British Private Equity & Venture Capital Association
5th Floor East, Chancery House
53-64 Chancery Lane
London WC2A 1QS
T +44 (0)20 7492 0400
bvca@bvca.co.uk www.bvca.co.uk

5 February 2015

Carolin Gardner
Technical Specialist (Financial Crime Policy)
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

By email: carolin.gardner@fca.org.uk

Dear Ms Gardner,

Re: Guidance consultation: Proposed guidance on financial crime systems and controls (November 2014)

This response to the FCA's '*Guidance consultation: Proposed guidance on financial crime systems and controls*' (November 2014) 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 this response in further detail with the FCA. 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,

Sheenagh Egan
Chair - BVCA Regulatory Committee

GUIDANCE CONSULTATION: PROPOSED GUIDANCE ON FINANCIAL CRIME SYSTEMS AND CONTROLS

1. Introduction

We set out in this response comments only on the proposed amendments to Part 1 of the FCA's regulatory guidance, '*Financial crime: a guide for firms*' (the "**Guide**"). We assume that the FCA will make clear in each of the proposed new Chapters for Part 2 of the Guide that the Chapter is relevant only to specific types of firm (small banks in the case of Chapter 16 and commercial insurance brokers in the case of Chapter 17).

2. Comments on proposed amendments

Part 1, Chapter 2: Financial crime systems and controls

Box 2.1A Management Information (MI)

2.1 We assume that the FCA will, in practice, treat the 'examples' of financial crime MI as examples only and not prescriptive requirements. We consider that it is for firms to take a proportionate approach to determining the financial crime MI which is received by senior management, taking into account the nature of both the firm's business and its exposure to financial crime risks.

2.2 Even if the FCA will, in practice, treat the financial crime MI listed at Box 2.1A as example MI only we still have some concerns about the particular examples given.

2.3 Our key concern relates to the final example, which refers to "*Details of any SARs considered or submitted*". Given the importance of maintaining confidentiality about such information we consider that it may not be appropriate always to provide senior management with specific details about SARs considered or submitted. We would suggest that the FCA amends this example to refer to, "*Where appropriate, information about SARs considered or submitted*".

2.4 We are also concerned that some of the examples are too widely drawn. In particular, an overview of "*staff expenses, gifts and hospitality*" seems unnecessarily broad. This example would be better drafted so as to refer only to particularly unusual examples of expenses, gifts and hospitality and the approach taken to those examples by the firm's compliance team. We consider that unless the example is narrowed in this way it will impose an unnecessarily onerous administrative burden on compliance teams without any commensurate benefit to the firm's management of financial crime risks.

2.5 As the FCA stated during a recent webinar ('*Managing Bribery and Corruption Risk in Commercial Insurance Broking*' (21 January 2015)) that senior managers should receive more information on expenses, gifts and "big ticket" hospitality items, we assume that the FCA would not object to such a narrowing of this example.

2.6 We are similarly concerned that the reference to relevant information about "*individual business relationships*" is extremely wide and could catch many types of business relationship which do not pose a particular financial crime risk. We would instead suggest that the example should refer to "*relevant*" business relationships.

2.7 We believe that amending the examples in the ways described above would still ensure that senior management, "*... receive sufficient information to understand the financial crime risks to which their firm is exposed*" (introduction to Box 2.1A).

Box 2.3 Risk assessments

2.8 We do not have many substantive comments on the proposed amendments relating to risk assessments. This is because we consider that they do not impose any new obligations on firms but rather illustrate the ways in which firms can meet the requirements imposed on them by the FCA's Senior Management Arrangements, Systems and Controls rules.

2.9 We would, however, note that we are not entirely clear as to what the FCA means by a "*business-wide risk assessment*". As the FCA also received a question on the meaning of this term during another recent webinar ('*Managing Money Laundering and Sanctions Risk in Small Banks*' (21 January 2015) (the "**AML/Sanctions Webinar**")) we consider that it may be helpful if the FCA included in its amendments to the Guide a high-level overview of what constitutes a 'business-wide risk assessment'. Any such overview should, however, be sufficiently high-level so as to allow firms to take a proportionate approach to such an assessment. Is the phrase intended to capture the process described in the paragraph beginning, "*A firm should identify and assess the financial crime risks to which it is exposed...*"?

Part 1, Chapter 3: Money laundering and terrorist financing

Box 3.7

2.10 We do not have many substantive comments on the proposed amendments relating to enhanced due diligence ("**EDD**"). This is because we consider that the amendments do not impose any new obligations on firms but rather are intended to assist firms in interpreting the requirements of UK anti-money laundering laws, such as the Money Laundering Regulations 2007 ("**MLRs**"), and the Joint Money Laundering Steering Group's guidance for the UK financial sector (the "**JMLSG Guidance**").

2.11 During the FCA's AML/Sanctions Webinar, the FCA confirmed this position and stated that the Guide is designed to complement the JMLSG Guidance and, rather than imposing stricter conditions than are required at law, seeks to illustrate ways in which a firm can meet those conditions. Whilst paragraphs 1.10, 3.2 and 3.3 of the Guide cross-refer to the JMLSG Guidance, we consider that those paragraphs could be amended so as to make clear more expressly that the Guide is not intended to impose more onerous requirements on firms than those which are imposed under UK law and the JMLSG Guidance.

2.12 Our two substantive comments are as follows. First, we would note that rather than providing additional guidance on the existing examples of EDD set out at paragraph 4.51 of the JMLSG Guidance, the FCA's proposed amendments at Box 3.7 set out similar (but slightly different) examples of EDD. Whilst we do not consider that this is necessarily problematic (on the basis that they are examples only), we think it would be easier for firms if all examples of EDD were contained in the JMLSG Guidance and the Guide simply provided further detail about those examples.

2.13 Secondly, we are concerned that the language in the paragraph next to "MLReg 7" does not accurately reflect the legal requirements imposed on firms under the MLRs. We would suggest that in order for that paragraph better to reflect the legal requirements imposed on firms, it should be amended as follows: "*The extent of EDD must be commensurate to the risk associated with the type of customer, business relationship, product or ~~occasional~~ transaction but firms can decide, in most cases, which aspects of CDD they should enhance. This will depend on the reason why a ~~relationship or occasional transaction~~ customer was classified as high risk*".