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Dear Sirs

**A New Regime for European Venture Capital Response – Registered Association 82506726362-20**

The British Private Equity and Venture Capital Association (BVCA) welcomes the opportunity to comment on the European Commission’s Consultation ‘A New Regime for European Venture Capital’.

The BVCA is the industry body for the UK venture capital and private equity industry. With a membership of over 450 firms, the BVCA represents the vast majority of all UK based venture capital private equity firms and their advisers.

We welcome the Commission’s proposals, which we believe could have a significant impact in terms of driving investment into European SMEs. This investment will be vital in generating jobs and growth right across Europe. By opening up the internal European investor market to venture capital funds, a passport allowing funds to market across Europe could lead to increased institutional and retail investment into these funds, which will then be invested into SMEs right across Europe.

We believe that the proposed regime should impose as few burdens as possible on those funds that choose to adopt it. Any regulatory burdens that the regime imposes will reduce the amount of capital for investment into SMEs, and will therefore reduce the effectiveness of such a scheme.

It is also important that such a scheme is not compulsory for all funds investing in SMEs, and is instead available on an opt-in basis. Many funds that invest in SMEs will choose to fundraise domestically only, and a compulsory regime would create unnecessary and damaging burdens for these funds. It is also important that a passport regime for marketing does not lead to the removal of national private placement regimes.

We set out below our detailed comments on the Commission’s individual questions and boxes:

**Box 1**

***a) Do you think that encouraging Member States to a process of mutual recognition of venture capital funds, based on the direct enforcement of the Treaty freedoms, could facilitate the cross-border activity of these funds?***

The regulatory issues faced by funds investing in SMEs and carrying out activity across Europe relate to fundraising activity, not to investment restrictions, and regulatory changes resulting from the recognition of Treaty freedoms would be welcome.

We note that there are also tax implications for those funds that invest in SMEs across Europe, and these are the primary barrier to cross-border investment. We therefore believe that any encouragement of Member States towards mutual recognition of existing national tax structures to be made mandatory without any delay.

Further, we note that not all member states provide efficient and tax transparent fund structures. Therefore, we call upon the European Commission to create a Pan-European tax neutral vehicle to eliminate all cases of prejudicial treatment of investors in SMEs as soon as they are “pooled” in a fund, including the risk of double taxation at investor level and to meet the reasonable expectations of these investors that their tax treatment will be the same as if they had invested directly into the underlying portfolio companies and at par with holding listed shares.

***b) Do you believe that the main impediment preventing cross-border venture capital fundraising and investments is***

- ***the absence of a passport for activities under the AIFMD thresholds; or***
- ***the fact that the AIFMD is not tailored to venture capital in general?***

The majority of funds that invest in SMEs in Europe are small, and we note in this context that the AIFMD places disproportionate burdens on smaller funds which could act to deter them from opting into the scope of the Directive. We believe that some institutional investors may not include non-AIFMD compliant funds within the scope of their investment criteria, and as a result, we believe that this could act to dampen fundraising for those smaller funds that invest in SMEs, but who do not opt in to the AIFMD due to cost burdens.

Further, we believe that the current national private placement regimes for those funds raising capital on a country by country basis, without a passport, face a significant cost burden in complying with these regimes.

We therefore believe that it is crucial to provide a proportionate passport regime for those small funds which invest in SMEs across Europe, as this would give them access both to the internal market and would remove any barriers to accessing investors who only wish to invest in AIFM or similar compliant funds.

***c) Is a targeted modification of AIFMD rules for venture capital or a standalone initiative in this area the more appropriate tool to increase venture capital activities? Please specify.***

While the motivation of the AIFMD was to regulate all AIFM with a large scope, the proposed regime is aimed at improving access to finance for SMEs. Therefore, considering that not all AIFM contribute to this purpose, a standalone initiative for fund managers who provide investment to SMEs would be more appropriate than a modification of AIFMD rules for them.

