bvca
Invested in a better future

Consumer Investments Advice Policy
Financial Conduct Authority
12 Endeavour Square
London
E20 1JN

By email: cp24-24@fca.org.uk

28 March 2025

Dear Consumer Investments Advice Policy,

RE: CP24/24 The MiFID Organisation Regulation – Chapter 4

The British Private Equity and Venture Capital Association (BVCA) is the industry body and public policy advocate for the private equity and venture capital (private capital) industry in the UK. We represent the vast majority of all UK-based private capital firms, as well as their professional advisers and a large base of UK and global investors. In 2023, a total of £59.6bn was raised by UK-managed funds to be invested globally, with £20.1bn having been invested by private capital into UK businesses in sectors across the UK economy. There are over 12,000 UK companies backed by private capital which currently employ over 2.2 million people in the UK. Most are outside of London and 90% of the businesses receiving investment are small and medium-sized enterprises (SMEs).

We welcome the opportunity to provide feedback on the discussion points raised in Chapter 4 of CP24/24. Changes to update and enhance proportionality in UK MiFID are needed to ensure that the UK's regulatory framework remains fit for purpose and aligns with the FCA's secondary objective on the international competitiveness of the UK and growth. The resulting consultation will be an important opportunity to create a more competitive, proportionate and effective regulatory framework under UK MiFID, better aligned with the needs of the UK market and the government's ambition for growth.

Private capital plays a crucial role in supporting economic growth, job creation, and investment in high-potential businesses. Ensuring that the regulatory framework is tailored to better suit the UK market and promote the growth and competitiveness of the financial services sector will be key to maintaining the UK's attractiveness as a place to locate a private capital firm and invest. In particular, we urge the FCA to take important steps to reform client categorisation rules, which are a persistent source of friction for private capital firms and investors. The current opt-up test, based on rigid quantitative criteria designed for liquid investments, is poorly calibrated for private markets. This prevents experienced and sophisticated individuals – such as firm staff participating in co-investment, senior executives of portfolio companies, and ultra-high-net-worth investors – from being treated as professional clients, even where their knowledge and understanding of the sector is clear. This acts as a barrier to investment and participation. We strongly support the FCA's proposal to return to the qualitative opt-up test, which would allow firms to conduct more holistic assessments of client expertise and experience and remove unnecessary regulatory obstacles.

Looking to longer-term structural reforms, the FCA has a unique opportunity to revisit elements of the MiFID regime that were never well-suited to the UK's private capital industry. MiFID was originally developed with liquid, retail-facing financial markets in mind and not for negotiated and long-term investments in private capital involving largely professional investors. For example, prescriptive disclosure rules, such as those requiring detailed ex-ante cost breakdowns, often result in irrelevant or impractical information for professional investors in private capital funds. Similarly, rules on best execution, telephone taping, and inducements create obligations

that add little investor benefit in the context of unlisted, negotiated transactions, but introduce material compliance costs. Revisiting these rules to better reflect the nature of private capital would help level the playing field globally (e.g. with the U.S.) and strengthen the UK's position.

We also encourage the FCA to consider broader rationalisation of overlapping and duplicative regimes that affect UK-based private capital firms. For example, firms that are Alternative Investment Fund Managers (AIFMs) with MiFID top-up permissions are currently subject to both the Alternative Investment Fund Managers Directive (AIFMD) and MiFID remuneration codes, often requiring the "strictest of" approach that lacks flexibility and undermines competitiveness. Similarly, the full application of the Investment Firm Prudential Regime (IFPR), including regulatory capital, remuneration and Internal Capital Adequacy Risk Assessment (ICARA) requirements imposes significant burdens without there being commensurate risk. Reforming the requirements to enhance proportionality for UK private capital firms would help to level the playing field with EU-based counterparts and help to improve the UK's attractiveness as the European home for private capital.

