1 February 2013

Investment Funds Team
Conduct Business Unit
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

By email: cp12_32@fsa.gov.uk

Dear Sirs,

Re: BVCA Regulatory Committee response to the FSA Consultation Paper on the Implementation of the Alternative Investment Fund Managers Directive: Part 1 (CP 12/32)

This response to the FSA Consultation Paper on the Implementation of the Alternative Investment Fund Managers Directive: Part 1 (CP 12/32) (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 and public policy advocate for the private equity and venture capital industry in the UK. The BVCA Membership comprises over 250 private equity, midmarket and venture capital firms with an accumulated total of approximately £32 billion funds under management; as well as over 250 professional advisory firms, including legal, accounting, regulatory and tax advisers, corporate financiers, due diligence professionals, environmental advisers, transaction services providers, and placement agents.

In our response, our points are generally made in reference to private equity but could equally apply to other investment strategies incorporated by BVCA members, notably venture capital and real estate investment. In order to focus our response appropriately, we have considered only those parts of the Consultation Paper which we think raise issues relevant to private equity and venture capital firms ("**PE/VC firms**"). Given that a number of our comments and concerns are not linked to particular questions posed by the Consultation Paper ("**Consultation Questions**"), but are instead of a more general nature, we have structured our response such that a series of general comments precedes our answers to the Consultation Questions.

We appreciate the very difficult task facing the FSA, and HM Treasury, as regards the implementation of the Alternative Investment Fund Managers Directive (the "**Directive**") and welcome the opportunity to respond to the Consultation Paper. We stand ready to provide

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whatever further contribution to this work the FSA would find helpful. In particular, we would be delighted to attend a meeting with the FSA to discuss the issues raised in our response.

Yours faithfully,

Margaret Chamberlain
Chair - BVCA Regulatory Committee

BVCA

FSA CONSULTATION PAPER – IMPLEMENTATION OF THE ALTERNATIVE INVESTMENT FUND MANAGERS DIRECTIVE: PART 1 (CP 12/32)

PART A: GENERAL COMMENTS AND CONCERNS

Key concerns

Applications for authorisation from prospective UK AIFMs and depositaries

1. We are deeply concerned by the proposal, set out at paragraph 4.13 of the Consultation Paper, regarding the time at which the FCA intends to accept applications for authorisation from prospective UK AIFMs.

2. The marketing regime applicable to EU AIFMs which are marketing EU AIFs in the EU after 22 July 2013 is predicated upon authorisation. It is therefore vital that the FCA is in a position to accept and approve applications for authorisation from prospective UK AIFMs prior to 22 July 2013 such that those firms are authorised, and have the benefit of the marketing passport, with effect from 22 July 2013. Unless an earlier authorisation date is set, it will not be possible for UK firms, including PE/VC firms, to market their funds in the EU for a potentially lengthy period of time this year.

3. This has the potential to cause damage to the competitiveness of the UK asset management industry, significant harm to the wider real economy and is of great concern to the BVCA's members. Many of the BVCA's members will be marketing in the EU as at 22 July 2013 and many more will want to commence marketing over the summer. Marketing is the means by which PE/VC firms (and others) raise the funds necessary to make significant contributions to the real economy and deliver returns to investors. Marketing is, for many PE/VC firms, a fundamental and continuously ongoing part of their activities – it is not something which can simply be "switched off" whilst they await authorisation.

4. We are particularly concerned about the competitiveness of the UK asset management industry given that, as far as we are aware, AIFMs from other EU Member States will not suffer a similar fate and will be able to market their funds throughout the EU, including in the UK, immediately after 22 July 2013. We understand that, for example, Ireland and Luxembourg intend to accept applications for authorisation from the end of March, so that their firms obtain authorisation in time. The UK has the largest number of firms affected by the Directive, and is unusual in that these firms are already regulated, whereas many other Member States have not authorised alternative investment managers before. So the UK regulator already has a considerable amount of information about these firms and they are already subject to many rules that are similar to those under the Directive. It is, therefore, essential that the UK authorities develop a process pursuant to which firms are able to apply

to the FCA for authorisation prior to 22 July 2013 and be granted authorisation (and the benefit of the marketing passport) with effect from that date. The date of effectiveness of the Directive has been known for a long time and our members are very surprised that the UK is not planning to put them in a position where they can be authorised under it from its effective date.