***e) Do you believe that an initiative on cross-border operations of venture capital could contribute to eliminating the cross-border tax problems encountered and if so, how?***

We do not believe that a regulatory passport would have an effect on cross-border investment activity. As noted in section a) above, a pan-European tax neutral vehicle to eliminate all cases of prejudicial treatment of investors in SMEs as soon as they are “pooled” in a fund, including the risk of double taxation at investor level, is necessary to remove the tax distortions which currently stifle cross-border investment activity.

We believe that this tax issue should be looked at as a matter of urgency by the Commission.

***f) How could a possible passport for venture capital operators facilitate targeted tax incentives in favour of cross-border venture capital investments?***

Individual national regimes which offer targeted tax incentives for investment in SMEs are already in place – for instance, Venture Capital Trusts in the UK. Whilst we believe that any pan-European passport for funds investing in SMEs should not have a negative impact on such schemes, we feel that the further facilitation of such schemes is not required. The solutions to the tax and regulatory barriers detailed above would be sufficient to encourage further investment by funds into European SMEs.

**Box 2**

***a) Do you agree with this approach? If not, what alternative approach would you suggest? Could you then briefly outline the pros and cons of such an alternative?***

Yes. We agree that a voluntary regime which does not impose significant additional burdens on funds which invest in SMEs would be most appropriate.

***b) Do you consider such a voluntary regime to have any major cost implications for the key stakeholders? (Investors, competent authorities, venture capital business). Please specify.***

We do not believe that a voluntary, light-touch regime would carry major cost implications for the key stakeholders, and we believe that this lack of cost implications is a crucial aspect of such a regime – any cost implications will feed through to reduced returns for investors, which would make small venture funds unattractive to investors and result in reduced investment into SMEs.

***c) Based on your experience, could you provide qualitative and/or quantitative assessment of potential cost savings that the European 'Passport' would bring about?***

The potential cost saving is difficult to quantify as it will depend on the number of countries a small funds' manager would look to market into. Some Member States are of more interest than others as they will have not only more and larger institutional investors but also investors more knowledgeable and more interested in backing small funds. This would include high net worth individuals, family offices and other angel investors, usually themselves with entrepreneurial backgrounds. It may currently also not be possible to provide an accurate quantitative assessment of cost savings in respect of many small funds' managers, since they may have refrained from a broader marketing as the costs seemed prohibitive and may thus also have incurred an opportunity loss in the form of smaller amounts raised than may otherwise have been possible based on performance and track record.

The cost implications for a small funds' manager of a survey of the different national private placement regimes are difficult to estimate. Generally, the costs of a major law firm experienced in raising funds for small funds for an update of their pre-existing documentation (i.e. where no in-depth advice is required) may amount to about EUR 500 to EUR 1,000 per jurisdiction, i.e. EUR 13,500 to EUR 27,000 for an update for the European Union. Still, these costs will be significantly higher in particular (i) if first time advice is sought from a local law firm with only limited experience in the field or (ii) if specific advice, e.g. a legal opinion, on the specific fund structure is sought or (iii) where domestic legislation has substantially changed compared to previous fund raisings.

***d) What information should the manager provide to the competent authority?***

The fund managers wishing to make use of the EU-wide marketing passport under the new regime should be registered with the competent authority prior to any marketing. The competent authority will thus have the information as dealt with in Box 6 below and the investment focus is already determined by the scope of the new regime.

Further, the fund documentation of a small fund is normally prepared through a process of negotiation with investors, not a matter of selling a prepared product. It is important that any registration regime for small funds recognizes this and, in particular, does not require advance filing of fund constitutional documents or terms, or advance clearance of changes to these. There needs to be scope for marketing on the basis of proposed fund terms which are negotiated with investors in the course of fund raising and a fund constitution the terms of which are only finalized by negotiation. Those final documents can be filed after completion of the marketing and negotiation, but not before. This seems proportionate keeping in mind that the proposed regime aims to facilitate the EU-wide fundraising for small funds and should thus not hamper the necessary and positive process of negotiations with investors.

