Asset Management and Funds Policy Team
Wholesale Buy-side Division
Financial Conduct Authority
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By email: dp23-2@fca.org.uk

22 May 2023

Dear Asset Management and Funds Policy Team

Re: BVCA response to DP23/2 Updating and improving the UK regime for asset management

The BVCA is the industry body and public policy advocate for the private equity and venture capital (private capital) industry in the UK. With a membership of over 700 firms, we represent the vast majority of all UK-based private capital firms, as well as their professional advisers and investors. Between 2017 and 2021, BVCA members invested over £57bn into around 3,900 UK businesses, in sectors across the UK economy ranging from heavy infrastructure to emerging technology. Companies backed by private equity and venture capital currently employ over two million people in the UK and 90% of the businesses our members invest in are small and medium-sized businesses.

The BVCA welcomes the FCA's discussion paper on updating and improving the UK regime for asset management. The UK is the world's second largest hub for the private capital fund industry, a position that depends on global institutional investors knowing that the UK maintains a robust tax, legal and regulatory environment that is competitive and in-line with global standards on investor protection. At the same time, regulation must continually adapt to remain effective, and there are certain prescriptive elements of the UK regulatory framework for private capital firms that effectively constitute gold-plating of the EU approach or make less sense outside a single market context, yet add cost burdens that ultimately impact investors' returns. With that in mind, we are making certain recommendations that will update and improve the proportionality and effectiveness of the UK regulatory regime as it applies to UK-based private capital firms (and, indirectly, their investors). Our key recommendations include:

- Consider making full scope UK AIFMD an "opt-in" regime so that AIFMs who choose not to "opt-in" would be subject to the rules replicating the UK's current regime for small UK AIFMs (see our response to Q4).
- Lower the barriers to entry for smaller firms and increase competition in the market by raising the size threshold for full scope UK AIFMs to £1bn AuM, to reflect the passage of time since AIFMD was first introduced (see Q3).
- Reconsider imposing additional requirements borrowed from EU AIFMD on small authorised AIFMs as doing so would result in the FCA "gold-plating" AIFMD after Brexit (see Q3).
- Allow firms to utilise the depository regime on an opt-in basis, for example where certain investors require this, rather than it being mandatory as it is today (see Q4).
- Remove the rules on notifying the FCA of the acquisition or disposal of major holdings and control of non-listed companies in Regulation 38 (see Q4).
- Remove the AIFMD business restriction in FUND 1.4.3R (see Q4).
- Revisit the post-Brexit IFPR regime, as it imposes disproportionate additional rules on exempt CAD firms (see Q24).

- New AIF under management and material change filing processes should be brought into line with the approach taken in Luxembourg and Ireland where notifications only are required, instead of the current clearance processes (see Q24).
- Re-calibrate the reporting framework under Annex IV UK AIFMD and CASS rules in relation to illiquid holdings in private companies (see Q24).
- Amend the professional investor definition to better reflect the sophistication of experienced investors in private capital funds (see Q24).

We have responded only to the consultation questions relevant to private capital and on which our members have specific views.

Q1: Do you think that we should aim to create a common framework of rules for asset managers? What benefits would you see from this? What costs might this create? If you do not think we should do this, are there any areas discussed above where we should consider taking action, even if we do not create a common framework of rules? What would we need to consider around the timing of implementing a change like this?

No, we do not think the FCA should aim to create a common framework of rules for asset managers at this time. As a conceptual matter, the BVCA considers that one of the benefits of the Future Regulatory Framework (FRF) should be the flexibility to tailor the regulatory regime appropriately to different industry sectors, moving away from a "one-size-fits-all" approach, rather than applying common rules across the whole asset management sector for perceived consistency. On a practical level, the cost and disruption arising from regulatory change is significant and BVCA members believe that the costs and disruption that this proposal would cause for firms and other stakeholders would significantly outweigh the potential benefits. The BVCA recognises that there is, however, a strong case for light touch, non-substantive simplification and removal of duplication from certain parts of the FCA Handbook to make it easier for firms to navigate.

Q3: Do you think we should work with the Treasury to amend the threshold at which AIFMs must apply the full-scope rules? If so, do you have any comments on the options described above? Are there any other areas we would need to consider if we were to do this?

Yes. The BVCA strongly supports the continued exclusion of smaller fund managers from the full-scope UK AIFM regime.

The distinction between full-scope and sub-threshold fund managers already recognises that the costs associated with the full application of UK AIFMD would be disproportionate to the regulatory benefits and unsustainable for smaller managers. Private capital firms managing AIFs with AuM below the existing threshold do not have the size, resources, or organisational sophistication to apply the full-scope regime.

