THE TRANSPARENCY TASK FORCE

# 19th May 2017
# Transparency Task Force Response to the Investment Association's Draft Cost Disclosure Code

## 1. The purpose and status of this document

This document has been put together by members of the Transparency Task Force (TTF) to provide comment on the Draft Cost Disclosure Code that has been produced by the Investment Association (IA).

The IA's Draft Cost Disclosure Code has been of great interest to our community because the lack of transparency on costs and charges in investments is considered a major problem area, for all the reasons expressed by the Financial Conduct Authority (FCA) in their work on Transaction Costs in Workplace Pensions (CP 16/30) and their Asset Management Market Study.

## 2. About the Transparency Task Force

### Introduction

The TTF is a collaborative, campaigning community dedicated to driving up the levels of transparency in financial services, right around the world. We believe that higher levels of transparency are a pre-requisite for fairer, safer and more efficient markets that deliver better value for money and better outcomes to the consumer.

Furthermore, because of the correlation between transparency, truthfulness and trustworthiness, we expect our work will help to repair the self-inflicted reputational damage the Financial Services sector has suffered for decades. We seek to effect the change that the financial services sector needs and the consumer deserves.

Trust needs to be earned but the financial services industry routinely fails to earn it. This is a systemic problem with far-reaching consequences for all societies and all governments around the world.

The lack of transparency in financial services clearly contributes to this state of un-trustworthiness. By driving up transparency we will increase truthfulness; which in turn will improve trustworthiness.

### Committed campaigners

We believe that those of us who care about the sector and the people it serves can, and

should, work together to help put things right. Let's stand up, not stand by; and let's take heart from the famous quote by Margaret Mead:

"Never doubt that a small group of thoughtful, committed citizens can change the world; indeed, it's the only thing that ever has".

Market reaction has been extremely responsive to our clarion call for collaboration for the benefit of the consumer and the benefit of the reputation of the sector. Fortunately, there are many individuals within the sector who are not only honest enough to admit that the status quo is far from satisfactory; they are also willing and able to put time and effort into finding solutions to known problems.

In under 2 years we have developed eight teams of volunteers, each team focused on a set of transparency-related issues and desired outcomes; and each working on a project that will help to make a positive difference:

- The Banking Team
- The Market Integrity Team
- The Foreign Exchange Team
- The Costs & Charges Team
- The Stewardship & Decision-Making Team
- The International Best Practice Team
- The Scams & Scandals Team
- The PISCES Team

The TTF Teams seek to operate in a collaborative, collegiate and consensus-building way; focusing on solutions not blame.



## Free of commercial conflicts

The TTF is free to consider what is ultimately best for the consumer without commercial conflicts and we are perhaps unique in being made up of a truly pan-industry cross-section of individuals that includes market participants, researchers, academics, legal professionals and those formally representing trade bodies and professional associations. As such we are well-placed to establish consensus that does not merely reflect the wishes of one particular "tribe" or another. As such we are able to work to one simple and straightforward guiding principle: 'What's best for the consumer?'

## 'Sunlight is the best disinfectant'

That beautifully simple phrase sums up what the TTF is all about. We believe that financial services market behaviour is improved when it is visible; and conversely, that behaviour happening 'in the shadows' tends to be at the expense of the consumer.

This is because the financial services sector has been notoriously opportunistic with obfuscation and opacity; it has profited from things being kept hidden from the consumer; sometimes deliberately, sometimes not – things like the true costs of investing, the true performance of products and sometimes the true risks to the consumer of the products they buy.

This is having terrible consequences on two fronts: it completely undermines the efficient

workings of the market and it also jeopardises social justice. This is a state of affairs that must not be allowed to continue.

### Our strategy for driving the change that is needed

Our strategy for driving the change that is needed is to bring together two types of people:

1, Those with a sense of 'passion & purpose' about what needs to be done – such as ethically-minded financial services professionals, enlightened market participants, thought leaders, pro-consumer campaigners and leading academics;

2, Those with the 'power & position' to make it happen – such as regulators, politicians, financial services leaders, trade bodies and professional associations.