We therefore welcome the FCA's engagement on these issues and look forward to the resulting consultation proposals, which we hope will help to enhance proportionality and advance the international competitiveness of the UK's regulatory regime for private capital.

We have only responded to the questions on which BVCA members have specific views.

Immediate Opportunity for Rationalisation

Question 21: Do you agree that it would benefit firms to rationalise SYSC 10?
We agree with the FCA that the current conflicts of interest rules at SYSC 10 are unduly complex to navigate and that streamlining of these rules would potentially be beneficial.

However, any rationalisation would need to be undertaken carefully to ensure that it does not result in inadvertent changes in scope or substance of rules which may create an implementation burden on firms without a corresponding benefit. In this respect, we agree with the FCA that whilst the conflicts of interest rules applicable to different types of firms are substantively similar, careful consideration will be needed as to whether small differences in language give rise to substantive impacts for firms.

Additionally, firms should not be expected as a matter of practice to revise their conflicts of interest policies (which will often mirror and apply the current technical drafting of relevant conflicts rules) simply for the sake of conforming to newly streamlined rules.

It is important that rationalisation does not mean imposing a "strictest of" ruleset across all types of firms. Instead, we consider this is an area where a high-level, principles-based conflicts of interest rule could be applied across multiple sectors or firm types in a proportionate manner. Specifically, we would suggest that any new rule be drafted in a principles-based manner to allow for application to different types of firms and activities, and that the proportionality principle that currently applies to insurance distribution activities under SYSC 10.1.7A be explicitly extended to all types of firms and activities.

"Preventing" conflicts

There are various rules that currently require firms to take steps to "prevent" conflicts, for example under SYSC 10.1.3R, SYSC 10.1.7R and SYSC 10.1A.4R. These rules are drafted in slightly different ways, with some appearing to require firms to take steps to "prevent" conflicts from arising altogether and others clarifying that firms are required to take steps to "prevent conflicts form damaging the interests of the client". We understand the latter drafting reflects the underlying policy aim of the relevant conflicts of interest rules. We therefore request that

any new conflicts of interest rule be clear that any obligation on firms to "prevent" conflicts is to prevent damage to clients' interests, rather than to prevent conflicts from arising at all (which is not always possible).

Role of disclosure and informed consent in conflicts management

We also ask the FCA to consider the role of disclosure and informed consent in the context of a firm's management of conflicts of interest. The current conflicts of interest rules and guidance applicable to MiFID investment firms indicate that disclosure should only be used as a measure of last resort, where effective organisational and administrative arrangements established by the investment firm to prevent or manage its conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the client will be prevented. We suggest that any rationalised conflicts of interest rule should acknowledge that disclosure and informed consent can be an appropriate means of managing conflicts in accordance with English law more broadly, particularly in the case of professional clients. (We note that disclosure and informed consent is a common approach to conflicts management in the U.S.)

Question 22: What differences between conflicts rules for different types of activity do you think need to be maintained in a rationalised SYSC 10?

Subject to the considerations highlighted above, the BVCA would support a shift towards more overarching rules governing conflicts of interests that are consistent with a principles-based approach to regulation. We do not see a strong need to maintain differences between different types of activity as the general principles of conflicts management can be applied effectively to all types of activities.

In particular, we do not believe the specific requirements for AIFMs under SYCS 10.1.23 to 10.1.26 are materially additive. For example, the references to "an AIF or the investors in that AIF" create uncertainty, as this suggests that the interests of the AIF and its investors may be different, whereas firms would typically consider the interests of the AIF to be essentially the same as the interests of its investors as a whole (in their capacity as investors in the AIF).

Question 23: Do you agree that it would be beneficial to rationalise these requirements?

Best Execution

We believe that any rationalisation of the best execution rules that would involve substantive changes to the existing regime, or any tailoring to reflect different roles in the execution chain, would require a fuller industry consultation.