Based on discussions with the investor constituency in our membership, the BVCA does not believe there is any desire among investors to apply the full scope UK AIFM regime to smaller managers. The relative success of the EU/RVECA Regulations suggests there is room in UK AIFMD for more risk and size-adjusted regulation of smaller managers and that the sub-threshold framework is recognised and has for some time been accepted by large public institutional and other professional investors in funds managed by sub-threshold managers.

In the UK, sub-threshold managers are required to be fully authorised by the FCA. This is not generally the case in the EU, where the light touch "registration" requirement under AIFMD is often the only licensing regime applicable to sub-threshold AIFMs. FCA authorisation of sub-threshold AIFMs confers significant regulatory protections for investors and other stakeholders. We recognise the need expressed in paragraph 3.50 of the discussion paper to ensure that the FCA's rules (in particular, on marketing higher-risk alternative investments) are not circumvented but note that the FCA has wide-ranging supervisory powers over all authorised firms that are not materially enhanced by the AIFMD framework. We therefore consider it appropriate that the mandatory application of the additional requirements under UK AIFMD be reserved for the largest fund managers.

The AuM thresholds have not changed since 2013. As a result, the size of firm now inside the full-scope regime is smaller in real terms than was considered appropriate when AIFMD was designed and implemented. The BVCA would welcome an increase in the threshold to help ensure smaller managers are protected from the regulatory obligations intended for larger firms, which would also effectively lower the barriers to entry for smaller firms and increase competition in the market. The BVCA supports the existence of the small registered UK AIFM regime as an important and proportionate regime for new and small UK AIFMs. While small registered AIFMs are not directly authorised by the FCA it is important to remember that each AIF managed by a small registered AIFM must be operated by a person who is appropriately authorised by the FCA to carry on the regulated activities of establishing, operating or winding up a collective investment scheme. We would also welcome the integration of the register of small registered UK AIFMs in the FCA Directory.

The stated aims of AIFMD were to protect investors and reduce any systemic risk that AIFs might be deemed to pose to the economy. In relation to this, we note the following:

- Smaller managers, and arguably all private capital firms, do not pose a systemic risk because each investment is shielded from the impacts of other investments, i.e. there is no cross-collateralisation, and the assets of the AIFM and the AIF are separated in different legal entities. In addition, private capital funds are almost exclusively closed-ended, meaning there is an absence of liquidity risk. Investors in these funds typically commit their capital for a period of five to seven years, so it is not possible for managers to be unexpectedly faced with significant numbers of investor redemption requests – as has happened in open-ended funds.

- On investor protection, investors in private equity funds are typically large institutional and professional investors that often have long-standing relationships with the AIFM. Fund documentation is negotiated at length and contain various protections for investors, including cause and no-fault removal and key person departure provisions, and ensure there is investor oversight of the fund manager by a limited partner advisory committee (LPAC). Furthermore, there are International Private Equity and Venture Capital Valuation (IPEV) Guidelines setting out industry standards on the valuation of private capital assets and a requirement on UK AIFMs to produce audited annual reports for each AIF.

For these reasons, the BVCA believes material and considered increases to the full-scope thresholds are justified and appropriate for private capital firms. Indeed, we think there is a good argument that the UK AIFMD framework should be an 'opt-in' regime for those managers who consider this to be important to their investors, or who operate on a pan-European or global basis and consider there are benefits to maintaining close alignment with the EU regulatory regime. Those managers who did not opt-in would be subject to the existing sub-threshold regime regardless of AuM (see our response to Q4 below).

From a UK competitiveness perspective, the FCA's proposal to increase the threshold will reduce barriers to entry for smaller fund managers, making the UK a more attractive jurisdiction in which to establish fund management businesses, and have a positive impact on the UK economy by allowing managers to direct essential funding to support the creation, growth, and development of entrepreneurial and innovative UK companies.

Of the options discussed in paragraph 3.49 for changing the threshold criteria, the BVCA believes that AuM continues to be an appropriate measure of size of firm for applying the full-scope regime. However, unless the FCA proposes to materially increase AuM thresholds across the board, the BVCA considers it both necessary and appropriate to continue to apply a higher AuM threshold to managers of closed-ended, unleveraged funds. This distinction was intended to recognise the lower systemic risk posed by private capital firms compared to other market participants, and the BVCA believes the policy rationale for this remains sound. The BVCA considers that a revised AuM threshold of £1bn would be appropriate for such firms. Following any changes, sub-threshold UK AIFMs that wish to continue to comply with the full-scope regime should be entitled to opt-in, as they can under the current regime.