5. We believe that, given the constraints of both time and resources, it may be necessary for the FCA to offer a "short-form" authorisation procedure (which requires the prospective AIFM to provide information and various confirmations), but even on a new authorisation the process incorporates confirmations that certain compliance procedures exist, which are not usually reviewed by the FSA. In this case the issue concerns existing firms who have already been subject to many similar rules under the UK existing regime. We see no reason why an appropriate procedure cannot be developed. Without doing so, not only will other EU firms be in a better position than UK firms as at 22 July 2013 but so too will third country (non-EU) firms as they will be able to market under existing private placement regimes (where such marketing is permitted by individual EU Member States). The FSA and HM Treasury must take urgent steps to bridge this "marketing gap" if the UK asset management industry, and wider real economy, is not to suffer. We would be delighted to work with the FSA on developing an appropriate solution.

6. Finally, given that there are no general transitional provisions relating to depositaries (paragraph 2.43 of the Consultation Paper), it is imperative that the FCA is also able to accept and approve applications for authorisation from prospective depositaries prior to 22 July 2013, and that it publishes its full requirements as soon as possible. An AIFM is under an obligation to ensure that, for each AIF it manages, a single depositary is appointed. The authorisation procedure for depositaries must, therefore, sit alongside the authorisation procedure we describe at paragraph 5 above. In addition many of our member firms are having difficulties in finding an entity willing to be a depositary for PE/VC strategies and so are likely to need to use the services of one of the alternative types of depositary. We believe that there are a few firms hoping to provide this service, but they need certainty as to what will be required of them as a matter of urgency in order to finalise their proposition. They also need to be authorised, probably for the first time, before 22 July.

Scope of Article 6 (Conditions for taking up activities as AIFM) of the Directive

7. Article 6 (*Conditions for taking up activities as AIFM*) of the Directive contains limitations on the activities which may be undertaken by an AIFM. We are not, however, clear as to: (i) how these limitations are to be implemented in the UK; or (ii) how they are to be interpreted. Urgent clarification is required given that, depending on how the FSA interprets these limitations, firms may need to apply for new group entities to be authorised to carry out activities which would otherwise be carried out by the AIFM.

8. The industry needs to understand as a matter of some urgency how the UK authorities view the limitations set out in the Directive. Are they to be interpreted as restrictions on only the MiFID activities that an AIFM may perform, which we think is a likely interpretation given the fact that the limitation stems from a Directive, or are these limitations to be interpreted more widely so that if a Member State, under its domestic law, regulates an activity, an AIFM may not also perform it unless it is part of collective portfolio management as defined in Annex 1 of the Directive? This issue is particularly acute in relation to the operation of an unregulated collective investment scheme ("**UCIS**") (an entirely UK concept). A key issue for PE/VC firms is whether the limitations will prohibit an AIFM from managing a co-investment scheme (where such co-investment scheme is a collective investment scheme but not an AIF). We would expect the majority of UK AIFMs to need authorisation for both managing AIFs and operating UCIS. If two authorised firms are required this would be very serious and disruptive. We do not however see this as a necessary result. We suggest that either (a) the Directive restrictions are to be interpreted as we suggest and/or (b) these schemes are clearly related to the management of the AIF and within Annex 1 to the Directive. Any authorisation could be subject to limitations to make this clear. As other Member States do not currently regulate "operating unregulated schemes" the issue will not arise elsewhere and we expect their firms will naturally continue to manage coinvestment schemes without the issue arising as it does in the UK.

9. We therefore believe that any approach which requires a separate authorised firm would put UK firms at a disadvantage to their counterparts in other EU jurisdictions. It was open to the UK authorities, when implementing the Directive, to remove the existing UK regulatory regime for UCIS and replace it with the Directive regime. Instead of taking this approach, the UK has decided to retain the current regime and apply the Directive regime as an additional layer of regulation. It is only because of this policy that this issue arises in such a form. We therefore think it is vital that the FSA clarifies its approach soon to this very important issue.

10. A further issue on the limitations relates to the additional MiFID services which may be provided. It appears that even if a firm only wants to provide the additional non-core service of investment advice, it must also be authorised to provide discretionary asset management (Article 6(5)(b) of the Directive). It would be helpful if the FSA could indicate what the position will be if a firm does not wish to actually provide a discretionary asset management service – will the FCA be prepared to grant authorisation for both activities? We would also like to seek clarity in respect of the following questions:

    - Can a UK authorised AIFM provide marketing services to a non-EU AIF which is managed by a sister/affiliate entity that is not an authorised AIFM?

- Can a UK authorised AIFM advise or manage discretionary accounts cross-border throughout the EEA under a MiFID passport?

