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Corporate Frameworks, Accountability and Governance
Department of Business, Innovation and Skills
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By email: pauld.smith@bis.gsi.gov.uk

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Dear Sirs

Re. BIS discussion document: Auditor regulation - implications of the EU and wider reforms

The British Private Equity and Venture Capital Association (“BVCA”) is the industry body for the private equity and venture capital industry in the UK. With a membership of over 500 firms, the BVCA represents the vast majority of all UK based private equity and venture capital firms, as well as their professional advisers. Our members have invested £30 billion in over 3,900 UK-based companies over the last five years. Companies backed by private equity and venture capital in the UK employ around 790,000 people and almost 90% of UK investments in 2013 were directed at small and medium-sized businesses.

This submission has been prepared by the BVCA’s Legal & Technical Committee, which represents the interests of BVCA members in legal, accounting and technical matters relevant to the private equity and venture capital industry. Given how many people are likely to comment on the Consultation, we have limited our responses to those questions that we believe are of particular relevance to our members.

Background to Private Equity and Venture Capital

Private equity and venture capital firms are long-term investors, typically investing in companies for around 5-7 years. This means a commitment to building lasting and sustainable value in the businesses they invest in. Typically, firms will sell their stake in a company by listing on the public markets or selling to a strategic buyer.

Private equity and venture capital firms raise capital to invest from sources such as pension funds, endowments, insurance companies, banks, family offices/high net worth individuals and sovereign wealth funds.

A private equity or venture capital manager manages one or more funds, often set up as limited partnerships. The funds are closed-ended meaning that they have a limited life span, the industry standard being 10 years. The funds will invest in companies in the earlier part of a fund’s life until an agreed date (e.g. 5 to 6 years) and exit investments in the run up to the fund’s tenth anniversary. The life span of a fund can be extended (if permitted in the fund’s constitutional agreement) and this is typically up to 2 additional years.



Private equity and venture capital managers operating in the UK will be authorised and regulated by the Financial Conduct Authority and now (for funds which are in-scope Alternative Investment Funds (“AIFs”)) must be authorised and regulated by the FCA as an Alternative Investment Fund Manager.

Q5. Do you agree that the Government should not expand the definition of a PIE beyond the EU minimum requirement – that is listed companies, banks, building societies and insurers? Please provide further information in support of your answer?

We support the objective of seeking to increase quality and independence in the audit market and agree the Government should not ‘gold-plate’ its implementation of the Directive and Regulation by expanding the definition of a PIE.

In the preceding section we have explained how private equity and venture capital funds are often structured; fund set-ups are very different to typical corporate group structures and there is considerable complexity involved in analysing audit and adviser relationships, also noting that this extends beyond the ‘Big 4’. Our interest in the Regulation was driven by the initial proposal to include AIFs in the definition of a PIE, a proposal which would have been disruptive and likely led to additional costs for investors. Despite AIFs being removed from the EU definition of a PIE, our members will still need to review the implications of the Directive and Regulation.

Any extension of the definition of a PIE would increase the burden on our members given the transaction-driven nature of our industry and management of controlling stakes in investee or portfolio companies through fund structures. It is not unusual to have relationships with several audit firms and so it is our expectation that any extension would also lead to a reduction in choice of advisers. In addition, applying auditor rotation rules to limited life funds that are AIFs would be disruptive and likely lead to additional costs for investors. We should also note that some funds will have investments in companies that meet the definition of a PIE and so will have to consider the impact of and comply with the restrictions.

Any departure from the requirements of the Regulation is almost certain to create inconsistency in how the rules work between Member States, which will just add to the complexity for companies and their directors in a world where so many groups have cross-border considerations (for example, companies incorporated in one country but with securities listed in another). We believe that everything possible should be done to achieve consistency in application of the Directive and Regulation between Member States rather than doing things which are almost bound to result in the opposite effect.

In particular, we believe that, in giving the FRC specific responsibility for addressing the Articles on provision of non-audit services, BIS should set principles which the FRC should follow in implementing the requirements of the Regulation. Most importantly, we believe that BIS should specify that the way in which the FRC changes its Ethical Standards should not result in requirements and restrictions, either in terms of entities to which the requirements apply or in



terms of the actual requirements, that go beyond those in the Regulation, unless there is a clear public interest in so doing. The roots of this legislation is part of a package of measures introduced by the EU in response to the financial crisis and its implementation needs to be viewed in that context, especially by considering the costs borne by smaller entities which could fall within scope in relation to the perceived benefits. We believe that this would help ensure that the overall way in which the Directive and Regulation are implemented, either directly by BIS or indirectly by the FRC, is in line what we believe to be the Government's position of not 'gold-plating' EU Regulation.

Q7. What issues, if any, do you consider arise from the need to broaden the application of the implementation of the 2006 Directive as amended to include:

- other entities whose securities are admitted to trading on a regulated market;
- electronic money institutions;
- payment institutions;
- MiFiD investment firms;
- Undertakings for Collective Investment in Transferable Securities (UCITS); and,
- Alternative Investment Funds (AIFs).

How do you consider these should be addressed?

Where our members are, or include entities in their structures that are UK companies, UK LLPs or UK qualifying partnerships, these amendments should not lead to issues when implemented.

The BVCA would of course be willing to discuss this submission with you further and, if you so wish, please feel free to contact me.

Yours faithfully

A handwritten signature in black ink that reads 'Gurpreet Manku'. The signature is written in a cursive style and is underlined with a single horizontal stroke.

Gurpreet Manku
BVCA, Director of Technical and Regulatory Affairs