Best execution is generally not a relevant concept for private markets (with the exception of situations where a manager acquires listed securities or listed debt instruments). This is because no meaningful "order", "execution venue" or "execution data" exists for private capital transactions in unlisted securities, which are typically bilaterally negotiated transactions.

This position is recognised in Recitals (45) and (46) of the AIFMD "Level 2" regulation, as follows:

- *AIFMD "Level 2" Regulation – Recital (45)*
  "Investors in AIFs should benefit from protection similar to that of AIFM clients to whom AIFMs provide the service of individual portfolio management, as in such a case they have to comply with the best execution rules laid down in Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC(4) and Directive 2006/73/EC. However, the differences between the various types of assets in which AIFs are invested should be taken into account, ***since best execution is not relevant, for instance, when the AIFM invests in real estate or partnership interests and the investment is made after extensive negotiations on the terms of the agreement. Where there is no choice of different***

execution venues, the AIFM should be able to demonstrate to the competent authorities and auditors that there is no choice of different execution venues.*"*

- *AIFMD "Level 2" Regulation – Recital (46)*
  "For reasons of consistency with requirements applying to UCITS managers, rules on handling of orders and on aggregation and allocation of trading orders should apply to AIFMs when providing collective portfolio management. ***However, such rules should not apply where the investment in assets is made after extensive negotiations on the terms of the agreement, such as investment in real estate, partnership interests or non-listed companies as in such cases no order is executed***."

It would be helpful if the FCA could expressly confirm that this approach can be applied by firms to private capital transactions generally, regardless of whether the firm is licensed as an AIFM or as a MiFID firm.

Personal Account Dealing
BVCA member firms would support rationalisation of the personal account dealing rules under COBS 11.7 and COBS 11.7A to achieve a common set of rules. Having two different regimes is unduly complex and causes challenges in practice as it not always intuitive to determine which of the two regimes applies to a given fact pattern.

We recognise that any substantive rationalisation would need to be the subject of a more fulsome consultation and appropriate analysis of the differences between the two regimes. However, as a general proposition, the BVCA considers that the rules in COBS 11.7 are clearer and more effective than the MiFID-derived rules in COBS 11.7A.

More Complex Opportunities for Rationalisation

Information and Disclosure Requirements
Question 24: Do you have any specific suggestions for which disclosure requirements could be rationalised? This does not include CCIs.
The MiFID II information and disclosure requirements extended a broad range of quasi-retail disclosure requirements to professional clients. These disclosure requirements are overly prescriptive and were not designed with private markets in mind. In practice this means that private capital firms are required to provide their professional clients with mandatory disclosure information that is often not useful or meaningful for the recipient and is burdensome and costly for the firm to provide.

In particular, the disclosure requirements under COBS 6.1ZA, particularly those relating to costs and charges, present significant practical challenges due to their lack of flexibility to accommodate private markets, and the resulting disclosures are often not meaningful to the client. For example, during the life of a typical 10-year private capital fund there will be many costs and charges that cannot be quantified definitively from the outset – for example, the acquisition costs that will be associated with future transactions. The template for costs and charges disclosure at Annex II of the MiFID Org Regulation (reproduced in COBS 6 Annex 7) is overly prescriptive and does not allow firms to adapt disclosures as appropriate for their business models. Another example is the requirements relating to packaged investment services / products under COBS 6.1ZA.16, where the required disclosures do not make sense or add value in a private capital context.

We appreciate the benefits of specifying standard formats or content of information and disclosures to be provided to retail clients, to aid understanding and comparability. However, it would be helpful if the FCA could consider allowing firms to tailor disclosures as appropriate and proportionate to their business model, taking into consideration the sophistication of the clients receiving relevant information. In particular, we consider that retail-focused, prescriptive aspects of any revised rules should be either disapplied automatically for

bvca
Invested in a better future

professional clients and eligible counterparties, or that an opt-out should be available for professional clients and eligible counterparties, who are by their nature sufficiently sophisticated and knowledgeable to make this decision.