- Can a UK authorised AIFM take on non-discretionary management mandates (i.e.to advise and arrange transactions)?

Chapter 2 (Implementation)

Scope of transitional provisions

11. Paragraph 2.40 of the Consultation Paper provides that, "*[t]he AIFMD allows firms that are already managing or marketing AIFs, before 22 July 2013, a transitional period of 12 months to comply with the relevant laws and regulations and to apply for authorisation. The Treasury regulations propose that a firm carrying on the activity of managing one or more AIFs as at 22 July 2013 will be permitted to continue its collective portfolio management activities, subject to the Handbook rules applying immediately before that date*".

12. We understand from this (and agree) that AIFMs that already manage or market AIFs prior to 22 July 2013 may also launch (and manage and market) new AIFs after 22 July 2013 but prior to receiving authorisation. That is, we assume that the transitional provisions apply both in respect of each AIF in existence immediately before 22 July 2013 and any AIF launched by the AIFM after that date. We consider this to be the only sensible interpretation of the transitional provisions but would welcome confirmation by the FSA.

Chapter 3 (Scope)

13. We appreciate that the Consultation Paper was published prior to the ESMA Consultation Paper on Guidelines on key concepts of the AIFMD being published (the "**ESMA Consultation Paper**"). One of the issues discussed in the ESMA Consultation Paper is the meaning of "raising capital" and, more particularly, what constitutes "external" capital. We think it would be useful if the FSA were to discuss this issue in its second consultation paper in the context of UK implementation.

Chapter 4 (Authorisations)

Applications for authorisation from prospective UK AIFMs after fund has been raised

14. A prospective UK AIFM's application for authorisation must contain certain information, including information about each AIF managed by the AIFM. Paragraph 4.14 of the Consultation Paper provides that this must include the information to be disclosed to

investors in accordance with FUND 3.2.2R – the investor "prior disclosure" information. We would welcome the FSA's views as to how this requirement is to be satisfied in instances where the prospective AIFM has already raised a fund and, because it was raised prior to 22 July 2013, was not required to provide investors with such information.

MiFID services and passporting

15. The FSA notes, at paragraph 4.18 of the Consultation Paper, that there is some uncertainty in the EU about the passporting by an AIFM of 'MiFID services' carried out under Article 6(4) (*Conditions for taking up activities as AIFM*) of the Directive. Specifically, the uncertainty relates to whether a firm performing such services has the right under the Directive to passport these services to other EU Member States, or whether they would need to be authorised under MiFID to do so. While we acknowledge that, in practice, a UK AIFM will hold the same Part IV permissions whichever directive they are considered to derive from, it would be helpful if the FSA could use its influence to seek to resolve this uncertainty at the European level. A number of our members would urgently like a greater degree of certainty in this area and it would be very odd if they are not able to operate under a passport.

Chapter 6 (Transparency)

Pre-sale disclosure requirements

16. Paragraph 6.7 of the Consultation Paper sets out certain information which must be made available to investors before they invest in an AIF – the investor "prior disclosure" information referred to at paragraph 14 above. Paragraph 6.8 of the Consultation Paper provides that, "... *[w]here the fund's constitution does not currently require the information to be made available at least on request, it will need to be amended*". We do not consider it necessary or proportionate to require changes to be made to the AIF's constitution. We believe that it would be sufficient for the AIFM to write to the AIF's investors notifying them of their right to have the relevant information made available to them on request and would strongly encourage the FSA to take such a view.

General reporting requirements

17. We consider that certain of the proposed reporting obligations should not apply to PE/VC firms. FUND 3.4 (*Reporting obligations to the FCA*) sets out certain information which an AIFM must provide to the FCA. This includes information on matters such as the main instruments in which the AIFM is trading, the principal markets of which the AIFM is a member and the results of stress tests. These requirements are inappropriate in the context of many PE/VC firms and we presume that where FUND 3.4 provides that such information

must be reported to the FCA, PE/VC firms (and, potentially, others) should interpret this to mean, "*where such information is relevant, an AIFM must report it to the FCA*".

18. More generally, we are concerned that it is not yet clear precisely how the draft FUND rules will operate (although we appreciate that the Consultation Paper was published prior to the final Level 2 Regulation being available). Given that some firms will be required to meet a reporting deadline in October 2013 (see paragraph 6.33 of the Consultation Paper), we would urge the FSA to issue a final version of the FUND rules as soon as possible to enable those firms to make the necessary preparations to meet that reporting deadline.