## 3. Should the IA be carrying out this work at all?

**This is a question of fundamental importance.**

**If you come at this question from the position of 'What is the best way for the asset management industry to defend its commercial interests from the ever-strengthening demands for transparency on costs and charges?' the answer is yes. In essence the IA's Draft Disclosure Code could be perceived as a damage limitation exercise for the IA and its members.**

**But if you come at the issue from the position of 'How can we provide investors with the best possible outcomes?' the answer is 'No'.**

**Why? – because the IA is a trade body. Understandably, trade bodies have a primary duty of care for the commercial interests of their members; they are clearly too conflicted to be responsible for the development of a costs disclosure code. The overall purpose of greater transparency on costs and charges is to improve the efficiency of the market and enable investors to get the best possible value for money.**

**As a trade body the IA works for its members, not for consumers; there is a serious conflict of interest as evidenced by the IA's unwillingness to wholeheartedly support the idea of putting the investors' interests first – an issue of such concern to the IA and its members that a clear majority of IA members were unwilling to sign up to a code that included the requirement to put the interests of the consumer first.**

**This is exactly the kind of behaviour that results in the Financial Services sector routinely being at the bottom of consumer trust ratings. Furthermore, the reputational damage this kind of behaviour causes must contribute to the UK's appallingly low savings ratio – just 3.8%, which is the worst it has been since 1963. This is a huge problem for our economy and society as a whole today and it has the potential to drive serious social unrest in decades to come - a systemic risk that must not be ignored.**

**In short**:

- We do not think that the IA can objectively introduce a Code that binds the asset

management industry.

- We do not support the FCA adopting the fund industry's trade body code i.e. we reject that the IA Draft Code should be recognised in the FCA's Rule Book.

- We encourage the FCA to issue its own draft code following consultation and the Asset Management Market Study.

We believe that it is far better if the sector as a whole works together~~,~~ to produce a 'blanket' solution that covers the entire value chain rather than a 'patchwork quilt of protocols'. A market-wide framework that captures the entire value chain is necessary to prevent manipulation of charges from transparent to opaque parts of the value chain. Moreover, only a 'blanket' solution lends itself to efficient monitoring and regulation; otherwise there will be rampant regulatory arbitrage.'

**There is much work to be done and it should all be properly conceived, initiated and led by the FCA; not a highly conflicted trade body. Turkeys don't vote for Christmas. Regulators are best placed to regulate and to lead the industry on behalf of consumers.**

It is absolutely vital for the public to have confidence in the financial services sector and they are more likely to have confidence in the financial services sector if the sector's Regulator leads activity and does not outsource key themes to trade bodies – it must not allow itself to be sold the idea that highly conflicted trade bodies might do their job for them.

The IA will always be pre-disposed to help show the asset management industry in a good light and to support the interests of the firms' owners; that is why it exists. Given the motive of the shareholders of many asset managers, any disclosure activities which impact the profitability of industry participants, will be resisted by the organisations themselves; clearly creating a conflict of interest.

We only need to go back to last August to see how highly motivated the IA is to show its members in a good light. The TTF and many others were highly critical of research carried out by the IA that was published in August 2016. The 'research' attempted to suggest that there was no evidence of significant hidden costs damaging investor outcomes. The IA challenged the suspicion that funds carry hidden fees which hurt returns, claiming it had found 'zero evidence' of such a trend.

The IA released a report announced by a press release entitled 'Hidden fund fees: The Loch Ness monster of investments?'. The Loch Ness monster theme ran through the rest of its press release, referring to 'hidden-fees hysteria' and suggesting 'hidden fund fees' may in reality be the 'Loch Ness Monster of investments'.