***e) What option would you favour: registration with the national authority or with ESMA? Alternatively, ESMA could hold a European register of venture capital managers and funds with the information provided by national authorities. Would you favour this solution?***

Registration with a national authority in the same manner as the AIFMD may be most appropriate. By definition smaller funds with limited personnel resources will find it easier and more natural to speak to their national authority. The national authorities should be responsible for communication with ESMA.

### **Box 3**

***a) Do you agree with this approach? If not, what alternative approach would you suggest?***

Yes.

### **Questions b) and c)**

***What should be the content and timeframe of the notification? Should the notification cover both, the places where the manager intends to invest in SMEs and the places where it intends to raise funds?***

***Do you consider such a procedure to have any major cost implications for the key stakeholders? (Investors, competent authorities, venture capital business). Please specify.***

We believe that a single authorisation and registration with the competent home authority should be required prior to marketing to investors under the regime, followed by notification to the same authority when the fund intends to market to investors in individual European countries. The home authority should be responsible for the communication of the information provided by the fund to any other relevant competent authorities.

There should be no need for notification of where a manager intends to invest - as already noted there are no restrictions on investment today and the proposal should not create any. Managers need to be able to invest freely in accordance with their investment mandate as and where investment opportunities occur.

It is important that such authorisation and notification should not impose significant burdens on funds that invest in SMEs, as these would significantly reduce the benefits and effectiveness of opening up the internal market to investors in such funds.

**Box 4**

***a) Do you agree with this approach? If not, and in case you believe venture capital should be accessible to retail investors, what kind of measures would you recommend to ensure their protection?***

We do not agree with this approach.

There is currently a fund market for investment in SMEs in the European Union, with an established investor base, and any passport regime should take as its starting point a consideration of who that investor base is made up of. It is then appropriate to examine what investor protection restrictions are required in the new regime and how these can best be tailored to the risks posed to investors in this market. The benefit of any proposed restrictions needs to be weighed against the negative impact on the amounts invested in funds that invest in SMEs which will result from restricting the investor base.

**(i) Who are currently the investors?**

Investors in these funds are typically institutional investors as well as family offices and certain types of individual. Individual investors may include:

- **Entrepreneurs and other so called "angel investors"** (many of which are entrepreneurs themselves), who have traditionally constituted an important source of "intelligent capital" to the small fund sector;
- **Members of management teams** running companies in which the fund invests;
- **Industry sector experts** (where the fund has a sector focus);
- **Venture and enterprise capital experts** which would include both venture and enterprise capital executives and other professionals connected with the industry;
- **Finance sector experts;** and
- **Wealthy individuals.**

In some cases, the fund might be established in a way that meets local requirements implementing the Prospectus Directive, in which case the investor pool may be wider - this is discussed further below.

**(iii) Could the MiFID definition of "professional client" work without amendment?**

No. The term "professional client" as currently defined under MiFID is designed to identify individuals who regularly trade in listed securities or are experts in the trading of listed securities (and derivatives based on these securities). This only includes individuals if they meet at least two of the following criteria (roughly summarized):

- Client has entered into at least (in average) 10 transactions of substantial amount per quarter during the last year;
- Client has a portfolio of financial instruments and deposits of more than EUR 500,000; and

- Client has worked for at least one year in financial sector.

This definition would most likely exclude all the types of individual listed in (i) above other than some finance sector experts. Adopting this definition could significantly reduce the amounts invested by individuals in small funds. It would be a very strange regulatory policy if business angel investors were permitted by domestic laws to subscribe for, or to acquire, securities in companies seeking venture or enterprise capital directly, but were precluded by the "professional client" definition from participating in a venture or enterprise capital collective investment undertaking (marketed in reliance on a passport or otherwise) which is likely to bring the advantage of risk spreading.

