



6 May 2014

Stefan Saldanha, PRR
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London, E14 5HS

By email: cp14-04@fca.org.uk

Dear Mr Saldanha,

Re: FCA Quarterly Consultation Paper No. 4 (March 2014) (CP 14/4)

This response to Chapter 2 (*Changes to the Handbook impacting AIFMs, UCITS managers and certain AIF depositaries*) of the FCA's consultation paper entitled '*Quarterly Consultation Paper No. 4 (March 2014)*' (CP 14/4) (the "**Consultation Paper**") is made by the Regulatory Committee of the British Private Equity and Venture Capital Association (the "**BVCA**").

The BVCA is the industry body for the UK private equity and venture capital ("**PE/VC**") industry. With a membership of over 500 firms, the BVCA represents the vast majority of all UK-based PE/VC firms and their advisers. Its members have invested £33 billion in over 4,500 UK companies over the last five years. Companies backed by UK-based PE/VC firms employ over half a million people and 90 per. cent of UK investments in 2012 were directed at small and medium-sized businesses.

We would be happy to discuss any of the issues raised in our response to the Consultation Paper in further detail with the FCA if this would be helpful. If this would be helpful, please contact Gurpreet Manku (Director of Technical and Regulatory Affairs, BVCA) (gmanku@bvca.co.uk) in the first instance.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'pp' followed by a stylized name.

Sheenagh Egan
Chair - BVCA Regulatory Committee



**FCA CONSULTATION PAPER – 'QUARTERLY CONSULTATION PAPER NO. 4
(MARCH 2014)' (CP 14/4)**

Q2.1: Do you agree with our proposed addition of links in the Handbook to the ESMA guidelines and delegated regulation?

We agree with the proposed addition of links in the Handbook to ESMA's '*Guidelines on Key Concepts of the AIFMD*' and '*Guidelines on reporting obligations under Articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD*' (the "**ESMA Reporting Guidelines**") and to the European Commission's '*Delegated Regulation supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to regulatory technical standards determining types of alternative investment fund managers*'.

We had understood, prior to the publication of the Consultation Paper, that there would be a more detailed FCA consultation on reporting under the AIFMD. Our members consider that a number of the reporting requirements – and particularly their application in a PE/VC context – remain unclear. We set out certain of these issues in our response to Question 2.2. below. We may, however, raise further reporting queries with the FCA as increasing numbers of our members are required to file reports under the AIFMD with the FCA for the first time.

Q2.2: Do you agree with our proposed guidance on AIFMD reporting requirements?

We agree with the clarification provided in new FUND 10.5.11AG that a non-EEA AIFM marketing in the UK under the national private placement regime is not subject to reporting obligations to the extent that these are derived from an AIFMD provision to which the AIFM is not subject.

Separately, however, we would note that the general guidance on reporting obligations contained in FUND 3.4 remains extremely limited, even following the proposed additions set out in the Consultation Paper. To date, the FCA has adopted the approach of providing additional guidance on AIFMD reporting through the "Reporting" webpage in the AIFMD section of its website. We consider that this guidance could sensibly be transposed into FUND 3.4 (with appropriate amendments and clarifications) in order to prevent AIFMs from having to consult multiple sources when considering their reporting obligations.

Although we appreciate that granular information on an AIFM's reporting obligations is set out in the ESMA Reporting Guidelines, we consider that the ESMA Reporting Guidelines nonetheless contain ambiguities and the FCA should clarify in FUND 3.4



the interpretation that it will apply to the relevant provisions in its capacity as the national competent authority receiving the reports.

For example, the ESMA Reporting Guidelines state at paragraph 12 of Annex II that AIFMs should start reporting, "... as from the first day of the following quarter after they have information to report until the end of the first reporting period". The phrase "have information to report" is ambiguous in this context but from the FCA's response to Question 1 (*'When will the first report be due and what will the reporting period be?'*) under the "Frequently asked questions" heading on its Reporting webpage, we understand that the FCA's interpretation (at least in the context of UK AIFMs and with which we agree) is that this refers to the point at which the AIFM is authorised. Since it is clearly critical that AIFMs understand when their regulatory reporting obligations first arise, we believe it would be helpful if guidance to that effect were included in FUND 3.4 as that interpretation is not evident simply by virtue of the cross-reference to the ESMA Reporting Guidelines.

We also believe it would be helpful if additional information relating to the practical mechanics of AIFMD reporting were included in SUP. We understand from the FCA's Reporting webpage that, after October 2014, reporting must be in XML format and should be uploaded via the GABRIEL system. We believe that it would be helpful for this obligation to be clearly stated in the relevant reporting provisions in SUP 16.18.

In addition, we believe that non-EEA AIFMs which are required to report to the FCA as a result of marketing AIFs under the UK national private placement regime would benefit from further guidance on how they are to submit their reports to the FCA. If reporting is to occur via XML upload through GABRIEL, it is not clear whether such firms (who may not be set up to use GABRIEL) are required to register a GABRIEL account in order to meet their regulatory obligations, or if some other mechanism will be provided. If a GABRIEL registration is required, we consider that it would be useful for guidance to this effect to be provided in order that non-EEA AIFMs can make the necessary preparations in advance of their first reporting dates.

Q2.3: Do you agree with how we propose to transpose these risk management requirements for AIFMs and UCITS managers?

We have no specific comments from the perspective of the PE/VC industry.



Q2.4: Do you agree with our proposed amendment to the funds under management definition that will affect the capital calculations of AIFMs managing AIF portfolios that include derivatives?

We have no objections to the proposed amendment to the FCA Glossary definition of "*funds under management*".

Q2.5: Do you agree with our proposed amendments to the requirements for Article 36 custodians?

We have no specific comments from the perspective of the PE/VC industry.

Q2.6: Do you agree with our proposed changes to AIFM remuneration requirements?

We agree with the proposed changes to the FCA's rules on AIFM remuneration requirements.

Q2.7: Do you have any comments on our proposed forms?

We have no specific comments from the perspective of the PE/VC industry.

Q2.8: Do you agree with these proposed additional changes?

We have no specific comments from the perspective of the PE/VC industry.

Q2.9: Do you have any comments on our cost benefit analysis?

We have no specific comments from the perspective of the PE/VC industry.