**However, this view was seen to be in direct conflict with mountains of highly respected academic research into the topic that had been built over decades and by numerous unconnected parties from all over the world. As a consequence, it is worth considering if the research and the churlish press release accompanying it seriously undermined the credibility of the IA and jeopardised good market relations.**

**In response to the mountains of well-founded and totally justified criticism from right across the industry, the IA stated that it was looking to 'press the reset button' after it had 'inadvertently upset people'.**

**Even the IA's own Independent Advisory Board on cost disclosure was unwilling to support the validity of the research; so much so that its Chair wrote a letter to the editors of several news publications stating that the Independent Advisory Board had not been consulted on the matter, and that it did not endorse the report. One headline read 'In-house advisory board turns on IA over 'Loch Ness' costs report.'**

**Given this background and conflict of interest, our view is that the IA is the very least suitable organisation to be entrusted with writing a costs disclosure code that has the potential to become part of the regulatory framework.**

Similarly, the FCA should not allow other trade Bodies to write the costs disclosure rules for their aspect the market; they will be invariably conflicted for similar reasons to those given above and secondly, the fragmentation will result in inefficient practices.

We believe this 'Patchwork Quilt' approach will result in inconsistency, confusion and even the potential for 'gaming'; issues so serious that they have the potential to undermine the efficacy of a robust regulatory framework and consumer confidence in the sector. The "Patchwork Quilt' approach has the potential to become a systemic risk.

So while we believe it is critical that the IA's draft code is NOT adopted as the rule book, we have answered the questions in an effort to make the draft code as good as it can be from an investors perspective whilst continuing to argue that it should be the FCA itself that leads regulatory and guidance activity in this space; and that they should look at the entire value chain, not just the asset management sector.

We believe this is the only way market confidence can be restored and we must not under-estimate the importance of general confidence in the market for investors, particularly pensions investors being automatically enrolled. The last thing the Government's flagship pensions policy success needs is to have its success jeopardised by a collapse in confidence in pensions savings which would manifest in rocketing opt-out rates. The Government must not gamble with the success of automatic enrolment and must therefore insist that the FCA takes full responsibility for leading the development of a robust cost disclosure framework.

Unfortunately, it seems we could be heading for exactly the kind of 'patchwork quilt of protocols' that will result in weak, inconsistent and virtually unenforceable regulation that has prevailed for decades; unless of course the FCA conclude that it should not be the trade body to the asset management sector that writes the rules. Codes that do not have any data verification process, which are voluntary in nature and only address one part of the market are an invitation for the kind of "Regulatory Whack-A Mole", "Gaming" and "Regulatory Arbitrage" that distorts an already distorted market. More 'kicking the can down the road', which is the last thing investors need.

Furthermore, it must be remembered that this is not the first time the IA has attempted to introduce a Disclosure Code. Does the IA simply lack credibility in this space?

With all that in mind we will now turn attention to responding to the Draft Code itself.

## 4. Responses to specific questions asked

**Q1.**

**Will the information contained in the templates along with the associated disclosures in Part IV of the Code provide pension scheme trustees and IGCs with the cost information they need to facilitate 'value for money' judgements?**

- **We do not think that the information contained in the templates is sufficient to provide pension scheme trustees and IGCs with the cost information they need to facilitate 'value for money' judgements.**

- **Our view is based on the fact that few costs are identified within the templates, with the majority of known costs left to be included in the three 'other' lines**.

- **This lack of prescription will lead to a lack of consistent disclosure as well as open the disclosures up to gaming.**

- **Trustees and IGCs will not be able to assess the nature of the services that are being paid for by the funds entrusted to their care nor will they be able to determine whether the aggregate represents value.**

- The inclusion of implicit transaction costs in the overall transaction cost figures will serve to distort, and likely render meaningless, these aggregate numbers as there is no consistent definition of implicit transaction costs.

- We note that the IA intends to use the definition of implicit costs to be determined by regulators later this year. However, we strongly suggest that these implicit costs be separated from the other transaction costs so that a consistent assessment can be made of the transaction costs that can be controlled.

- The templates also contain, in our opinion, too much non-core information. We propose that the data related to investment returns and investment activity be removed from the main template and be provided as supplementary information.

- The presence of these two sets of information serves to distract from the primary task at hand, namely the quantification of charges and transaction costs.