On a technical note, it would be beneficial and in keeping with the policy rationale if closed-ended funds operating a drawdown model (i.e. calling on investors' committed capital as and when it is needed) were considered "unleveraged" for this purpose where borrowing at fund level does not exceed undrawn commitments of investors, rather than assessing leverage as a ratio of borrowing to NAV.

Paragraph 3.50 suggests that if the threshold for full scope AIFMs is raised, the FCA may change the rules applicable to small authorised AIFMs to apply some rules applicable to full scope AIFMs. We do not think this is necessary and consider it would remove some of the benefits of raising the threshold. In particular, it would mean that the UK has increased "red tape" for smaller AIFMs post-Brexit. It would also further complicate what is already a very complex regulatory licencing and rules landscape for UK asset managers. We would advocate that if the FCA considers it appropriate to raise the threshold, this be done without imposing additional rules on smaller AIFMs (often referred to as the "gold-plating" of EU rules).

Q4: Are there aspects of the current AIFM regime that professional investors do not value? Would there be benefit in us removing any of these?

Yes. There are several areas of UK AIFMD that could be better calibrated to UK markets or that our members and investors investing in our members' funds consider add disproportionate cost. These include the requirement for AIFMs to appoint an independent depositary, notification requirements in the rules for AIFs which acquire control of non-listed companies and issuers and the AIFM business restriction, each discussed in more detail below. We also consider that the UK's particular approach to AIFMD "new fund under management" and "material change" notifications adds unnecessary delay and cost to raising a fund in the UK and puts the UK at a competitive disadvantage compared to competitor jurisdictions which do not require this under EU AIFMD (see our response to Q24 below).

<u>Opt-in regime</u>

While some firms and other stakeholders would welcome and benefit from the recalibration of UK AIFMD in these and certain other areas, many of our larger members operate both in the UK and across the EEA and are, therefore, subject to EU AIFMD as well as UK AIFMD. For compliance purposes and operational efficiency, and for making the strongest possible case for future access to EU markets if a strict, line-by-line approach to equivalence is adopted, these firms typically would like the UK and EU regimes regulating and supervising the management of AIFs to remain as closely aligned as possible, even if they see less value in certain aspects of the regime as applied in the UK context.

One option that the FCA could consider to ensure the UK remains a competitive place to set up a private capital firm (and other types of alternative investment firm), is to allow firms to 'opt-in' to full scope UK AIFMD. This would mean that all UK AIFMs would be subject to the regime that currently applies to subthreshold AIFMs, unless they opt-in to the full scope regime and requirements. Another option is to retain a mandatory version of UK AIFMD for full scope AIFMs (i.e. those exceeding AuM thresholds) but to make certain provisions opt-in only, e.g. the requirement to appoint a depositary. Either route would enable groups with regulated AIFMs in the UK and EU to continue to operate their UK AIFM and EU AIFM under similar rules. This may assist also UK-only AIFMs when marketing funds under certain EEA national private placement regimes (NPPR); for example, Germany and Denmark for now require non-EEA AIFMs marketing under NPPRs to appoint a depositary, so it is essential that this remains an option for UK firms, even if it is not mandatory. An opt-in regime would provide those UK AIFMs that do not intend to raise capital in the EEA with an attractive opportunity to be subject to more proportionate rules that maintain high standards for investors and are more closely tuned to the UK and broader international markets.

Depositaries

UK AIFMD requires AIFMs to appoint an independent depositary responsible for the safe-keeping of assets, monitoring cash flows, and performing oversight for each AIF they manage. The depositary requirement in UK AIFMD was derived from UCITS legislation that has been in place since 1985. UCITS typically target mass-market retail investors and invest predominantly in listed assets and other regularly traded securities, so it is an important consumer protection for UCITS funds to ensure the manager is running the fund in accordance with pre-set investment and risk limits, that titles to assets are appropriately safeguarded and that net asset valuations (NAV), used to set daily prices for investors buying or selling units in UCITS funds, are fairly calculated.

