



5 July 2013

By email: [AIFMD-Forms-Comments@fca.org.uk](mailto:AIFMD-Forms-Comments@fca.org.uk)

*Re: BVCA Regulatory Committee comments on FCA's draft AIFM application pack*

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These comments on the FCA's draft AIFM application pack are 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 £40 billion in over 5,000 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 2011 were directed at small and medium-sized businesses.

We appreciate that the FCA is only actively seeking feedback on the draft Variation of Permission ("VoP") form but we also have a small number of comments on the draft schedule of AIFs and the draft marketing passport form which we thought it helpful to include.

We very much hope that our comments are taken into account in order to ensure that the VoP and authorisation processes run as smoothly as possible for both prospective AIFMs and the FCA.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Margaret Chamberlain', is positioned above the typed name.

Margaret Chamberlain  
Chair - BVCA Regulatory Committee



## COMMENTS ON FCA'S DRAFT AIFM APPLICATION PACK

### Draft VoP form

1. **General comments:** We consider that the VoP form is extremely detailed in comparison to previous application forms published by the FSA. Whilst such detail may perhaps be justified in the longer term, it is difficult for firms which are seeking early authorisation to complete such a lengthy form in a short space of time. We are also aware that a number of our members have found it difficult to gauge the FCA's expectations as to the level of detail required in each answer. Additional guidance from the FCA would be welcomed.
2. **Section 5 (Regulatory Business Plan):**
  - a. **Paragraph 5.1(g):** We are concerned that some (particularly smaller) firms may not understand the meaning of the reference to, "*the first line controls of the business and the interaction of the second and third line controls*". We suggest that these concepts should either be explained in further detail or be prefaced with, "*where relevant in the context of the organisation...*". We would also note that this may not be relevant where proportionality considerations are in play.
  - b. **Question 5.4(a):** This question requires the AIFM to confirm that for each AIF it manages it, "*makes available to the AIF investors ... the information required by FUND 3.2.2R ... before they invest in the AIF*". We think that this question should take account of funds which are fully raised prior to 22 July 2013, where investors will not necessarily have been supplied with this information (because the fund will have closed prior to the Directive's implementation). We would suggest that this question is amended by, for instance, referring to, "*for each AIF it manages and markets after 22 July 2013 ...*", so as to exclude fully raised funds from the requirement.
3. **Section 7 (Conditions for Authorisation): Question 7.9:** We think it will be difficult for firms to fully answer this question ("*Please confirm that you have a remuneration policy in place that has been reviewed and adopted by the management body of the AIFM, and which is compliant with SYSC 19B (AIFM remuneration code) ...*") prior to final FCA guidance on remuneration being issued, given that this guidance may cover a number of important points. We consider that it should be sufficient for a firm to state that it has a remuneration policy in place and that it will be finalised after the FCA publishes final guidance in this area.
4. **Section 9 (AIFs):**
  - a. **Question 9.4(b):** This question, which suggests that a firm must have appointed a depositary at the time of its AIFM application, does not tie in with Section 10 (*Depositary arrangements*). Question 10.1, for instance, helpfully states, "*Please confirm the name ... of the firm(s) that you have already appointed, or intend to*



*appoint, to act as depositary to the AIF(s) that you manage ...*" (emphasis added). We consider that Question 9.4(b) should be conformed with Section 10. We think that either Question 9.4(b) should be amended or firms should be able to tick the final box in Question 9.4(b) ("*Not attached >> explanation below*") and explain that they are in the process of appointing a depositary.

- b. **Question 9.4(3):** As a very minor point, we note that the question immediately following Question 9.4(b) is Question 9.4 "3)". We think that "3)" should be amended to "c)".
5. **Section 11 (Fees): Question 11.4:** We are concerned that the options offered at Question 11.4 do not contemplate that an applicant firm may only fall within fee-block A.7 (for example by virtue of the fact that it is a VC firm and therefore outside the coverage of fee-block A.9). It is unclear whether, in such a scenario, the firm should tick the last box and be subject only to the administration fee of £250 (on the basis that the applicant firm currently is, and will remain, only an A.7 firm and is not moving into a new fee-block – we presume that a firm will not have to change fee-blocks simply on the basis of the Directive).

#### Draft schedule of AIFs

6. **"AIF ID Code Type" and "AIF ID Code":** Many funds (particularly non-listed funds) will not have such a code. It would be helpful if the FCA could confirm that if there is an 'AIF code' (e.g. an ISIN) it should be included in the schedule but, if not, the AIFM should simply write "not applicable".

#### Draft marketing passport form

7. **Section 3 (AIFMs): Question 3.5:** The introductory statement to Section 3 states, "*Please provide the following documentation and information*". Question 3.5 goes on to require, "*A description of, or any information on, the AIF available to investors*". It is unclear from these two statements whether the AIFM must provide: (1) copies of all documentation made available to investors (a very onerous obligation); or (2) a description of, or a reference to the location of, the information. We would welcome clarification. We would also welcome confirmation that this question applies only in respect of funds which are marketed post-22 July 2013 (and does not apply to funds which are fully raised by that date).