**(iv) Are there circumstances in which small funds should be made available to retail investors?**

Yes. Funds which are structured as listed investments subject to the protections afforded by the issuance of a prospectus which complies with the requirements of the Prospectus Directive should be capable of being promoted in this way. This approach appears to be supported by the consultation itself, which refers to the Prospectus Directive when it reads:

*"As a consequence venture capital funds covered that would operate under the proposed passport system would not be obliged to face the traditional disclosure obligations and requirements linked to investors' protection which would imply an offer to retail clients (prospectus in accordance with Prospectus Directive, etc.)..."*

Some funds within the European Union currently operate on this basis, such as Venture Capital Trusts in the UK (this is discussed further in our answer to b) below).

The industry also notes that the Prospectus Directive contains "private placement" exemptions, including for example offerings with minimum subscription amounts of at least EUR 50,000 per investor. The proposed regime should reflect the legislative idea behind the Prospectus Directive and should permit offerings of small funds which meet this criterion to both individual and institutional investors.

**(v) What other approaches might be used?**

Whatever approach is adopted, it is important that the current permitted categories of investor listed in (i) are preserved.

Private individuals that require protection when investing may be precisely defined by minimum thresholds (as provided for under the Prospectus Directive) or an assessment of their ability to appraise the risks involved in the investment (e.g. as provided for in the UK, see question b) below) in particular it should be stressed that such can and should be achieved without restricting the ability of the small fund's managers to structure the fund according to their needs (please see Box 7 below).

***b) What are the restrictions (if any) on participation of retail investors in your country within the fund structures used for venture capital investments?***

The UK heavily restricts the promotion of investments to the retail market, in particular in relation to unregulated collective investment schemes such as most private equity funds.

However, the UK does permit individual and collective investments in unlisted companies to be

promoted to business angels and other sophisticated and high net worth individuals (who do not meet the MiFID definition of a "professional client"). The promotion of such investment opportunities is strictly regulated but there is a longstanding policy (over more than 25 years) of recognising that high net worth and sophisticated individuals are important supporters of SMEs. As a result there are specific exemptions designed to permit the promotion of collective and individual investment in unlisted companies to such individuals provided they meet certain stringent conditions. If the conditions of the exemptions are not met then the promotion is unlawful and the investor has compensation rights and the right to claim that his contract is unenforceable. Such "certified high net worth individuals" or "certified sophisticated investors" (i) must have signed a certificate of a given format recently which states both (a) his/her eligibility to be treated as high net worth or sophisticated, respectively, and (b) contains a written acknowledgement of the risks and (ii) must have been given a written warning which is precisely defined in content and format. There is a similar exemption for promotions to associations whose membership is limited to, inter alia, certified high net worth and sophisticated investors, enabling companies to promote to business angel associations and for the associations to pass the promotions on to their members. In practical terms, in the experience of practitioners and advisers, these exemptions have been very useful to the SME community in raising funds from experienced individual investors and there are no reported cases of difficulties or abuses.

In addition, as noted above, an important part of the UK market comprises "true" retail funds, Venture Capital Trusts ("VCTs"), which are required to be traded on an EEA regulated market and are therefore subject to the requirements of the Prospectus Directive. These are a sub-set of Investment Trust Companies. Although their name uses the word "trust", they are not structured as trusts but rather established as ordinary English public limited companies. Investment in VCTs bestows certain income and capital gains tax advantages on a UK natural person tax payer (please refer to our response to Box 9 below for further details). The class of VCTs is thus defined by the conditions which must be met by the VCT to obtain the tax advantage (please refer to our response to Box 7 below). On the basis of the prospectus, retail investors can subscribe for shares in the VCT as part of a new offering or can acquire shares in the secondary market. Substantially all investors in VCTs are retail investors. As at 31 May 2011, there were 121 VCT companies with a total of GBP 2.6bn (Euro 2.9bn) under management. Anecdotally, substantially all VCT shareholders are UK tax payers, because it is they who are most interested in obtaining the tax reliefs. It is vital that any Commission legislative proposal does not restrict the ability to market VCTs to retail investors on the basis of the prospectus or otherwise in accordance with UK domestic securities marketing laws. Otherwise the flow of funds for SMEs will decrease, not increase.