We consider that the detail of any new disclosure and information requirements should be subject to separate consultation.

Client categorisation

Question 26: Could the per se categories be simplified in other ways, eg , replacing different types of authorised firm listed separately with 'authorised person'? Or harmonising the differences in certain thresholds within the wholesale categories which differ for MiFID and non-MiFID business?
The BVCA would support widening the scope of the per se professional categories, to expressly include fund SPVs and other "below the fund" vehicles. These entities are professional clients/investors in all practical respects, as they are controlled by the relevant fund and are used as a means to deploy its capital.

We would also support simplifying the categories of per se professional by having a single "authorised person" category, as the FCA suggests.

Question 27: How important is it to your clients to have the ability to opt up to professional client status? What are the benefits to clients of opting up eg is there a cost saving from lower fees and /or better pricing?
Please see our response to question 28 below. In summary, BVCA member firms need the ability to opt up certain investors to professional status for financial promotions purposes.

Question 28: Do you think we should change our rules in relation to opting clients up to professional status? If yes, would you support any of the approaches suggested above, or a combination of these? Are there any alternative approaches you would suggest?
For BVCA member firms, client categorisation is straightforward in most cases, since those firms' regulatory clients are typically funds managed by them or other regulated group entities, which are per se professional clients. Most investors in private capital funds are also per se professionals (e.g. pension funds, insurers, funds-of-funds etc.)

However, BVCA member firms do encounter client categorisation issues in practice, where they need to opt up certain investors to professional status to comply with the relevant financial promotion rules. These investors tend to fall into one of three categories:

1. staff of the firm (including employees, former employees and immediate family members) participating in employee incentive arrangements;
2. highly experienced entrepreneurs and c-suite executives from companies with whom the firm has invested previously and who understand the private capital ownership model; and
3. extremely wealthy individual investors (often in excess of $50m) who typically invest in private capital outside the UK.

We wish to clarify that in the private capital context, only a very limited range of experienced and/or wealthy investors is permitted to invest and needs to be opted up to professional status for this purpose. We are not proposing to expand the scope of the opt-up rules beyond these narrow parameters to allow more general public access to private capital funds.

Issues with the MiFID quantitative opt-up test
Firms face practical issues in opting up the above types of investors under the MiFID quantitative test, where two of the three tests under COBS 3.5.3R(2) must be met:

a. *the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters* – this is unlikely to be possible in the context of investing in private capital funds, which do not allow for investment at such high frequencies. This usually leaves the relevant investors having to meet both of the other tests below to be opted up.

b. *the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds EUR 500,000* – this criterion is often difficult to meet for investor categories 1 and 2 above.

   - In particular, we would highlight the case of junior investment professionals, who may be offered the opportunity to participate in staff co-investment arrangements but often do not have a large enough investment portfolio. Participation in co-investment should not be restricted in this way, but rather encouraged, as it aligns investment professionals' interests with those of fund investors.
   - We also note HMRC's proposals regarding requiring mandatory co-investment in order for staff to participate in carried interest arrangements. If such rules are introduced, the opt-up rules would need to be amended to allow some sponsors to provide co-investment by more junior investment professionals.

c. *the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged* – this criterion can be difficult to meet for investor category 3 in particular, despite such individuals otherwise being highly suitable investors in private capital funds.

Recommended approach

In light of the issues described above, the BVCA broadly supports the FCA's option ii as set out in the CP, i.e. returning to the non-MiFID qualitative opt-up test for all purposes. The FCA already sees this test as being effective and appropriate in the context of non-MiFID business (including e.g. in determining the application of the Consumer Duty). We do not see any practical reason to have additional quantitative criteria for MiFID business, particularly where those criteria appear to be arbitrary and poorly calibrated for the private capital industry.