- The format of the disclosure templates themselves are potentially confusing. Is it the case that the use of templates is designed to be such that the segregated template is in monetary terms while the pooled fund template includes specific fields converting the percentage costs at fund level into monetary costs at client level?

**Q2:**

**Does the information in the Code provide MiFID distributors with the information they need to meet their cost disclosure obligations to clients?**

- This is not assured pending level 3 guidance for MiFID II and cannot be assumed or

inferred.

**Q3:**

**Does the information in the Code provide PRIIP manufacturers with the cost information necessary to create the KID?**

- This is not assured pending level 3 guidance for PRIIPs and cannot be assumed or inferred.

**Q4.**

**Is the approach within the template proportionate? Should there be further granularity in relation to asset classes and implicit costs?**

- The approach within the template is too high-level when it comes to fees, costs and charges. We feel that greater granularity is required in order to achieve consistent and relatively complete coverage.

- Leaving managers to capture most of the fees, costs and charges within the three 'other' categorisations creates the opportunity for the template to be gamed and for the end result to be inconsistent across managers.

- Any fees and/or costs that are explicitly deducted should be explicitly disclosed.
- An insight into the number of fees not clearly and/or explicitly mentioned can be gained looking at the management fees section for segregated funds. It is not clear what 'invoiced fees' covers – is this the managers' fee or more?

- Potential fees that do not seem to be explicitly mentioned on the template include: portfolio valuation, fund accounting, audit, performance reporting, monitoring for corporate actions, engagement and proxy voting services, bank account, credit facility, fees on committed but not drawn capital, own research (as distinct from payment to third parties for research), conferences, administration, benchmark licensing and prime brokerage to name a few. It is difficult to ascertain how complete the proposed template is and we therefore suggest the Code includes a list of all costs and charges that it does not include.

- We recognise that a complication is that some charges are paid at a business level (say between asset manager, ACD, custodian and counterparties) which may cover a number of funds, general business, rather than be deducted accurately and explicitly from each fund. Currently it is difficult to identify which costs are levied and reported against a firm's balance sheet, which against the fund and which are internally charged by the firm to the fund.

- The lists of potential fees, costs and charges not detailed is even more extensive for transaction costs and auxiliary services.

- The template currently explicitly excludes hedge funds and private equity yet many institutional, and some individual, investors invest in these categories. Consequently,

we propose that the template be extended to cover these categories, and their related charges, too. There are other fee disclosure initiatives related to these categories that the IA might want to co-ordinate with, for example the ILPA reporting template for private equity, to ensure the creation of a single, consistent template.

**Q6.**

**Are there specific areas of cost disclosure that require additional consideration?**

- We propose that implicit transaction costs be separated into its own section of the template. This separation will allow the balance of the figures to be used for comparison without the distortion of implicit transaction costs.

- Similarly, any items required by one (regulatory) body/region but not others can then be easily added for the purposes of that comparison without disturbing the core disclosures.

- All forms of trading costs, slippage costs and derivative costs need to be properly accounted for

**Q7.**

**What would be the framework for ongoing development and maintenance of the Code?**

- We feel the any costs disclosure code needs to be conceived, initiated and owned by regulators rather than industry participants. Market participants can, and should provide input into the regulator's work.

- The nature of the disclosures contained in the code impacts the profitability of industry participants, creating a conflict of interest.

- The cost disclosures are intended to protect investors from detriment and should, consequently, be the property of bodies charged to protect investors.

- The levels of distrust towards the Asset Management industry are simply too high for the market to have confidence in entrusting such work to a conflicted trade body (See the FCA's Asset Management Market Study for many reasons why trust in the sector has been undermined).

## 5. Other reasons why this Draft Code should be rejected

1. **It is absolutely vital that the interests of Retail Investors are properly protected as well as Institutional but the IA's Code does not look after the interests of Retail Investors. Failure to do so will seriously undermine consumer confidence even further. This is a major flaw in the Code that will create Regulatory Arbitrage and distort an already distorted market even further.**

2. We are concerned that the IA's proposal of oversight is tantamount to self-regulation: "During the consultation period, the IA will also be discussing with regulators and the Advisory Board how to put in place an ongoing governance structure that allows industry, client groups and regulators to monitor its success and identify areas for further evolution over time. The IA would welcome feedback on this as part of the consultation."

