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**By Email only**

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Dear Ms Dawkes

**Industry Response to the FSA's Guidance Consultation on Remuneration**

This response to the FSA's Guidance Consultation on the Remuneration Code is made by the British Private Equity and Venture Capital Association ("**BVCA**"). The BVCA represents the overwhelming majority of UK-based private equity and venture capital firms.

In order to focus our response appropriately we have considered only those parts of the Guidance Consultation which we think raise issues relevant to private equity and venture capital firms, the vast majority of which will fall into Proportionality Tiers 3 & 4.

**General Comments**

We welcome the FSA's publication of additional guidance to assist firms implementing the Remuneration Code and we consider that the guidance is broadly helpful in this respect. We recognise that further areas of complexity may arise once the transitional provisions of the Remuneration Code expire and the Remuneration Code is fully implemented by firms. Should it be needed, we would be happy to work with the FSA in developing guidance to cover such further issues.

**Remuneration Code FAQs**

*Treatment of Overseas Code Staff*

It is appropriate for individuals based overseas who fall within the definition of "Code Staff" to be subject to the Remuneration Code. However, it is disproportionate to require that the rules govern the whole of their pay rather than just the proportion earned in connection with the UK firm.

The requirement unfairly penalises affected individuals. Where a UK regulated entity suffers poor financial results, such that the amount of variable remuneration payable to employees and Code Staff is limited, any overseas Code Staff would be restricted from benefitting from more generous variable remuneration payable by other companies for whom they work. This places such persons at a distinct disadvantage compared to other colleagues who would be able to benefit fully from the second company's financial success.

This makes the UK anti-competitive in such markets. Individuals with the correct experience and talent to work with UK firms will be disinclined to do so - thereby reducing the talent pool from which UK firms can look to recruit specialists to assist in the management of their firms.

From a risk perspective, it is difficult to identify the added benefit that is brought by subjecting the individual's entire remuneration to the Remuneration Code rather than simply the relevant proportion earned in connection with the UK firm.

#### *Aggregated disclosure*

We have previously commented that the information disclosure requirements place a disproportionate obligation on private equity and venture capital firms. The vast majority of private equity and venture capital firms are very small when compared to other securities market participants, including deposit-takers, investment banks and many securities dealers. The smallest have only two principals and a few junior executives. It would be a more proportionate approach to limit disclosure by firms within Proportionality Tiers 3 & 4 to a summary of their governance and controls around remuneration, with a focus on conflicts of interest management. To the extent that any quantitative data is required to be published (no matter how anonymised) it will otherwise be very easy to work out the remuneration packages of particular individuals. This would be a perverse outcome, given that Tier 1 firms are only required to publish aggregate quantitative information at the level of directors. This also undermines the purpose of the aggregation and could create issues and tensions which run contrary to the interests of the individuals and firms concerned, their funds and investors as well as their portfolio companies.

The guidance advises that firms may take into account the provisions of the Data Protection Directive (Directive 95/46/EC) as transposed in the relevant Member State. This will be of limited practical benefit and will place an additional administrative burden and further costs on smaller firms who are required to undertake a legal analysis of the effects of remuneration disclosure. Larger firms, where the aggregated disclosure would not be capable of identifying the remuneration of single individuals, are unlikely to perform this analysis. We therefore do not consider that this effectively addresses the concerns.

We would be delighted to discuss any of these issues with you.

Yours faithfully



Margaret Chamberlain  
Chair – BVCA Regulatory Committee