As the FCA notes, this approach would give firms flexibility to create their own assessments of the expertise, experience and knowledge of investors, in the context of their specific business. BVCA member firms would continue carrying out such assessments in a thorough and diligent manner, as they do now.

For investor categories 1 and 2 above, firms will typically already have a large amount of information on which to base their assessments. For investor category 3, we would support allowing firms to take into account the knowledge and experience of the prospective investor's advisor for these purposes in circumstances where the individual has an advisor. In practice, many individual investors in category 3 do not take their investment decisions in a vacuum but instead rely on advice from firms with the relevant expertise. Often those individuals and their advisors are based outside of the UK.

The BVCA would resist the introduction of a minimum investment portfolio threshold for these purposes, as it would effectively reintroduce the MiFID quantitative test in a slightly different form, which would likely remain an issue for category 1 investors (and potentially category 2 as well).

The BVCA would also not be in favour of the FCA's option iii. In the private capital context, cooling-off periods and periodic confirmations would introduce unnecessary additional administrative and compliance burdens.

Periodic confirmations in particular would not be meaningful in the financial promotions context for closed-ended funds.

If the FCA does not wish to proceed with its option ii, we would suggest the FCA considers aligning the opt-up requirements in the private capital context with the approach taken in the U.S., the world's largest private capital investment market. This would involve (i) modifying the quantitative test for investor categories 1 and 2 so that only twelve months' experience of the relevant industry of the investment is required (which would not necessarily have to be in the financial sector), and (ii) applying an accredited investor test to category 3. However, we would ultimately argue that such a bespoke approach is not necessary, since firms are already familiar with the well-established non-MiFID test under option ii, which has proven effective in practice.

Question 30: In what circumstances do clients opt up to be treated as elective professionals for the purpose of exemption from certain financial promotion rules only?
Please see our response to question 28 above.

The 'MiFID provisions' of the financial promotion rules in COBS 4 have a similar (albeit not identical) application in respect of promotions to professional and retail clients. Meanwhile the 'excluded communication' provisions which apply to non-MiFID business are generally not available in respect of promotions regarding a firm's MiFID business. As such, a firm treating a person as an elective professional client in the context of its MiFID business may not have a material impact on its compliance burden. Such requirements are relatively prescriptive and are not well suited to investors in private funds categorised as professional clients. We would encourage the FCA to consider applying the 'MiFID provisions' of the financial promotion rules more akin to how it applies the non-MiFID provisions – i.e., more broadly excluding promotions to sophisticated investors, including elective professional clients.

Question 32: How do firms navigate the process of opting up while ensuring that contacts are not under the impression that they are receiving a service in the relation to a designated investments (and related protections) from the firm?
BVCA member firms make this client vs investor distinction very clear in the opt-up letters sent as part of their investor opt-up processes.

Question 33: To the extent you rely on the venture capital contacts regime, please provide answers to the questions we have asked for corporate finance contacts.

Long Term Changes

Question 34: Are there are any areas where you think sector specific changes are needed? If yes, please explain your answer.
The BVCA would welcome the opportunity to discuss the following topics with the FCA:

MiFID-related topics

As noted in our responses to some previous questions, MiFID was not designed primarily with private capital firms in mind. During implementation of MiFID and MiFID II, the BVCA brought a number of issues to the FCA's attention where rules were not well suited to the private capital industry. In some cases, the FCA indicated that it understood industry concerns with respect to rules that were clearly targeting other parts of the financial services industry, but that the FCA was constrained in its ability to tailor or disapply rules by the EU legislation.

