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Strategy & Competition  
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London  
E14 5HS

By email: [cp17-25@fca.org.uk](mailto:cp17-25@fca.org.uk)

Date 03 November 2017

Dear Sirs

**Re: BVCA response to CP17/25 - Individual Accountability: Extending the Senior Managers & Certification Regime to all FCA 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 600 firms, the BVCA represents the vast majority of UK based private equity and venture capital firms, as well as their professional advisers. Our members have invested over £27 billion in nearly 3,900 UK-based companies over the last five years. Companies backed by private equity and venture capital in the UK employ around 385,000 people and 84% of UK investments in 2015 were directed at small and medium-sized businesses.

The BVCA welcomes the opportunity to respond to the FCA’s consultation on extending the Senior Managers & Certification Regime (“**SM&CR**”) to all financial services firms. In general, the BVCA supports the FCA’s proportionate approach to applying the SM&CR to the wider population of the financial services industry. However, we do have some real and specific concerns, which we have raised below.

Our responses to the FCA’s questions

We have limited our response to those issues that specifically affect private equity and venture capital firms. Given this, we have responded to the below selected questions only.

**Q1. Does the proposed list of Senior Managers in the core regime cover the appropriate roles, i.e. the most senior decision makers within a firm?**

We welcome the FCA’s clarity in CP17/25 that a person acting as a partner must also meet the FSMA definition of a person performing a “Senior Management Function” (section 59ZA(2)) in order to be treated as performing SMF27. In our view, this clarity is important to ensure that SMF27 is applied in a manner that accurately reflects the governance of BVCA member firms.

**Q7: Do you agree with the functions we have proposed making Certification Functions? If not, please explain why.**



We have no comments on most of the proposed Certification Functions. However, in relation to the material risk taker Certification Function (which will cover a large number of BVCA members), we note that some BVCA members are not subject to the existing FCA remuneration codes and would have individuals captured by the "risk taker" definition for the first time under the proposed regime. We believe the FCA should firstly clarify that the "risk taker" definition should be limited to firms subject to SYSC 19A – 19E and for those firms should track the relevant definition of "risk taker" applied in relevant sectoral definition of remuneration code staff. In particular, the FCA should avoid cross-applying the CRR RTS definition of "material risk taker" to firms which are not subject to CRR. We also note the FCA's approach to applying SMF27 to only those individuals meeting the definition of performing a "Senior Management Function", as discussed above.

We believe the FCA should take a similar approach to the material risk taker Certification Function and clarify that the role does not include individuals who in practice are **not actually taking material risks** on behalf of the firm, despite being remunerated at a level which might otherwise cause them to be deemed to fall within that definition. In other words, the material risk definition for the purposes of the Certification Regime should only capture a firm's remuneration code staff if those staff members actually take material risks (and who are not otherwise caught by the SM&CR). For example, it would be disproportionate for front-office executives within private equity firms who are not otherwise performing a role that would cause them to be treated as performing a Certification Function to be deemed to undertake such a role solely as a result of the quantum of their remuneration.

**Q9: Do you think the identity of people performing Certification Functions should be made public by firms? If so, which Certification Functions should be made public?**

We do not necessarily consider that a publically accessible register of individuals performing Certification Functions is necessary. However, in the absence of such a register, at a minimum, we do consider that it would be useful for firms to be required to state which Certification Functions are being performed and the effective dates for such roles, when providing regulatory references to other firms.

**Q10: Do you agree with our proposed territorial limitation for the Certification Regime? If not, please explain why.**

The fact that the FCA proposes to exclude material risk takers from the territorial limitation could pose challenges for BVCA member firms with a large international presence. In line with our response to Q7 above, we believe the FCA should only exclude those material risk takers from the territorial limitation who are actually taking risks on behalf of the UK firm. In addition, the FCA appears to be going beyond the current territorial application of the approved person's regime to CF30s by applying the Certification Regime in this way to individuals who do not deal with UK clients.

**Q12: Do you agree with our proposed approach to rules and guidance on the fit and proper test? If not, please explain why.**

We would welcome confirmation from the FCA that firms can apply the test proportionately, having regard to the nature, scale and complexity of their business and the nature of an individual's role and responsibilities.



**Q19: Do you agree with our proposed frequency of Conduct Rules notifications? If not, please explain why.**

For notifications regarding Senior Managers, we believe that within ten business days from the firm becoming aware of the matter would be preferable to seven business days, as this would give firms additional flexibility and be consistent with well-established market practice in terms of timeframes.

**Q21: Do you agree with our proposed approach to moving firms between core and enhanced? If not, please explain why.**

We welcome the FCA's recognition that this could be an issue and the provision of a mechanism to allow firms to move between categories.

We would be very keen to discuss the contents of this letter with you and look forward to hearing from you in order to establish whether a meeting of this sort is possible.

Yours faithfully,

A handwritten signature in blue ink, appearing to be 'Tim Lewis', written in a cursive style.

Tim Lewis

Chair, BVCA Regulatory Committee