Private capital funds investing in private equity are fundamentally different to UCITS and do not present those same risks to investors. Managers of private capital funds typically draw down capital from investors over several years as investments are made on a "cash to cash" basis. This means that regardless of when an investor commits to a private capital fund, the cash will only flow from the investor through the AIF to the portfolio company at the time when an investment is completed, and cash will be returned from the AIF to the investor when an investment is sold. By the end of the fund's term, it is intended that the private capital fund manager will have returned to investors their capital contributions plus a share of any additional returns in the fund. For private capital firms to be able to successfully raise funds from investors, they need to be able to demonstrate a strong track record of delivering good returns from sound management of previous funds. In addition, the investments held by private capital funds are typically assets that are not readily negotiable; they are typically shares issued by a private limited company. The investing fund will be party to a shareholders' agreement. In the event the share certificates are lost or never issued, or there is an error in the share register, the private equity investor can insist that the issue is rectified. This is completely different to the world of UCITS funds investing in listed shares, where an error by a custodian could lead to a loss of shares. Prior to the introduction of the depositary requirements in UK AIFMD, private capital investors did not require managers to appoint depositaries for such funds as this did not form part of the global model for these funds. Given the importance of reputation in our industry, investors judged that the risk of loss or fraudulent misstatement of assets was extremely low.

Therefore, we do not believe that investors have benefitted in any material way from the appointment of depositaries to private capital funds. However, the costs of appointing a depositary have had to track through to the returns that would otherwise have been available for distribution to investors and are ultimately borne at this level. On that basis, we consider the requirement to appoint a third-party depositary to AIFs that are private capital funds is an unnecessary cost to investors and an undue administrative burden on private capital fund managers. The BVCA recommends that the mandatory requirement for a depositary in UK AIFMD be removed for such AIFs.

AIFs which acquire control of non-listed companies and issuers

The BVCA recommends that the FCA remove the notification requirements on the acquisition or disposal of major holdings and control of non-listed companies in Regulation 38 as this information is of limited, if any, value to the regulator (or investors) in a private market context and is an unnecessary regulatory reporting burden on firms.

AIFM business restriction

The restriction in FUND 1.4.3R, which prohibits AIFMs from carrying on any activities other than a narrowly defined list of non-core "MiFID top-up" activities, serves no clear purpose (there is no equivalent restriction on other types of regulated firm) and potentially prevents firms licensed as full-scope UK AIFMs from carrying on other types of regulated or unregulated business that are complementary to the firm's AIFM activities. In practice, this means that UK firms are required to establish multiple entities with multiple licences to be able to offer the full range of services that they wish to offer to their clients. This gives rise to significant unnecessary costs and administrative burdens and acts as a barrier to entry for smaller managers.

The FCA has already recognised in FUND 1.4.6G that an AIFM should be permitted to carry on residual CIS operator activities. We would suggest that the AIFM business restriction should be abolished entirely.

Q9: Do you have any comments on us making our expectations on investment due diligence clearer for all asset managers?

Due diligence is already an essential part of the private capital investment process. Before any investment is made, private capital firms spend considerable time looking at the potential risks of a proposed investment. Typically, this will involve a combination of in-house expertise and professional advisors, i.e. consultants, accountants, lawyers, etc., to conduct industry research and undertake financial, commercial, operational, technological, legal and regulatory due diligence on each investment target. Given this context, we do not think it would be beneficial for the FCA to give granular guidance or set detailed expectations for firms on the pre-investment due diligence process to be followed, as what constitutes adequate due diligence will vary significantly from sector to sector and investment to investment (at a practical level, appropriate due diligence on a start-up tech company will be very different from appropriate due diligence on an established industrial company and very different again from appropriate due diligence on a distressed investment under significant time pressure). We therefore feel it would be difficult for the FCA to set detailed expectations for firms' due diligence processes that would be relevant in all contexts and remain current as best practice evolves. The BVCA is, of course, supportive of the FCA making clear that firms are expected to undertake appropriate due diligence before making investments, and we would not expect any such high-level expectations articulated by the FCA to impact on established processes in our industry given the level of due diligence already undertaken by our member firms.

Q10: Do you agree that we should make our expectations of depositaries clearer? Do you have any comments on the areas where greater clarification would be desirable? Are there any areas where we should consider removing oversight functions from depositaries? Are there areas where the contribution of depositaries is particularly valuable for the interests of investors?

The BVCA does not believe that investors in private capital funds have benefitted in any material way from the mandatory requirement to appoint a depositary to AIFs. From a private capital perspective, it is an unnecessary cost to investors and an undue administrative burden on fund managers and the mandatory requirement in UK AFIMD should be removed (see our response to Q4 above).

Q24: Do you have any comments on potential reform of the UK regulatory regime for asset managers and funds in areas that are in scope of this paper but have not been discussed in detail?