In a post-Brexit context, the FCA is no longer so constrained and there are still instances where BVCA member firms would greatly benefit from reform to MiFID rules primarily introduced to address concerns in other parts of the industry. For example:

- **Research and inducements rules:** There are various different forms of FCA inducements rules applicable to different types of firms and those applicable to MiFID portfolio managers are the most prescriptive and inflexible. In a private capital context, this means that MiFID portfolio managers subject to the inducements ban are not able to apply the "quality enhancement" test to the receipt of research. We understand that the FCA has recently reviewed and proposed changes to the inducements and research rules, including introduction of a third option for paying for research. However, frictions and challenges persist and the rules remain at odds with the US rules on soft dollar commission payments. In the current global environment and in light of the UK's growth and competitiveness agenda, we do not think the current inducements regime is fit for purpose and would ask the FCA to look again at the regime.
- **Telephone taping rules:** Similarly, when the MiFID telephone taping rules were initially implemented, the ability to limit the application of the rules for (then) CAD-exempt adviser-arranger firms in relation to their arranging (bringing about) activities was outside of the FCA's discretion. This meant that such firms were unable to benefit from the exclusion from the taping rules for AIFMs and MiFID portfolio managers in respect of unlisted securities. We would ask the FCA to revisit this position now that it has the ability to do so.

Whilst the focus of CP24/24 is on MiFID, there are various other rules applicable to AIFMs carrying on MiFID activities which create a patchwork of rules that is difficult to navigate. In the broader context of the FCA's work in seeking to rationalise areas where regulation has grown overly complex, we would like to highlight the following areas:

- **IFPR:** IFPR resulted in significant changes to the capital, liquidity, and remuneration requirements for investment firms. The BVCA previously raised concerns at the IFPR consultation stage that the UK would be implementing IFPR in a manner that was more onerous to the EU and individual EU Member States' approach to IFR/IFD. In our letter dated 11 January 2024, we further raised a number of points where BVCA members would welcome a review of the IFPR rules to support a level playing field between adviser/arranger firms located in the UK and the EU. (see our further comments on IFPR in response to the questions on Article 3 MiFID Optional Exempt Firms).
- **Remuneration requirements:** Collective portfolio management investment firms (CPMI firms) are subject to both the MIFIDPRU and AIFMD remuneration codes, which generally requires firms to apply a 'strictest of' approach. There are also some gaps where the two codes do not neatly align. In general, the BVCA does not consider that the application of these remuneration codes (in particular, the payout process rules) to private capital firms has a material benefit in terms of investor protection or financial stability, but it does create a competitive disadvantage for the UK compared to other jurisdictions (e.g. the U.S.) where no such requirements apply.
- **Custody rules:** The FCA custody rules have not been drafted with private assets in mind and there are challenges with scope and application of CASS for entities with different types of licence, such as full scope AIFMs with MIFID top-ups that can also act as a residual CIS operator. We believe there would be scope to streamline some of these provisions without compromising investor protections.

Article 3 MiFID Optional Exempt Firms

Question 35: To the extent not already raised in your response to the Consumer Duty CFI, are there any MiFID derived rules, that we should consider tailoring differently for Article 3 firms? Are there any improvements we could make to our Handbook to make it easier for Article 3 firms to navigate?

Question 36: In the event of future reform, would you plan to take advantage of any removal of the activity restrictions to offer more services to your clients? What, if any, proportionality would need to be added to any current rules relating to these additional activities to better tailor them to the risks presented by your business?

The purpose of the MiFID Article 3 optional exemption regime was to provide an exemption from the requirements of MiFID and CRD for firms which conduct limited investment services. The rationale being that these were firms which presented relatively limited risk, since they carry out only investment advice and reception and transmission of orders, do not hold client money or assets and pass orders only to certain categories of other regulated firms (credit institutions, investment firms and collective investment undertakings). Article 3 firms are not defined by reference to type of customer; so, such firms could deal with retail or professional clients or eligible counterparties. The exemption is based solely on the scope of activities. These limited activities were defined quite narrowly and had the effect of excluding (or creating uncertainty as to the availability of the exemption) for certain types of firm. In particular, the extended meaning of reception and transmission of orders of bringing together two or more investors (and the FCA's associated guidance that this could capture certain M&A activities) meant the conditions could be difficult to apply to firms engaged in corporate transactions. The requirement that orders be passed only to other MiFID investment firms, credit institutions or collective investment undertakings is difficult to apply in the M&A context if the bringing together of two or more investors (i.e. reception and transmission of orders) involves bringing together two unregulated corporates, for example. In addition, the restriction that the advice and reception and transmission of orders only relate to transferable securities and units in collective investment undertakings means that any reception and transmission of orders relating, for example, to an FX hedge in connection with an M&A transaction means the exemption is unavailable.

