Paul Rich/Hillary Neale
Financial Conduct Authority
12 Endeavour Square
London
E20 1JN

By email: cp21-26@fca.org.uk

17 September 2021

Dear Mr Rich, Ms Neale

Re: CP21/26 A new UK prudential regime for investment MiFID firms

We are writing on behalf of the British Private Equity and Venture Capital Association ("BVCA"), which is the industry body and public policy advocate for the private equity and venture capital industry in the UK. With a membership of over 700 firms, we represent the vast majority of all UK based private equity and venture capital firms, as well as their professional advisers and investors. Between 2016 and 2020, BVCA members invested over £47bn into around 3,500 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 1.1m people in the UK and the majority of the businesses our members invest in are small and medium-sized businesses.

We have responded only to those questions that raised concerns amongst our member firms.

Disclosure (Chapter 3)

Q.1 Do you agree with the proposed scope and process of disclosure set out in this chapter?

Q.2 Do you agree with our proposed disclosures on risk management, own funds, own funds requirements and investment policy, including the use of templates?If not, please provide details of what should be disclosed or how the templates should be amended.

As a general point, the relationship between BVCA firms and the relatively limited numbers of investors in their closed-end funds is inherently close and long-term, with communication primarily through direct conversations and negotiations. Public methods of communication are less relevant in this arena, as investors base their investment decisions on extensive and direct due diligence instead.

Disclosure can be a burdensome and costly exercise, particularly in relative terms for smaller firms, and we would ask that the FCA consider whether each of the disclosures is necessary. Where information may already be publicly available, for example at Companies House, we would request that such information should not be duplicated in the FCA disclosure requirements.We would suggest that the FCA rules should permit information which is already publicly available to be incorporated by reference into the new regulatory disclosures.

One example of a potentially unnecessary disclosure is the requirement on all non-SNI firms to disclose their K-factor requirement for K-factors grouped into three categories. The proposed disclosure rules would require a non-SNI firm whose capital requirement is determined by the FOR (or PMR) to disclose its K-factor calculation. Where it is the FOR (or PMR) which determines the firm's capital requirement,

the firm should not be required to disclose its K-factor calculation. Since this is not the calculation which determines the firm's capital requirement this would not provide useful information to investors or other stakeholders in the firm (and may, in fact, cause confusion as to the basis of the calculation of the capital requirement).

We would also ask that the FCA clarify whether the required disclosure of investment policies applies only to substantial holdings in listed companies when held on the investment firm's balance sheet. If the scope is in fact wider (i.e. applying to investments held by funds managed by the investment firm) this would appear to be creating additional stewardship obligations via the prudential regime.

Importantly, the draft rules appear to omit any clarification relating to the timing of firm' first public disclosures under IFPR; they only note that the disclosures are required to be made at least annually at the same time as the annual report. We suggest that the FCA clarify that the first disclosures should be published during the course of 2023, in respect of 2022, which is the first full year of application of the IFPR. It would not be appropriate to require firms to publish their first disclosures in 2022 as this would relate to a period during which IFPR was not yet in force and firms may not have the relevant data points in order to make the disclosures. In particular, there are firms that will be subject to IFPR which are not currently subject to any Remuneration Code, and so would be unlikely to have the necessary remuneration information to disclose in respect of a performance period beginning in 2021.The transitional provisions relating to remuneration disclosures do not appear to cover firms that are not subject to any existing Remuneration Code. Should it be the FCA's intention to require firms to publish their first disclosures in 2022, we strongly support a position that such disclosures be made on a reasonable efforts basis.

Q.3 Do you have any specific suggestions on our proposed disclosures on governance arrangements and on remuneration?

The proposed disclosure rules require the disclosure of directorships which do not contribute to the numerical limit on the number of directorships which may be held (where the numerical limit applies).Consequently, directorships in entities which pursue a predominantly non-commercial objective and multiple directorships within a corporate group must be disclosed individually. Since these directorships are not considered to contribute to the limit on directorships, requiring them to be disclosed individually is inconsistent with the substantive requirements on directorships and risks creating a misleading disclosure.

Although the quantitative remuneration disclosures are made on an aggregated basis we are concerned that for non-SNI firms with small numbers of senior managers and/or other material risk takers it may be possible to calculate (by "reverse engineering") the remuneration awarded to individual senior managers or other employees. This could result in a breach of applicable laws relating to data privacy e.g. the UK's onshored version of the General Data Protection Regulation (GDPR), along with the other risks associated with the disclosure of commercially and/or personally sensitive information. We would strongly urge the FCA to provide an exemption, or expressly refer to the possibility of seeking a waiver, where the number of senior managers and/or material risk takers would allow a "reverse engineering" of individuals' remuneration to be performed.

Own funds – excess drawings by partners and members (Chapter 4)

Q.4 Do you agree with our proposal to require excess drawings by partners or members (of partnerships and LLPs) to be deducted from CET1 capital, except where the amount is already required to be deducted or deemed repaid under other MIFIDPRU rules.If not explain your reasons for disagreeing.

We assume the purpose of the proposed rule is to replicate the position under the existing FCA rules requiring the deduction from tier one capital of the amount by which the aggregate drawings by partners or members from a partnership or LLP exceed the profits of the partnership or LLP. If the intention is simply to continue the existing requirement, rather than introduce a new obligation, this should be confirmed.

We would be happy to discuss the contents of this letter with you; please contact Tim Lewis (tim.lewis@traverssmith.com) and Tom Taylor (ttaylor@bvca.co.uk).

Yours sincerely,

Tim Lewis, Chair, BVCA Regulatory Committee