#### **Box 5**

##### ***a) Do you agree with this approach? If not, what alternative approach would you suggest?***

We agree with this approach.

##### ***b) Do you agree with the need to require an annual report for each fund?***

We agree that each fund should provide an annual report, in the form usually provided to investors.

##### ***c) Do you agree that the annual report should reflect the annual financial accounts and a report of the activities of the financial year?***

The form of the annual report should reflect that normally provided to investors. Any blanket requirements on the reporting of such funds would add to the burdens of an SME investment regime



and reduce the effectiveness of such a regime in promoting further investment in European SMEs.

***d) Do you agree with the obligation to audit the financial information of the annual report?***

As noted above, the form of the annual report – including whether such information is audited - should reflect that normally provided to investors. Any blanket requirements on the reporting of such funds would add to the burdens of an SME investment regime and reduce the effectiveness of such a regime in promoting further investment in European SMEs.

***f) Do you think that more information requirements should be imposed on venture capital managers? If so, please specify.***

We do not believe that further information requirements should be imposed, as these will increase the cost burden to funds without adding significantly to investor protection. This in turn will increase the cost burden to these funds and will feed through into reduced investment into SMEs and reduced returns for investors.

**Box 6**

***Do you think there is a need to specify any operating condition for venture capital entities? If yes, what would you consider as sufficient EU level framework for venture capital managers in this area and what level of compliance cost would this entail?***

***Do you think that it should be specified that venture capital entities should comply with rules of conduct when dealing with their investors? If yes, to what extent?***

***Do you think that it should be specified that venture capital entities should comply with specific organisational requirements? If yes, to what extent?***

***Do you think that it should be specified that the persons effectively conducting the business should have good reputation and experience? If yes, to what extent?***

***Do you think that it should be specified that the significant shareholders should be suitable? If yes, to what extent?***

No. We do not believe that there should be further requirements for funds within this regime. The regime should be light-touch and impose as few burdens as possible on funds that are investing in SMEs.



It is worth noting in this context that the terms of funds investing in SMES are extensively negotiated between the managers and the professional and investors, and address the governance issues that are important for investors. These will as a matter of course vary from fund to fund, and be tailored to the individual circumstances of the fund and its investors.

**Box 7**

***a) Do you agree with this approach? If not, what alternative approach would you suggest?***

***b) Is it convenient to specify in the legislative proposal the legal forms that the venture capital funds might adopt?***

***c) Is there any other aspect relating to the legal form of the venture capital entities that the proposal should take into account?***

***Replies to a) b) and c)***

Due to the very nature of venture and enterprise capital investing – highly opportunistic with a great need to be flexible having to adapt to the needs of SMEs, investors, entrepreneurs, co-owners, the nature and cross-border characteristics of the business as such, need for subsequent financing rounds, primary investors leaving and next stage investors coming on board, multiple exit options and so on and so forth - there should be no restrictions whatsoever as to how a small fund should be structured or which legal form it should have. Different structures work differently in different jurisdictions and are more or less attractive to different types of investors. Within the EU there are so many differences in legal systems, and such a broad variety of legal entities (whether with separate legal personality or not) that any harmonization on requirements for small funds seems almost impossible in the short term.

The industry also fails to recognize which interests are to be served by a too prescriptive approach to which fund structures would qualify and which not.

In many EU countries venture and enterprise capital funds are typically organized as limited partnerships, but other structures are also possible. For example, as specified in Box 4 above, UK VCTs are structured as closed-ended public limited companies that are admitted to trading on an EEA regulated market (normally the London Stock Exchange). However, this is more of a feature of the UK VCT tax regime than anything else and it would be equally appropriate in fund structuring terms for a fund investing in venture and enterprise capital to be structured using a more conventional private equity limited partnership structure.