There is no obvious rationale for excluding from the exemption firms which conduct advising and arranging (reception and transmission) activities and do not hold client money or assets, where such activities relate to M&A and corporate finance business, including the activities of private capital firms. Such firms present no greater risk than the personal investment and financial advisory firms that fall within the exemption. Indeed, it is arguable that they present a lower risk as their clients are almost exclusively companies, sovereign wealth funds, investment funds or other institutional investors that qualify as professional clients.

The constraints of the Article 3 exemption have resulted in firms which present a lower risk being brought within the IFPR, which has resulted in a more onerous capital regime than that which previously existed. Under the previous CRD regime certain firms, which could not clearly qualify as Article 3 exemption firms, still qualified as exempt CAD firms. They were subject to a much lighter capital regime, notwithstanding the fact that they were treated as investment firms. With the introduction of the IFPR, the exempt CAD category disappeared, and investment firms which provided only investment advice and reception, and transmission of orders were brought within the full IFPR unless they qualified as Article 3 exempt firms. This resulted in a significant capital increase for many of the BVCA's member firms – both large and small. It also imposed significant additional requirements such as the requirements to prepare an ICARA and the application of the remuneration code. Article 3 exempt firms, carrying out the same investment services, were not subject to these requirements.

The BVCA has consistently raised concerns about the application of the IFPR to member firms which carry out only investment advice and arranging activities and which were previously exempt CAD firms. The imposition of the full investment firm capital rules and related requirements, such as the ICARA and remuneration regime, is unduly burdensome for these firms which present a very low risk to the FCA's statutory objectives.

We welcome the FCA's openness to revisit the Article 3 exemption, and believe it represents an opportunity to create a regime which encompasses a wider number of firms that conduct limited investment services, carry no balance sheet risk and do not hold client money or assets. If the FCA is intending to consult in relation to the capital requirements for Article 3 firms (as indicated in paragraph 4.82) we would encourage it to consider creating a capital regime which is appropriate for an extended category of Article 3 firms – for example, to apply a modified form of the fixed overhead requirement, remove the k-factor requirement which applies to investment firms (and is of limited application to advising and reception and transmission of orders), remove or simplify the ICARA regime and replace the detailed remuneration rules with high level principles.

We would also encourage the FCA to consider applying an expanded Article 3 regime to AIFMs with MiFID top-up permissions. These firms would remain subject to rules deriving from AIFMD to govern their core activity of managing an AIF but would be subject to a more appropriate Article 3 regime in respect of their limited investment services.

The BVCA believes that these changes could be made without adversely affecting the FCA's primary objectives, but with a considerable benefit to its new secondary objective. The application of the full IFPR and remuneration code to firms which carry out very limited investment services is a significant burden. A regime which is more appropriately tailored to such firms would, we believe, provide a considerable benefit to the UK's international competitiveness and its attractiveness to private capital firms.

If you have any questions or points it would be helpful to discuss further, please contact Nick Chipperfield (nchipperfield@bvca.co.uk) and Tom Taylor (ttaylor@bvca.co.uk).

Yours faithfully,

Tim Lewis
Chair, BVCA Regulatory Committee

British Private Equity & Venture Capital Association
3rd Floor, 48 Chancery Lane, London WC2A 1JF
+44 (0)20 7492 0400 | bvca@bvca.co.uk | www.bvca.co.uk