not work effectively.

Q26: How can the regulatory framework provide protection to market participants for benchmarks administered in other jurisdictions in a proportionate way?

As noted in our response to Q.21 and Q.25, our key concern is that the interests' of European financial markets could be hurt by a failure to properly accommodate the use of benchmarks administered outside of Europe.

Will these uncertainties be dealt with by current reforms?

Q30: How can the industry, firms and regulators improve the understanding of existing codes and regulations by FICC market participants and their managers?

As a minimum, we believe that a supervisory stock take of relevant codes would be valuable. This could be made available on the regulator's website and supplemented by a commentary on where the codes might be relevant and the elements that have an explicit link to relevant regulatory requirements and supervisory concerns.

Q31: Should there be professional qualifications for individuals operating in FICC markets? Are there lessons to learn from other jurisdictions — for example, the Financial Industry Regulatory Authority's General Securities Representative (or 'Series 7') exam?

We believe that professional qualifications are important for individuals operating in FICC markets. Given the diversity of roles, however, we do not believe that it would be appropriate to specify a single benchmark qualification for industry professionals.

Can the industry help to establish better standards of market practice?

Q32: What role can market codes of practice play in establishing, or reinforcing existing, standards of acceptable market conduct across international FICC markets?

We believe that industry standards can play an important role in terms of bridging the gap between regulation and practical implementation and ongoing compliance. However, we believe that it is better to focus more on how industry can foster sound practice, rather than setting threshold standards.

This is important from the point of view of ensuring that industry standards are viewed by market participants as useful and constructive and can be adopted in a way that makes sense in the context of their business. It can also provide regulators with a useful benchmark by which to assess which firms have made an effort to go beyond baseline compliance.

AIMA has developed a series of sound practice guides dealing with the core aspects of the hedge fund management industry, from valuations, to selecting a prime broker to central clearing. The document that is most heavily relied on in industry is AIMA's due diligence questionnaire to be completed by hedge fund managers for investors.

We continually update our material in light of the changing regulatory environment to ensure that what is described as sound practice reflects the legal underpinnings in the relevant area.

Q33: How would any code tackle the design issues discussed in Section 5.4.3, ie: how to ensure it can be made sustainable given industry innovation over time? How to differentiate it from existing codes? How to give it teeth (in particular through endorsement by regulatory authorities or an international standard setting body)? How to communicate it to trading teams? Whether, and how, to customise it for individual asset classes?

As noted above, we believe the test of whether a code 'has teeth' relates not to its use as a baseline standard, but whether it is used as a measure of good practice – incentivising firms to adopt the standard, but not necessarily penalising those who don't. A focus on mandatory adherence to particular code inevitably leads to them being developed with a very high level of generality, which reduces their value.

It is also worth bearing in mind that for globally active firms, there are multiple codes that apply sectorally and regionally, and those firms will have to design governance structures in a way that best responds to the overall global picture, whilst still having a single firm-wide set of standards. While it is appealing to envisage a single global code for FICC market participants, this is highly unlikely given the diversity of players and regulatory frameworks, and we believe that it is sensible to recognise that maintain a range of available codes of good practice that are tailored for sections of the market.

Should the scope of regulation be extended?

Q34: In the context of implementing MiFID 2, which of the FCA Principles for Businesses should apply in relation to MiFID business with Eligible Counterparties?

We believe that the most relevant Principles for Business in this regard are Principle 1 (Integrity) and Principle 2 (Skill, care and diligence).

Q35: Are there any financial instruments that should be brought more fully into the scope of regulation in order to improve the fairness and effectiveness of specific FICC markets? For any instruments proposed: (a) what protections does the current framework provide; (b) what gaps remain of relevance to fairness and effectiveness; and (c) what is the cost/benefit case, bearing in mind the Review's Terms of Reference as set out in Section 1?

We believe that it makes greater sense to focus on firm and individual behaviours, rather than build supervisory structures around specific products.

Firm-wide initiatives to improve incentives and governance

Q37: Do respondents' agree that the thematic areas highlighted in Section 5.5 are key priorities for FICC firms (fine-tuning performance measures; adjustments to remuneration; attitudes towards hiring, promotion and advancement; closer board involvement in governance of FICC activities; and clearer front line responsibilities)? What specific solutions to these challenges have worked well, or could work well? And how best can the authorities help to support these initiatives?

We agree that these are important priority areas for FICC firms.

Regulatory initiatives to improve governance and incentives

Q39: Are there other regulatory measures the authorities could take to strengthen personal accountability or otherwise improve the way firms manage incentives and governance? In particular, should any or all of the measures in the Senior Managers and Certification regime be extended to non-bank firms active in FICC markets?