Operational aspects of reporting

19. Paragraph 6.39 of the Consultation Paper provides, "... *we expect that non-EEA AIFMs will report to the FCA after 22 July 2013 using the same systems as UK AIFMs*". We assume this refers to electronic systems for reporting. We do not consider this to be practicable for all non-EEA AIFMs, particularly in instances where the AIFM has no other links to the UK. We consider that it will be necessary for the FCA to offer an alternative solution for non-EEA AIFMs, even if the FCA charges for the use of such an alternative solution. If such an alternative solution is not offered, this may impose a significant burden in terms of both cost and administrative arrangements on such AIFMs.

Chapter 7 (Operating requirements for AIFMs)

Functional and hierarchical separation of risk management function

20. Paragraphs 7.38 and 7.39 of the Consultation Paper set out the FSA's approach to the Directive's requirement for functional and hierarchical separation of the risk management function from an AIFM's operating units. We welcome the FSA's acknowledgement that, while it cannot treat private equity AIFMs differently, the requirement will be interpreted in a proportionate manner and appreciate the FSA's acknowledgement that it will, "...*take account of each firm's structure in supervising the requirements*". We would, however, welcome guidance from the FSA as to what this will mean for PE/VC firms in practice.

Chapter 8 (Management requirements for AIFMs)

Valuation procedures

21. Paragraph 8.2 of the Consultation Paper provides that certain information about valuation procedures should be incorporated into the constitutional documents of an AIF. As discussed at paragraph 16 above, we do not consider it necessary or proportionate to require changes to be made to the AIF's constitution. We believe that it would be sufficient for the AIFM to

write to the AIF's investors notifying them of this information and would encourage the FSA to take such a view.

Chapter 9 (Depositaries)

We welcome the FSA's proposal to implement a bespoke regime to facilitate fund administrators acting as PE AIF Depositaries.

There remains considerable uncertainty for any fund administrator considering applying to become a PE AIF Depositary as to the precise requirements which will apply. Private equity houses are under considerable pressure to identify their depositary for the period immediately after the AIFM Directive comes into force. Depositaries however currently do not know which rules will apply to them. Although the rules have not yet been finalised, it is vital that the FSA accepts applications from PE AIF depositaries for FSA authorisation now. The FSA should be in a position to start processing these applications by reference to its normal authorisation criteria. Unless the FSA takes this approach, we are very concerned that potential depositaries will be unable to confirm to PE firms that they are able to provide their service from 22 July. This means that PE firms will be unable to appoint depositaries by that date; that would appear to block PE firms from being able to comply with the Directive by 22 July.

Chapter 10 (Marketing)

Guidance on definition of "marketing"

22. We appreciate that the Directive's marketing requirements have largely been transposed by means of the draft Treasury regulations. It would, however, be helpful if the FSA could, as soon as possible, provide firms with draft guidance as to how it intends to interpret the Directive's definition of "marketing" (which will be transposed into the Glossary of the FSA Handbook). Firms would, for instance, benefit from guidance as to what the FSA considers amounts to "indirect offering or placement". A number of our members are also concerned about whether activity in the secondary markets (where a third party intermediary may be acting on behalf of a professional investor, rather than an AIFM) could constitute "marketing".

23. It would also be helpful if the FSA could work with regulators in other EU Member States to discuss the filing procedures applicable to those AIFMs marketing in numerous EU Member States under national private placement regimes. It would be useful if we could avoid a situation whereby multiple filings and applications seeking permission to market must be made to numerous competent authorities. Firms would benefit from as streamlined a system as possible.

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PART B: RESPONSES TO CONSULTATION QUESTIONS

Q1: Although we will return to this issue in a later consultation, once ESMA has completed its work on types of AIFM, do you have any concerns or questions regarding our approach to AIFMD scope described in this chapter?

We welcome the FSA's efforts to set out criteria that distinguish AIFs from non-fund like undertakings and generally agree with the approach taken by the FSA. We are, however, uncertain as to whether the FSA intends to codify these principles, by incorporating them into the FSA Handbook, or whether firms will be required to look to the ESMA Guidelines on Key Concepts of the Directive.

Q2: Do you agree with our proposed approach to the capital and PII requirements for CPM firms and internally managed AIFs?