3. P18: The proposed methodology would need to ensure both the turnover costs of underlying assets and of the fund of funds structures would need to be captured rather than simply aggregating the underlying fund turnover costs. "Fund of funds: transaction costs and Portfolio Turnover Rate (PTR). Aggregate reporting will pick up all transaction costs in a given strategy."

4. We disagree that transactions cost should be viewed differently to other costs, whilst variable they are a reduction on the net return to the investor albeit deducted before the Net Asset Value of the fund is priced. "Unlike charges, transaction costs should always be viewed in the context of the return they generate and the investment approach followed. Transaction costs do not have a linear relationship to overall return as the OCF does. Two fund managers could incur considerably different transaction costs, but deliver the same return before fees. The level of the charge will determine the net outcome." The impact of trading is frequency multiplied by the size and riskiness of each trade.

5. As many fund managers including passives may have proprietary trading versus those who use brokers or dark liquidity pools and MTFs then an investor will find it difficult to discern trading cost from portfolio management. We suggest an encompassing figure is needed. One that removes offsetting income such as stock lending, selling research and Reverse Repo actions

6. We disagree with this statement as while implicit costs are variable and difficult to identify, they are certain. "Implicit costs, on the other hand, cover a variety of impacts, not all of which are measureable with any high degree of certainty."

7. We disagree with this definition since most trades are identifiable on an order driven system like SETS and centrally cleared, even if the identity of respective parties are not necessarily disclosed. "Implicit costs are those that do not result from any fees being paid as a separately identifiable amount by one party to another."

8. **'Table 1: Main costs of trading': We note that earnings from stock lending operations, not passed to the investor is not specifically noted. We believe any retained revenue is a net charge to the investor.**

9. We generally agree with the data points listed but welcome the inclusion of other data points identified. E.g. Costs relating to transfer agency and in-specie transfers.

10. Segregated Mandate and Pooled Fund template, we seek clarification that any reduction in Gross Income from Stock-lending is captured as a cost to the end Investor; rather than Net Income offsetting costs. This would appear consistent with

the IA's statement on page 49 "Any earnings from securities-lending (more generally any efficient portfolio management technique) not paid to a unit-linked fund is to be treated as a cost and disclosed as such; as should any other payments to securities lending agents."

11. There is a risk that the IA Code undershoots the final Template used for MiFID II / PRIIPs etc. This is serious a risk and generally an unwelcome outcome so consideration needs to be given to whether the IA template is sufficiently defined to captures all relevant costs. The final code must be fully MiFID II and PRIIPS compliant.

12. PTR calculation - typically assumes half purchases & sales. Every transaction incurs a cost on both sides of the trade. The model shown is inadequate and there are better approaches to determining PTR.

13. Costs for pooled funds are based on percentage at fund level. Share class level may identify variances (higher and lower) and we suggest reported figures should be in monetary amounts. We suggest the Fund Manager should present the cost specific to the share class and note the highest cost share class.

14. The Code lacks an explicit library of costs captured. Some cost items are in scope but apply to areas such as private equity and hedge funds (which are not in scope).

15. **Definitions section: the definitions are not sufficiently comprehensive and lack legal precision. This is a major failing of the Code that will lead to inconsistency, confusion and 'gaming of the system'.**

16. **There is no control framework in place to validate the quality of the data. This is a major failing of the Code that will lead to inconsistency, confusion and 'gaming of the system'.**

17. **In section "Granularity of Reporting": "Areas of cost that may be outside mainstream services" We disagree that any costs are identified purely as 'other costs' and believe there should be a standard template for each asset class if necessary so cost categories exclusive to any asset type can be catered for as standard. This is a major failing of the Code that will lead to inconsistency, confusion and 'gaming of the system'.**

## 6. Comments on the Independent Advisory Board

### Background

As explained, we do not agree that the IA should be producing a Disclosure Code. Not only has that point been made in this Consultation Response it was also made to the IA at a meeting on 19th April 2016, when the TTF argued that rather than the IA developing its own Code for its members and its part of the market, the IA should instead work collaboratively with all interested stakeholders, to create a comprehensive solution for the industry as a whole.