We note the discussion under section 5.5 of the FEMR consultation document regarding the proposed Senior Managers and Certification regime (SMC). This will introduce three broad changes in the governance of firms that are subject to the SMC regime: Firstly, it will set out the allocation of detailed responsibilities to individuals within the firm holding senior manager roles and will allow for them to be held accountable for any failures in areas for which they are responsible. Secondly, the SMC will require firms to assess and certify the fitness and propriety of employees whose role presents significant risk of harm to the firm or its customers. Thirdly, the SMC will introduce a set of enforceable conduct rules which will apply to all senior managers and to their respective populations within the certification regime. The review notes the possibility of extending this regime to other types of firms (beyond banks, building societies and credit unions), to include participants such as hedge funds and interdealer brokers.

AIMA does not believe that an extension of the SMC regime to hedge funds or other wholesale market participants would be desirable or appropriate. For one, hedge funds are already subject to extensive government requirements that have recently been implemented through the AIFMD. We also believe that the fact that the hedge fund industry is characterised by a professional investor base means that the design of the SMC regime would not necessarily be a suitable fit.

Surveillance and penalties

Q40: What role can more effective surveillance and penalties for wrongdoing play in improving the fairness and effectiveness of FICC markets globally? How can firms and the industry as a whole step up their efforts in this area? And are there areas where regulatory supervision, surveillance or enforcement in FICC markets could be further strengthened?

Surveillance by supervisors and by the market is an important and powerful tool when it comes to revealing and discouraging wrongdoing by participants in FICC markets. It is clear from the examples of wrongdoing cited in the FEMR than an absence of effective supervision and enforcement can create an environment in which there is a greater likelihood of wrongdoing – whether at individual or firm level.

Whilst supervisory enforcement action – including against the principals of a firm – is important, we believe that the role of market discipline could also be exploited further.

In our discussions with members, many referred to the value of maintaining a supervisory structure in which it is possible for firms to interact with their supervisors on a relatively informal – or even anonymous – basis in order to raise their attention to aspects of market functioning or individual behaviours that might be inappropriate.

Firm level penalties

Q43: Could firms active in FICC markets do more to punish malpractice by other firms, for example by shifting business and reporting such behaviour to the authorities?

As noted in our response to Q.40, we believe that informal or anonymous reporting channels are an effective means by which market participants can engage with authorities in order to highlight potential areas of malpractice and to ensure that these are addressed. Such channels do exist currently, but we believe that more could be done to draw the attention of market participants to their existence and to encourage their use.

Regulatory level surveillance and supervision

Q44: Is the current supervisory approach and level of intensity dedicated to supervising conduct within the UK wholesale FICC markets appropriate?

AIMA believes that the UK's risk-based supervisory structure is generally effective; we note the value of the increased intension to supervision of issues on a thematic basis, rather than focusing exclusively on firm-level supervision. We also note the value that market participants derive from public guidance from the supervisory authorities, including through the FCA's MarketWatch publication.

Q45: Are there ways to improve the data on FICC market trading behaviour available to the FCA, whether through the extension of the regulatory perimeter or otherwise?

AIMA strongly believes in the value of data-led supervision and policymaking, and notes that many recent regulatory initiatives have sought increase the amount of data available to regulators in the course of discharging their regulatory functions. That said, there remain a number of shortcomings in terms of how data requirements have been designed and implemented, leading to a situation in which data is not necessarily playing as valuable a role as might be possible. These issues include: a lack of consistency in reporting fields in similar areas across jurisdictions globally, leading to increased operational cost for industry and difficulty on the part of regulators in terms of aggregating data; dual-sided reporting structures that lead to participants each reporting data on the same transaction, with no guarantee that those two reports can be matched; restrictions in terms of the extent to which regulators are able to share data with one another, leading to an incomplete view of systemic risk.

We believe that these sorts of difficulties could be overcome by a fundamental assessment of the data that it is being collected globally, with a view to rationalising and streamlining this to make sure that it fully addresses supervisory interests. At the same time, close engagement is needed with industry to ensure that regulators' needs have been fully understood and to ensure that data reporting requirements satisfy those needs – rather than creating a situation in which supervisors have ample data, but are not able to use to interrogate issues of particular importance to their supervisory activities.

Regulatory-level penalties

Q46: What further steps could regulators take to enhance the impact of enforcement action in FICC markets?

It is not apparent that increased levels of fines have fundamentally improved behaviours in FICC markets, although we believe that it is important to ensure that punishment of wrongdoing receives proper attention. It is important, however, not to create an environment where the incentives for working in a compliance role are outweighed by the personal risk that attaches to this line of work.

Q48: Is there a need to widen and or strengthen criminal sanctions for misconduct in FICC markets?

As noted in our response to Q.46, we note the level of personal risk that is associated with performing a compliance role. The structure of supervision and enforcement should not be such as to discourage qualified individuals from taking on compliance responsibilities.