The BVCA recommends the FCA consider addressing:

- Gold-plating of EU-derived requirements and legislation
- Professional investor definition
- Reducing reporting burdens
- New funds under management and material change notifications

Gold-plating of EU-derived requirements and legislation

As far back as 2013, the Government of the day set out guiding principles to end the gold-plating of EU legislation in the UK (withdrawn on Exit Day, 2021) to ensure that the UK does not, except in exceptional circumstances, go beyond minimum requirements set by the EU. This was to avoid putting UK businesses at a competitive disadvantage compared with their EU counterparts, whilst maintaining robust standards. We feel these sentiments are shared by today's Government, as reflected in the new secondary statutory objectives for the FCA and PRA to facilitate the international competitiveness of the UK financial services sector and the growth of the UK economy in the medium to long-term.

Given this context, there are several areas of regulation where FCA rules unnecessarily "gold-plate" the original EU approach, imposing more complex regulation and putting UK firms at a competitive disadvantage with little added benefit for investors, including:

- **Investment Firm Prudential Regime**
  The introduction of IFPR resulted in significant changes to the capital, liquidity, and remuneration requirements applicable to investment firms that had previously been classified as exempt CAD firms. BVCA member firms were amongst those most affected by IFPR, despite the negligible level of systemic risk they pose (see response to Q3 above and our response to the EBA's 2017 consultation on the design of prudential rules for investment firms, in particular our response to Q5/6 on p9-12, which explains why MiFID firms' role in private capital fund structures poses negligible, if any risk to the market or consumers). We raised concerns at consultation stage that the UK would be applying the regime in a way which seems to have little policy rationale and is more onerous than the EU, and more onerous than the application in individual Member States. This was an unfortunate and presumably unintended result and the UK regime should be recalibrated to ensure prudential regulation targets risk effectively whilst supporting the UK's international competitiveness. For example:

  - The FCA applies IFPR to a CPMI firm's MiFID activities. This contrasts with several key EU jurisdictions (including Luxembourg) that do not apply IFD/IFR to CPMI firms at all. This puts UK CPMI firms at a competitive disadvantage against their EU counterparts, which also have the benefit of both the EU passport and lower capital requirements.

  - We suggest that the overlap between the IFPR and AIFMD rules should be reduced as far as possible. We do not agree that it makes sense to impose regulatory capital requirements on an advisor/arranger whose sole role is to provide services to a fund manager affiliate beyond a basic requirement of €50,000 (or potentially a higher flat requirement of say €100,000) (see the EBA response referred to above for further explanation of the rationale for this). An alternative option to address the overlap might be to require a CPMI firm to comply with the greater of the AIFMD and IFPR capital and liquidity requirements only.

  - The regime introduced pay rules for these firms for the first time. We consider the relevant rules do not address any meaningful regulatory concern, but they do impose cost and business restriction.

  - This *de facto* gold-plating arises in large part because many UK private equity advisor/arranger firms in the UK are regulated as MiFID firms, whereas we understand that equivalent advisor/arranger firms established in EU jurisdictions are typically not so regulated.

- There is no maximum limit on the capital requirements under IFPR, in comparison to the €10m maximum that exists for the funds under management requirement under AIFMD.

We ask that the FCA explore the possibility of the UK revisiting its approach in this respect to ensure a level playing field between adviser/arranger firms located in the UK and those in the EU.

- **Markets in Financial Instruments Directive II**
The mandatory application of MiFID II standards imposes additional compliance burden and costs on UK AIFMs and puts them at a competitive disadvantage when compared to funds operating in the EU.

- **Transparency reporting requirements**
The transparency reporting requirements under UK AIFMD require full-scope UK AIFMs to regularly report information for each non-EEA AIF they manage, even where they do not comprise UK assets and do not trade on UK markets. While this requirement carries a marginal cost for UK managers of overseas funds, it may make them less cost-competitive compared to EU managers of overseas funds, for little regulatory or investor protection benefit.

Professional investor definition

We welcome the FCA's recognition in Chapter 3 that professional investors and retail investors have differing needs, and the BVCA is fully supportive of the FCA's desire to tailor the regulatory regime appropriately whilst maintaining high standards and providing appropriate and robust levels of investor protection. However, for private capital firms, the definition of professional client under MiFID results in many sophisticated, experienced, and ultra-high net worth investors being categorised as retail rather than professional.