Unfortunately, the IA decided against a truly collaborative, pan-market approach and decided to push forward with its own Code. The IA then invited the TTF to be on its Independent Advisory Board on Costs Disclosure. The decision to be involved, or not, wasn't straightforward. On the basis that the IA were to be pushing ahead with the development of a unilateral Code for their members anyway, it was decided on balance that, subject to reassurances, it made sense for the TTF to be represented on the Independent Advisory Board with a view to positively influencing the outcome as best as possible on behalf of the end-investor.

The TTF were reassured that the Independent Advisory Board would provide truly independent oversight of the development of the Disclosure Code and that the whole exercise was not merely just part of a PR exercise for the IA. At no time in making the decision to be involved were the TTF made aware that the Advisory Board would operate 'in secret'.

## Off to a bad start

On the morning of Monday 4th July the IA informed the TTF that the work of the Independent Advisory Board would operate without members of the Advisory Board being able to comment on developments until after the Draft Disclosure Code had been published, i.e. that its meetings would be 'closed'. Note, it was the IA and not the Chair of the Advisory Board that stated the proceedings would take place on a completely closed basis. That decision was relayed by telephone call between the IA and the TTF just minutes before the start of the first meeting, well after the TTF had accepted the invitation to be involved.

That was a particularly difficult telephone conversation as much of it was spent discussing the fact that the IA were very unhappy with an article that had been published by the Financial Times (FT) the preceding Friday, on 1st July. The title of the FT article being discussed was: *Fund chiefs 'seek meal expenses from pension savers'.*

The FT's article had been written as a result of the publication by the TTF of its research on costs and charges on 1st July. That research was presented at a meeting to numerous industry bodies, journalists, market participants and various Regulatory officials.

The IA had been in dialogue with the FT prior to the FT's article being published on the Friday evening ahead of the article being published online. The IA were unhappy about the FT's planned article, claiming that it was inaccurate, sensationalist and damaging. Our understanding is that the IA were encouraging the FT to change the article prior to it appearing in print the next day. The FT, however, concluded that the article was factually correct and would be publish it regardless of how the IA felt about it, because it was factually correct.

Similarly, the TTF's view was that if the proposed article was factually correct it should not be altered regardless of whether the IA found it unhelpful; that was the thrust of the TTF's comments to the IA the following Monday, minutes ahead of the first meeting of the Advisory Board.

The decision that the Independent Advisory Board on Costs Disclosure be made to operate without disclosing its activity until after the Draft Code had been published may, or may not have been connected in some way to the FT's *Fund chiefs 'seek meal expenses from pension savers'* article; for it is perfectly possible that the timing of the two developments were completely coincidental.

Given the very nature and purpose of the TTF, it was then profoundly bizarre to be involved

with an Independent Advisory Board on Costs Disclosure without being allowed to disclose any of its activity; the situation couldn't really be more ironic. Unsurprisingly, some within the TTF felt that the best thing to do would be to leave the Advisory Board and that certainly would have been the easiest thing to do, for sure. So, another difficult decision was to be made, and one that on balance concluded with the idea that if the TTF were not involved it could not have any influence for the benefit of the consumer; nor could it eventually report on the workings of the Independent Advisory Board, for the sake of transparency.

To make matters worse, various articles appeared in the press that seemed to indicate that the Independent Advisory Board members including the TTF had in some way been involved with the decision to hold meetings in secret i.e. as if some inclusive, consultative process had been followed; but that was not the case at all. In fact, it seems as though the non-disclosure decision had been made following discussions between the IA itself and either just the Chair of the Independent Advisory Board or the Chair of the Independent Advisory Board plus a very small number of Independent Advisory Board members. One thing is for certain - the TTF had not been party to any such discussion and were wholly against the idea of meetings being held in secret. The decision had been made; and was presented to the TTF as a fait accompli.