**Box 8**

***a) What, if any, investment criteria determine your existing national fund structures used for purposes of venture capital investments?***

***b) Do you think it is worth specifying any investment rules for venture capital funds? If yes:***

***c) Do you think there is a need to define a compulsory investment percentage of assets that the venture capital fund should invest in SMEs? If yes, what compulsory investment percentage would you propose and how should it be calculated?***

***d) Do you agree with the need to envisage a flexible application of the principle described?***

The regime should be available to funds that make the majority of their investments in SMEs, and there should not be any further restrictions. Funds invest in individual SMEs based on a set of investment criteria defined by close negotiation with the fund's investors, based on a number of different factors, including specialism and experience in different sectors and stages, and with a specific risk and return target.

To ensure the accurate targeting of this regime, a stipulation that in order to be eligible for this regime, a fund would have to make a minimum proportion of investments in companies that are SMEs at the time of the initial investment by the fund could be adopted – this would allow the regime to be targeted at those small and high growth potential businesses to be targeted and make sure that the fund may actually exploit such SME's growth potential without dropping out of the scope of the proposed regime.

**Box 9**

***a) How do your national rules capture (if at all) the definition of venture capital funds?***

In the UK there is an FSA definition of venture capital business, which is used to limit the activities that a firm is permitted to carry out. This definition is broad, however, and is listed below:

Venture capital business

The business of carrying on any of:

(a) investing in, advising on investments which are, managing investments which are, arranging (bringing about) transactions in, or making arrangements with a view to transactions in venture capital investments;

(b) advising on investments or managing investments in relation to portfolios, or establishing, operating or winding up collective investment schemes, where the portfolios or collective investment schemes (apart from funds awaiting investment) invest only in venture capital investments;

(c) any custody activities provided in connection with the activities in (a) and (b);

(d) any related ancillary activities.

There are also certain restrictions on the activities of VCTs but these are primarily a feature of the VCT tax regime and would not apply to other funds (not seeking this tax status) investing in venture and enterprise capital. Further, the UK regime recognises that not all funds investing in venture and enterprise capital will be capable of qualifying as VCTs.

***b) Should the temporary nature of the venture capital investment activity in SMEs constitute a criterion that should be reflected?***

No. A fund that invests into an SME may make further investments into that SME over the life of the business. It is not appropriate to place temporal restrictions either on these further investments or the holding of such investments.

***c) Do you think it should be specified any temporal limit (minimum and maximum) to the participation of the venture capital fund in the capital of the SME (i.e., from at least 2 to 10 years)?***

No. A fund will hold its investments for a duration that is determined by a number of different factors, and imposing temporal limits on the holding of such investments could cause a fund to withdraw its support at the wrong time, causing negative consequences for the SME concerned.

***d) Are there any other means of finance that venture capital funds provide to SMEs that should be reflected (e.g. loans)?***

As the funding and financing needs of SMEs will vary over time and as the company grows there should be full flexibility allowed in the financing instruments to be used. To meet the desired objectives of a new European regime for venture capital, in particular to benefit from a European passport, there should be maximum flexibility in using such instruments. Therefore, to define the scope of application of the legislative framework any form of financing should be covered and no restriction as to the type of assets/instruments should be made. Any limitation of finance would be contrary to the great need of flexibility of investments in SMEs and will worsen SMEs' access to finance.

In particular many small funds (and private equity funds in general) provide mezzanine capital (silent partnerships, convertible loans) to fund their portfolio companies. Currently, not all of such instruments are treated uniformly within the EU.

***e) Do you think that there is a need to specify that the manager should be actively involved in the development, growth and success of the SME? Or should the passive investment in an SME also be considered by the proposal as venture capital investment?***

Fund managers are generally actively involved in the activities of the portfolio companies. In order to define an attractive legal framework, managers need to be permitted to become actively involved in the development.