Annex II of UK MiFID, which determines what is a professional investor under UK AIFMD by virtue of the cross-reference made in Article 4(1)(ag) (and similarly for other regimes, such as PRIIPs), does not reflect the knowledge or experience needed of investors in private capital funds and limits the ability of certain types of long-term investors to commit capital for investment into unlisted businesses.

This means otherwise suitable investors are often treated as retail despite having expertise and experience of the industry that matches or exceeds that of institutional investors. Given their level of knowledge and sophistication, these investors should be included in the professional investor category, preferably by aligning the definition of professional investor in UK MiFID Annex II with the existing UK domestic definition of professional investor in COBS 3.5 that applies in respect of non-MiFID business, or otherwise making amendments to the definition to address the following inadequacies in the quantitative criteria:

- Frequency: this test, calibrated for participants trading in liquid markets, such as those for exchange-traded equities, is inherently discriminatory in a private capital context due to the long-term and illiquid nature of private capital funds. Not even the most seasoned institutional investors make as many as 10 commitments per quarter to private capital funds.

- Experience: for investments made in funds investing into unlisted businesses (as opposed to financial products), working in the "financial sector" is not a helpful measure. The onus should be put on the ability of the investor to understand risk. While expertise may be derived from experience, it can also be the result of academic and professional qualifications or from an understanding of the sector where investment is made. Expertise in investing should therefore be seen as sufficient to be deemed sophisticated. In the case of private capital, many sophisticated investors also have extensive industry or sector experience (for example, in an operational role or as an entrepreneur) that provides them with a sophisticated understanding of a specific investment into a private capital fund.

Reducing reporting burdens

The supervisory reporting requirements in UK AIFMD are disproportionately burdensome for firms, partly because they lack tailoring to private capital and are not always suited to the specificities of the asset class. For example, Annex IV presents a major challenge for investment managers in terms of complexity of information, ongoing costs and the significant amount of time required to set up and collect data and coordinate the exchange of information among multiple service providers. These processes are administratively burdensome, provide little, if any, benefit and take valuable time and resource away from industry and the FCA.

In addition, the current preparation and submission process for the AIF002 is manual and does not allow for standing qualitative items (which rarely change) to be rolled forward from submission to submission, meaning each return must be fully recompiled, often on a quarterly basis. We also question the value of these reporting requirements to the FCA given it is no longer obliged to share this information with ESMA for the purposes of EU-wide analysis.

The Client Asset sourcebook (CASS) requires CASS medium and large firms to complete a client money and assets return (CMAR) each month. Given the long-term nature of private capital investments and the illiquid nature of private market assets, monthly reporting is unnecessary and out of step with other periodic reporting, which is on a quarterly or less frequent basis.

New funds under management and material change notifications

UK AIFMs are required to notify the FCA of any new AIF under management and subsequently of any "material changes" to an AIF, including AIFs which are not directly regulated. Currently, the FCA does not permit UK AIFMs to market new AIFs until it has confirmed that the FCA has processed the new fund under management notification or the one month wait period has expired. Similarly, firms should not market on the basis of material changes until the one month wait period has expired.

This practice damages UK competitiveness. The FCA should apply the same approach to new UK AIFs under management and material changes as it applies to NPPR, i.e. the obligation should simply be to file details with no wait period. This would bring the UK into line with practice in Luxembourg and Ireland, the two major European fund jurisdictions. We have been asking the FCA for several years to switch to the Luxembourg/Ireland approach. We continue to request this change.

The material change process could be further improved in the UK. There is no exhaustive list of notifiable changes, so there is ambiguity for firms in determining whether any given change should be notified. The rules require planned changes to be notified at least one month before the change takes effect, or immediately after an unplanned change has occurred.

In a similar way to the reporting burdens discussed above, the material change notification requirements are poorly calibrated for private capital funds and fail to recognise that AIF vehicles, structures and marketing documents are heavily negotiated as part of an iterative process with sophisticated investors. Material changes to fund terms will therefore invariably be agreed with investors in the fund-raising process. The "material change" notification process results in private capital firms having to make numerous material change notifications for AIFs that can result in fundraising activities being disrupted by a series of one-month delays before closings. In the absence of the EU marketing passport (which required the FCA to transmit details of material changes to EU competent authorities), the material change notification requirements are burdensome on firms and needlessly frustrate and delay UK investment activity.

Please do not hesitate to get in touch if you have any questions or if you would like to discuss any of the above in more detail (please contact Tom Taylor ttaylor@bvca.co.uk / Nick Chipperfield nchipperfield@bvca.co.uk).

Yours faithfully,

Tim Lewis

Chair, BVCA Regulatory Committee