Interestingly, the TTF had to stop a misleading letter being sent to Professional Pensions on the 'secret meetings' matter; the original version of that letter (from the Chair of the Advisory Board but who was writing in his capacity as the Chief Investment officer at NEST as opposed to his capacity as Chair of the Independent Advisory Board) to Professional Pensions inferred that all members of the Advisory Board had agreed to holding closed meetings, which was not the case at all and had it been published would have perpetuated the misunderstanding that was developing in the market that the TTF had willingly agreed to 'secret meetings'. That misunderstanding was undermining the integrity of the TTF and causing a totally unfair but completely understandable backlash against it. Fortunately, when challenged, The Chair of the Independent Advisory Board agreed to correct the misleading point that he would have otherwise made; the final version of the letter to Professional Pensions showed that it was only the Chair of the Independent Advisory Board who had been involved with the 'meetings in secret' decision and not the other members of the Independent Advisory Board.

## From bad to worse

In general terms, the TTF's experience of the Independent Advisory Board thus far has been wholly unsatisfactory and extremely disappointing.

In our view it would have been better if:

1. The Independent Advisory Board had operated as if it were fully independent

2. The meetings had not been held on a closed basis

3. The first draft of the Terms of Reference for the Independent Advisory Board had not been written by the IA

4. The Terms of Reference had been far more robust and challenging; i.e. more in line with what the IA's publicity about the Independent Advisory Board had conveyed. For example, despite being pressed on the matter extensively by the TTF, the Chair of the Advisory Board rejected the inclusion of the phrase 'fully comprehensive costs disclosure' being included in the Terms of Reference, despite the fact that the IA's

own publicity about the Advisory Board had inferred that the Independent Advisory Board would be looking to ensure fully comprehensive and complete costs disclosure by asset managers. The relevent parts of the 4th July press release about the Independent Advisory Board issued by the IA are:

*…The Board will ensure the project delivers on its aim to create a standardised, **fully Comprehensive** Disclosure Code for asset managers to disclose investment costs. …Mark Fawcett, Chair of the Disclosure Code Advisory Board, said: "This initiative has the potential to help the investment and pension industry take significant steps towards greater transparency of investment transaction costs. "It's vital that as an industry we're able to create a consistent disclosure framework if we're to make progress reaching this goal. "I look forward to collaborating with a talented team to shape a **comprehensive** disclosure code." …Jonathan Lipkin, Director of Public Policy at the Investment Association, said: "In line with previous commitments, we are building a framework that can provide consistent and **complete** information about charges and transaction costs…*

5. Similarly, it would have been better if the Terms of Reference required the disclosure of any actual or potential conflicts of interest amongst Independent Advisory Board members (another suggestion by the TTF that was rejected).

6. The minutes of the Independent Advisory Board meetings had been written up by the Independent Advisory Board, not the IA

7. The minutes of the Advisory Board meetings had been produced in a timely manner, because there was often an unsatisfactory interval between meetings and when the first draft of the minutes were produced by the IA – several weeks in some cases. This made it difficult to verify whether the minutes were accurate; and that's particularly problematic if ever there was disagreement about whether the minutes reflected what actually occurred in meetings

8. The IA had not acted as secretariat to the Independent Advisory Board

9. The Independent Advisory Board and/or the IA properly publicised the fact that minutes of the meetings were being published; especially as it had been a hard-fought concession to gain agreement for the minutes to be published; as had been the decision to publish the Terms of Reference itself

10. The Independent Advisory Board had ensured that the IA's Draft Code looked after the needs of retail consumers. It is a major flaw that is does not.

11. The Advisory Board had agreed to allow known costs and charges experts who were not on the Advisory Board to be seconded on to it for their valuable expert input. The TTF established that key individuals with a wealth of knowledge and experience on costs and charges (some of whom had been campaigning for greater transparency on costs & charges for approaching ten years) were willing to provide their input at no cost. But, despite being pressed to make use of this obviously useful resource the

suggestion was repeatedly rejected.