***f) What other criteria would you consider appropriate to capture the venture capital activity?***

We believe that active involvement must be addressed as an integral element of the small funds' definition.

**Box 10**

***a) To what extent does your national regime capture the above definitions of typical venture capital strategies?***

***b) Do you agree that the special rules on venture capital should only apply when funds invest in the seed, start-up and expansion stages of SMEs? If not, do you believe that SMEs in a restructuring phase should also benefit from venture capital? What other alternative approaches would you suggest?***

***c) Would you propose other definitions to define the permitted portfolio of venture capital funds?***

***d) Do you agree that venture capital funds do not/should not use leverage?***

***Questions a) to d)***

We do not propose that there should be limits in terms of which stages of investment can be made by funds, beside that the majority of investment should be made into SMEs – we feel that defining permitted portfolio companies of funds under this scheme is not appropriate, and indeed, could act to stifle investment into businesses with particularly high growth and employment potential.

Funds may invest in a number of different stages of venture or enterprise capital and a number of differently sized companies. Whilst the above definitions do adequately reflect the different stages of venture and enterprise capital that are invested in, they do not necessarily reflect individual strategies that funds may pursue - a fund may invest in several different stages of venture and enterprise capital from seed to expansion and growth capital during its lifetime.

If, for instance, a fund's investment focus was in development capital, and the majority of their investments were made into SMEs, with a few larger deals, then it would be desirable for them to be within the regime, both because they would be able to raise more capital to invest in SMEs, and because market distortions would be caused by disallowing them from the regime – they would be less competitive in fundraising terms than small funds investing in the same types of business.

**Box 11**

***a) Do you agree with the list of entities described as not being proper investment targets for venture capital funds?***

***b) If not, what types of companies would you specify as eligible investment targets?***

***c) Do you think that the EU should draw inspiration from the criteria set by the SEC to define the target companies of the venture capital funds?***

No. We agree with the Commission's proposal that investment into SMEs should be used to target this regime.

We note in this context however that the current concept of "linked enterprises" included within the EU SME definition and the significant problems it might pose for companies backed by small funds, if interpreted as if all SMEs owned by the funds managed by the same manager might be aggregated so that they lose their SME status. Whilst this does not have relevance in the context of being used in the AIFMD or in the context of the current proposal, there is a need for clarity when the term is used in other legislation which affects SMEs, and we call for this to be urgently clarified.

**Box 12**

***What could be an appropriate regime for third country venture capital funds?***

We believe that in line with the AIFMD, the regime should be available to third country funds - all of the same freedoms proposed by the Commission for EU small funds' managers should be available on the same terms, and without further material conditions to:

- EU managers of non-EU small funds;
- non-EU managers of EU small funds;
- non-EU managers of non-EU small funds; and
- affiliates established in the EU of non-EU managers of small funds wherever established.

The marketing freedoms should also extend to any affiliate who is marketing on behalf of the manager.

**Box 13**

***a) Do you agree with this approach?***

***b) Would you support the first (exemption for entities below the AIFMD threshold) or the second option (exemption independently from the threshold)? Would you suggest an alternative approach?***

***c) Are there any particular elements from the AIFMD that in your view should also apply to the venture capital managers?***

We believe that where a fund is registered under the proposed regime, and falls within the scope of the AIFMD, this regime could be used as an alternative. This would remove the fund from many of the cost burdens of the AIFMD, thereby freeing up more capital for investment into European SMEs.

**Box 14**

***a) Do you agree with this approach? If no, what alternative approach would you suggest?***

Yes, the new legislative framework for venture capital should aim at imposing light obligations on venture capital managers.

The BVCA would of course be willing to discuss further this submission and looks forward to receiving and commenting on any proposals which the Commission makes.

Yours faithfully



**Joe Steer**

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