We agree with the FSA's proposals set out at paragraph 5.16 of the Consultation Paper as regards the capital and PII requirements for internally managed AIFs. While we agree that the Directive is not entirely clear, we believe the FSA's reading of the Directive is legally correct and that the FSA's proposals achieve the intended policy outcome. We also consider the FSA's proposals to be appropriate on policy terms. In the case of an internally managed AIF (which in the UK is most likely to be an investment trust or similar) any additional capital is in effect taken directly from shareholders, and then can only be invested in liquid assets, which may not reflect the investment strategy of the vehicle itself. The position is different with an external manager which will usually be responsible for providing its own capital.

Q3: Do you agree that we should treat an AIFM that also undertakes MiFID services as a BIPRU limited licence firm (subject to the additional requirements of the Directive)?

We believe that there is scope for an alternative interpretation of the capital requirements in the Directive. It is not wholly clear to us that the effect of the Directive is to require an AIFM that also undertakes MiFID services to be treated as a BIPRU limited licence firm (although we recognise that this is how the FSA treats UCITS investment firms). Given that there is some scope for alternative interpretations, we think it is important that, before the FSA makes a final decision about how such firms should be treated, it ensures that there is a common approach across Europe on this point. If this is not the case, a UK AIFM that also undertakes MiFID services may be subject to more onerous capital requirements than a comparable firm in another EU Member State; an outcome which clearly cannot have been intended.

We also note that should discretionary investment managers become exempt CAD firms following the implementation of the Capital Requirements Regulation, this policy will need to be revisited.

Q4: Do you agree with our proposed approach to professional negligence risks and the liquid assets requirement?

We generally agree with the FSA's approach but have two concerns.

Firstly, the FSA notes, at paragraph 5.30 of the Consultation Paper, that the Level 2 Regulation will allow it, in the context of computing the own funds an AIFM must hold, to, "... *impose a higher percentage on an AIFM, if [it is] not satisfied that the firm provides sufficient additional own funds to cover appropriately professional liability risks*". It would be helpful if the FSA could provide firms with guidance as to when it may exercise this right.

Secondly, at paragraph 5.31 of the Consultation Paper, the FSA suggests that firms should, "... *maintain adequate own funds to cover any exclusions in the insurance policy*". We consider that this goes beyond what is required by the Directive and the Level 2 Regulation and request that this is deleted. We consider that this goes beyond what is required by the Directive and the Level 2 Regulation and request that this is deleted. Indeed this possibility was discussed as part of an earlier draft of Level 2 but was not included in the final Regulation. It is not clear to us how these amounts could in practice be calculated in any event.

Q5: Do you agree with our intention to apply the liquid assets requirement also to UCITS management companies that do not manage any AIFs?

We do not see any justification for the FSA applying a liquid assets requirement to a UCITS management company that does not manage any AIFs. This goes beyond the requirements of the UCITS Directive and we consider it unnecessary and disproportionate to make such a change unless and until the UCITS laws are amended. Imposing the liquid assets requirements on such UCITS management companies may lead to non-parity of treatment between UCITS management companies established in the UK and those established elsewhere in Europe.

Q6: Do you agree with the proposed changes to SUP 16.12 and that the proposed new forms and guidance notes will provide us with sufficient information to assess whether firms are complying with the capital and PII requirements?

While we do not have any particular comments from the perspective of the PE/VC industry, we wonder whether it would be helpful for the forms to be piloted by a range of firms in order to ensure that firms are able to provide the information required.

Q7: Do you agree with our proposal for aligning the existing requirements under the FSA Remuneration Code with the new AIFMD remuneration rules? Do you have any specific concerns regarding:

- **Our proposed treatment of AIFMs which are part of a banking group?**
- **AIFMs doing MiFID investment business?**

We generally agree with the FSA's proposal for aligning the existing requirements under the FSA Remuneration Code with the new remuneration rules under the Directive. Further guidance on proportionality would, however, be welcome. PE/VC firms currently subject to the FSA Remuneration Code believe that the existing regime is broadly workable and offers suitable protections. Such firms are, however, concerned that, given the "cash to cash" nature of PE/VC remuneration structures, unless the new requirements are interpreted proportionally, certain of the additional requirements could be both unhelpful and unnecessary.

Q8: Are the proposed capital requirements for firms that act as depositaries for authorised AIFs fair and appropriate?

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

Q9: Do you agree with our approach permitting authorised professional firms and other suitably qualified firms to be authorised to carry on the activity of acting as a PE AIF depositary?

We agree with the FSA's proposed approach. Allowing authorised professional, and other suitably qualified, firms to be authorised as PE AIF depositaries will increase competition in the market. Given that PE/VC firms are already finding it very difficult to find a depositary, we welcome this approach given that it broadens the market.