12. The Independent Advisory Board had made an appropriately critical comment about the IA's 'Loch Ness Monster' research in its own Report on the process that led up to the publication of the Draft Code (a Report that the TTF decided it could not endorse), despite the fact that the Independent Advisory Board had decided it would not endorse the 'Loch Ness Monster' research and despite the fact that the Chair of the Independent Advisory Board had publicly commented that the Independent Advisory Board would 'not pull its punches' when producing its Report

13. The IA had made a public apology to costs transparency campaigners about the infamous 'Loch Ness Monster' research. They were asked to make a public apology (by the TTF) because the IA's press release suggested that people looking for hidden fees were foolish. The IA chose not to make a public apology, which turned an already awkward relationship between the IA and the TTF into a *very* awkward relationship between the IA and the TTF

14. The TTF had been allowed to liaise with more than just 6 of its members when seeking opinion and input on the Disclosure Code; and if those individuals had not been forbidden to speak to any other party about what they were told outside that group of 6. Given the fact that the whole exercise was about the development of a *disclosure* framework the amount of secrecy and general lack of openness and transparency being displayed was simply absurd.

15. Meetings of the Advisory Board were planned well ahead. Because they weren't, many individuals were unable to attend all the meetings; even the Chair of the Advisory Board was unable to attend two of his own meetings.

16. The Advisory Board had been able to consider more than just one proposal for the Disclosure Code. The expectation had been set that we would be free to consider several approaches but in the end we were just asked to provide comment on what was essentially the LGPS Code.

17. The IA had not responded in a defensive manner when challenged; for example, when challenged on whether the Draft Code was actually as fully comprehensive as it was described to be

18. The Independent Advisory Board had pressed for the IA to include a list of all the costs and charges not covered by the Code within the Code.

19. The IA had answered all questions put to it. For example, the IA failed to answer questions (despite being chased in writing on numerous occasions) on whether any communication between Advisory Board members that excluded members of the IA had been shared with the IA; and also which member of the Advisory Board had allegedly (according to the IA) briefed the FT ahead of the FT publishing their *Fund chiefs 'seek meal expenses from pension savers' article*; and also whether the Independent Advisory Board was actually independent

20. The Advisory Board had properly concluded discussions on the question ‘what is the true purpose of the Advisory Board?’ This so-called ‘existential’ issue had been discussed at length but not concluded. In fact, during those discussions one member of the Advisory Board (not representing the TTF by the way) had even mentioned the possibility that that perhaps the real purpose of the Advisory Board was to ‘give the IA air cover for when the Draft Code is published’.

## 7. Conclusion

The Transparency Task Force is a collaborative, campaigning community dedicated to driving up the levels of transparency in financial services. We believe that greater levels of transparency are a pre-requisite for fairer, safer and more efficient markets that will deliver better outcomes and better value for consumers.

Furthermore, because of the correlation between transparency, truthfulness and trustworthiness we hope and expect that our work will help to repair the self-inflicted reputational damage the sector has suffered for decades.

Our conclusion is that the IA cannot objectively introduce a Costs Disclosure Code.

We do not support the FCA adopting the fund industry's trade body code i.e. we reject that the IA Draft Code should be recognised in the FCA's Rule Book.

We encourage the FCA to issue its own draft code following industry-wide consultation and the Asset Management Market Study.

We believe that the Independent Advisory Board has failed to perform adequately as an independent Advisory Board. As a consequence, a golden opportunity has been missed to help rebuild trust and credibility for the asset management sector, which is so desperately needed.

Our firmly held belief is that ‘sunlight is the best disinfectant’ and as such we hope that this response to the IA’s Draft Code and our observations about the shortcomings of the Independent Advisory Board as we see them are all taken in the spirit in which they are meant – fair, reasoned and balanced constructive criticisms intended to encourage the IA and the Independent Advisory Board to raise their game.

(E&OE)

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