16 June 2015

MiFID 2 Consultation,
Securities and Markets,
Financial Service Group,
HM Treasury,
1 Horse Guards Road,
London,
SW1A 2HQ

Email: mifid2consultation@hmtreasury.gsi.gov.uk

Dear Sirs,

HM Treasury Consultation on the Transposition of MiFID II – FIA Europe Response

We set out below our response to the question on third countries in chapter 2 (Third Countries) of the HM Treasury consultation on the Transposition of the Markets in Financial Instruments Directive II.[1]

In summary, our members are supportive of HM Treasury's proposals relating to third-country firms (TCFs) and agree that the UK Overseas Persons exemption regime should be maintained.

The current third country regime preserves and promotes liquidity and the functioning of the UK and international markets

The current third-country regime balances the need to maintain investor protection, market integrity and financial stability, whilst also ensuring that the United Kingdom remains open to international business. By facilitating the provision and performance of investment services and activities by a range of different TCFs in the UK, the UK Overseas Persons exemption affords such TCFs with the tools that they need in order to preserve and promote the liquidity and functioning of UK and international markets.

Today's regime is sufficiently tailored to the client types and risks in question - it recognises that different markets function in different ways and that different trading mechanisms are needed to support different instruments with different liquidity providers and different users of these markets.

The current third country regime promotes competition

The attractiveness of the UK Overseas Persons exemption promotes competition by providing clients and investors with flexibility as to how they choose to provide investment services or perform investment activities in the UK. Further, it lowers potential barriers for new entrants to the UK markets.

The risks posed by Article 39

If implemented in the UK, Article 39 of MIFID II would require TCFs that propose to provide investment services or perform investment activities to retail clients or professional clients in the UK to establish a branch in the UK.

In the view of FIA Europe's members, such an approach would likely result in the inverse of the above benefits: less liquidity, less competition in UK markets and higher barriers to entry into the UK markets.

[1] "Do you agree the UK should maintain its current third country regime and not implement Article 39 MIFID II? Please explain your reasons why and supply any evidence you have to support your answer."

The authorisation process set out in Article 39(2) seems unduly disproportionate and onerous.

For the above reasons, FIA Europe members therefore see value in maintaining the current UK approach, whereby (through the UK Overseas Persons exemption) TCFs can continue providing investment services to, and performing investment activities with, UK retail and elective professional clients without the need to establish a local branch.

We thank HM Treasury for their pro-active engagement with the industry during this consultation and welcome any opportunity to discuss our response further with HM Treasury's MiFID 2 consultation team.

Yours faithfully,

Simon Puleston Jones (CEO, FIA Europe)