



Lukas May  
Competition Department  
Policy, Risk & Research  
Financial Conduct Authority  
25 The North Colonnade  
Canary Wharf  
London E14 5HS

12 September 2014

Dear Lukas,

**Re: BVCA response to FCA call for input into Project Innovate**

The British Private Equity and Venture Capital Association (BVCA) is the industry body and public policy advocate for the private equity and venture capital industry in the UK. With a membership of over 500 firms, the BVCA represents the vast majority of all UK based private equity and venture capital firms, as well as their professional advisers. Our members have invested in over 4,500 companies over the last five years with the majority of UK investments directed at small and medium-sized businesses including start-ups.

As major investors in private companies, our members have an interest in supporting innovation and encouraging the facilitation of innovation in a wide range of industry sectors, including the financial services market, and welcome the FCA's general direction of travel on Project Innovate.

**1 Is there anything about the regulatory system that poses particular difficulties for innovator businesses?**

Cost and complexity are key issues to innovator businesses. The regulatory system to which UK based innovator businesses are subject is becoming increasingly complex, deriving in part from the organic development of the regulatory regime at both UK and EU levels and the range of sources impacting on the regulatory system (including statute, rules and guidance of regulatory authority and case law).

UK based innovator businesses that provide cross border services into other jurisdictions (particularly internet based "fintec") face additional complexity arising from varying local laws relating to the provision of financial services on a cross border basis (see response to question 5 below).

The complexity of the regulatory system combined with criminal and strict liability offences in relation to breaches of the UK regulatory regime would typically result in one or more of the following in relation to innovator businesses:



- a barrier to entry caused by the need for sophisticated and expensive advice (particularly in relation to the scope of regulated activity and the application and contents requirements of the financial promotions regime for innovative products or services which do not fall within the intent of the UK regulatory system) which is likely to favour incumbents, large businesses, reduce competition, limit consumer choice and outcomes, and threaten any first-mover advantage to the UK fintec industry;
- delays for innovator businesses pending clarification from the FCA, resulting in outcomes similar to the above; and
- a lag between the provision of products and services and the FCA's ability to ensure their effective regulation, possibly extending to breaches of FCA rules. This could be to the detriment of consumers and a threat to confidence in the wider UK fintec industry and its regulation.

Therefore, the BVCA warmly welcomes Project Innovate and the opportunity that it provides to:

- improve competition, consumer choice and consumer outcomes in the UK;
- ensure the effective regulation of innovative business models on a pro-active basis; and
- ensure regulatory foundations for the sustainable development of the UK fintec industry.

## **2 What practical assistance do you think the Incubator could usefully provide to small innovator firms?**

The types of assistance that the Incubator could usefully provide to small innovator firms include:

- To assist in the interpretation and application of the UK regulatory system, particularly in relation to novel financial products or services or novel methods of delivery, to which the current UK financial regime may allow more than one interpretation.
- Provide early indication of the viability of a business model in relation to the UK regulatory system and related concerns before a small innovator firm may be required to incur commercially prohibitive start up and advisory costs.
- Provide practical assistance and communicate clearly and transparently any concerns, in particular in relation to business model, business strategy, conduct, impact on the financial system, and consumer outcomes.
- In relation to delivery:
  - o allocating a contact person with responsibility for providing and coordinating assistance to a participating business seems key to the effectiveness of the Incubator, as do the calibre, knowledge, skills and experience of that contact person and their ability to engage relevant matter specialists within the FCA on a timely basis;



- avoid a check box and form-filling approach, which risks creating a pre-application process (in addition to an FCA application for authorisation); and
  - promote a more holistic, discursive and meeting-based engagement model, including face-to-face meetings with both contact persons and FCA subject matter specialists where appropriate.
- In relation to general approach, as identified in the Call for Input, there may be a fine balance between, on the one hand, the FCA being of genuine assistance to participating businesses and, on the other hand, avoiding tacit “kite-marking” or over-reliance by participating businesses on the FCA. Again, this indicates the need for high calibre contact persons within the FCA. While it is of critical importance that the FCA does not prejudice its position as the regulator of participant businesses, it is also important to avoid a “these are the rules, you should seek your own legal advice” approach in practice.
  - The BVCA fully acknowledges the role of clustering and connections with larger corporates, which are of vital importance in a fintec context.

### **3 Do you think it would be useful to establish an Innovation Hub function?**

The BVCA welcomes the concept of the Innovation Hub in addition to the Incubator. The further opportunity for participant businesses to receive ongoing advice should enhance the mutual understanding and related benefits set out in the Call for Input. It is likely that some participants’ businesses will be subject to development and adaptation as a result of operational, market and competitor effects; and the availability of a contact person within the FCA with detailed knowledge of the participant business should enhance the robustness of that process from a regulatory and prudential perspective. If the functional separation of the Incubator and Innovation Hub is important to the FCA, it should not prohibit a participating business from retaining the same contact person on progressing to the Innovation Hub, in particular where a change in contact person could weaken mutual understanding between the business and the FCA and the effective regulation of the business.

The Innovation Hub may also allow for the FCA authorisation of responsible innovative businesses of systemic and/or consumer value that would not otherwise receive authorisation, absent an enhanced ability within the FCA to understand, regulate and monitor effectively that business on an ongoing and pro-active basis.

### **4 What criteria should we use in order to focus the FCA’s resources on “genuine, ground-breaking” innovation?**

The FCA might favour businesses that provide products or services that:

- improve competition, consumer choice, disintermediation, the stability of the financial system and/or consumer outcomes;
- meet a fundamental consumer need in a novel manner, with reduced cost, or improved delivery; and



- are not detrimental to consumer outcomes or to the financial system.

**5. Do you have any other feedback or suggestions about Project Innovate?**

Many participant innovative firms may need to engage with other regulators in relation to cross-border business into other jurisdictions, and so the FCA could assist a number of the wider aims of Project Innovate by encouraging and assisting other regulators to launch and run similar projects.

The benefits of a nominate contact person at the FCA (set out in paragraph 11 of the Call for Input) would apply to other types of authorised firms. If Project Innovate proves a success, the BVCA would welcome consideration by the FCA whether some of Project Innovate's practices could be adopted or trialled for other financial services sectors, and would be delighted to assist the FCA with this in any way practicable.

We would be delighted to meet you to discuss our feedback further. Please feel free to contact Gurpreet Manku at the BVCA ([gmanku@bvca.co.uk](mailto:gmanku@bvca.co.uk)).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tim Hames', with a horizontal line underneath.

Tim Hames

Director General, British Private Equity and Venture Capital Association