Q10: What standards should we apply to determine that a firm, which is not a professional firm, is fit and proper to perform this function?

We expect the FSA will apply its usual fitness and propriety standards.

Q11: Do you agree that it may be necessary or desirable for PE AIF depositaries to be able to hold financial assets in custody?

Given the lack of certainty as regards what constitutes a "financial asset", we think it is necessary that PE AIF depositaries are able to hold such assets in custody. PE firms are obliged to appoint a single depositary for their EU AIF. At the time of appointment, it may be impossible for the PE AIFM to rule out all together the possibility that they may need to have a depositary with the ability to hold assets in custody. For this reason, we expect PE AIF depositaries will be required to offer this service. If a PE AIF depositary is unable to utilise delegates to hold all of the assets which must be held in custody (in each jurisdiction which the relevant PE AIFs hold assets), the PE AIF depositary will need to provide this service itself.

Q12: Do you agree with the proposed approach to setting capital requirements for firms acting as PE AIF depositaries? If not, please give reasons.

We think it is vital that PE AIF depositaries do not have an unnecessarily high initial capital requirement in order for them to be in a position to offer their services.

If PE AIF depositaries are forced to hold (for example) one quarter of fixed overheads in capital in each jurisdiction in which they operate, we think this will materially impact the ability of fund administrators to offer the service and will lead to a much smaller pool of potential PE AIF depositaries.

We note that unlike many EU directives, the AIFM Directive does not explicitly cover the position of depositaries operating in multiple jurisdictions. We think it likely that many AIF depositaries will wish to offer services from the UK, Luxembourg and potentially other EU jurisdictions. That will be necessary in order to reflect the fact that many private equity funds/fund managers have multiple jurisdictional components. We think it important that PE AIF depositaries not be forced to hold separate items of capital in multiple jurisdictions in order to fulfil essentially the same function. For instance, if a UK incorporated PE AIF depositary establishes also in Luxembourg and Germany, we believe it should be open to that entity to use the same capital to meet the different capital requirements imposed by the miscellaneous jurisdictions.

Q13: Should such depositaries be subject to different requirements, depending on whether or not they may hold financial instruments in custody? If so, what type of requirement would be most appropriate for these higher-risk firms: more own funds, an expenditure-based requirement, or some other method of calculation (please specify)?

We do not think that such depositaries should be subject to different requirements, depending on whether they may hold financial instruments in custody. This is for three key reasons.

Firstly, a firm may only appoint such a depositary where the firm's investment policy is: (i) either generally not to invest in assets that must be held in custody, which suggests that any such assets will be fairly minimal; or (ii) to invest in issuers or non-listed companies in order to acquire control. In the second case, the notion of "losing" investments to the detriment of the AIF when the AIF controls the investee is unrealistic.

Secondly, as indicated by our response to Consultation Question 11, we do not think that this would be an additional requirement imposed on only some PE AIF depositaries as we consider that all PE AIF depositaries will need to be able to hold assets in custody.

Finally, we do not consider the holding of financial instruments in custody to give rise to risks which can be mitigated by applying more stringent regulatory capital requirements.

Q14: Do you agree with our approach permitting AIF depositaries to be in the same group as the AIFM so long as Directive requirements are met?

Yes. We agree with the approach and do not consider that any other approach would be practicable. However, we strongly disagree with the FSA's suggestion at paragraph 9.40 of the Consultation Paper that a depositary in the same group as the AIFM should not be able to hold title to the AIF's assets. Any such depositary will be a regulated entity and required to comply with the Directive in the same way as a depositary outside the AIFM's group.

Q15: What additional safeguards, if any, should there be to ensure effective management of conflicts of interest, especially in relation to custody of AIF assets?

We do not consider that any additional safeguards are required. The Directive contains extremely wide ranging requirements relating to conflicts and custody. Any additional safeguards would be superfluous and represent gold plating.

Q16: Do you agree with our approach requiring UK firms providing depositary services under Article 36 to hold a Part IV permission to be an AIF depositary?

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

Q17: Do you agree that EEA credit institutions should be allowed to act as depositary to UK AIFs? If you expect to be an AIFM of UK AIFs from 2013, would you consider using such a firm as depositary?

We agree that EEA credit institutions should be allowed to act as depositary to UK AIFs.

Q18: Should authorised funds be excluded from this arrangement?

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

Q19: Do you agree with our assessment of the impact of capital requirements for PE AIF depositaries?

Please see our answer to question 12.

Q20: Do you agree with our analysis of costs and benefits?

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