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Dear Asset Management and Funds Policy Team

**Consultation Paper 26/28: The UK AIFM Regime**

The City of London Law Society ("**CLLS**") represents approximately 17,000 City lawyers through individual and corporate membership, including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its specialist committees.

This response has been prepared by the CLLS Regulatory Law Committee (the "**Committee**" or "**we**"), a list of whose members can be found on the CLLS website. The Committee not only responds to consultations but also proactively raises concerns where it becomes aware of issues which it considers to be of importance in a regulatory context.

We thank the Financial Conduct Authority ("**FCA**") for the opportunity to respond to its proposals in Consultation Paper CP26/28 (the "**Consultation Paper**") on the reform of the UK's AIFM regime. We have separately submitted a response on the discussion chapters 13, 14 and 16. This response addresses the other chapters of the Consultation Paper.

Whilst writing, please note that the Committee does not intend to respond separately to CP26/26 on the Fund Reporting for Asset Management Entities (referred to as FRAME). We have separately responded to HM Treasury's Policy Note on the Draft Regulations for Alternative Investment Fund Managers and also to the FCA's Consultation Paper 26/27 "Remuneration: Solo-regulated firms' rules reform".

In light of the CLLS mandate, our response only considers the proposals from a legal standpoint. We acknowledge that many of the proposals in the Consultation Paper are of a technical or operational nature and accordingly our response is confined to a select number of chapters and issues where we believe our legal or policy observations may be of value to the FCA in finalising the rules.

## 1 GENERAL INTRODUCTORY COMMENTS

1.1.1 We wish to start with some general comments on the Consultation Paper and the new proposed regime for AIFMs and residual CIS operators. These comments will also be relevant to the responses to specific chapters and questions in the Consultation Paper below.

1.1.2 First and foremost, we strongly support the FCA's objectives, as stated in paragraph 1.3 of the Consultation Paper to protect consumers and safeguard market integrity while ensuring that rules are proportionate and support firms to enter, grow, compete, innovate and operate internationally. This review presents an excellent opportunity to reshape the rulebook in a manner which is proportionate, appropriate for UK asset managers, and in line with the FCA's competition objective. This is particularly so given the decision already taken to diverge from the framework originally developed within the EU (and recognising that the EU is itself already diverging from that original framework through its work on AIFMD II).

1.2 **Proportionality and number of classifications in the new regime**

1.2.1 As we have referenced above, we note the FCA's objectives for this reform have included setting a framework that is "proportionate" and which supports firms to "enter, grow, compete, innovate and operate internationally". The FCA also states that it aims to "make requirements clearer and better aligned to firms' size and activities". We are concerned that, in seeking to set proportionate rules to different firm sizes, the FCA has in fact created as system that is considerably more complex and difficult to navigate than the current regime, whilst losing the flexibility of the current regime. By way of example, the current regime (including through the AIFMD Level 2 Regulation) allows firms to apply proportionality in implementing certain requirements (see in particular the comments we make in response to question 12 on the risk management framework below). Conversely, many of the provisions that are set out in the new ALTS sourcebook are being set as rules rather than as guidance or evidential provisions, with little indication of how firms can adapt the regimes for their specific requirements or features. The FCA is instead seeking to introduce proportionality by creating different sections, chapters or application provisions between different types of firms. This will result in firms having to choose between up to nine different categories or types of rule application in the new regime covering: (i) large AIFMs; (ii) medium AIFMs; (iii) small AIFMs; (iv) (expected to be a sub-category within large AIFMs), an AIFM that must also categorise itself as a significant SYSC firm; and then (v) firms (whether an AIFM or not) that manage residual CISs; within which there are further divisions of rules for structures that fall within the grey list of carried interest vehicles, excluded entities, joint venture vehicles and single investor vehicles; or those which are not, which will further divide into those that (vi) target retail investors; and (vii) those that only have professional investors. There are then further sub-categories of rules and requirements for (viii) small internally managed listed funds that will remain exempt; and (ix) those listed closed ended internally manged funds which are not exempt, but which receive a different treatment under the rules. As we discuss in response to Chapter 8, the FCA is also then proposing further differences in requirements depending upon the types of activities that are being delegated. AIFMs offering their AIFs to investors in the EEA will also have to contend with preparing both the UK investor disclosure documentation and also that which is required under EEA AIFMD II NPPR requirements (as we discuss in response to Chapter 10 and 12).

1.2.2 The review of AIFMD presented an opportunity to streamline the rulebook and allow firms the flexibility to apply a proportionate system that suited the types and sizes of AIFs (or residual CISs) that they manage and the investor base that they have. Instead, the proposals set out an ever more complex patchwork of rules where guidance or evidential provisions may have been sufficient. This will increase uncertainty for managers and could dissuade new entrants from the market (particularly where they are part of an international group that is already required to comply with comparable but different obligations under EEA AIFMD II or similar international regimes).

1.2.3 We are concerned that these extra layers, combined with uncertainties around classification of structures (as discussed further below) will have a negative effect on the international competitiveness of the revised UK regime. A carefully streamlined rulebook may have attracted additional managers and structures to the UK market. However, the extra complexities and uncertainties brought in by the proposed new ALTS may have the opposite effect and encourage existing managers and structures to move offshore and deter international managers from establishing a presence and structures in the UK.

1.3 **Implications for fund management groups operating in the UK and EEA**

1.3.1 Other than the chapter on NPPR and cross-border marketing, there is little in the Consultation Paper on how the new UK regime will interact with EU AIFMD II. The EU regulatory framework has already diverged from UK AIFMD in a number of areas. However, in the absence of clear guidance from the FCA, there will be further confusion for investment management groups that operate structures in the UK and also in the EEA. Many UK investment firms will act as delegated portfolio managers for EU AIFs, appointed by an EU AIFM. Those firms may also separately act as AIFM to UK AIFs (which could potentially be feeders into or parallel structures with the EU AIF). Where firms are required to have different compliance systems and controls, and provide very different disclosure documents, to meet differing requirements between the regime set out in ALTS compared to the EU AIFMD II framework, this will lead to unnecessary complexity, confusion and act as a disincentive for international firms to maintain operations in the UK. Has the FCA considered an equivalence regime that allows firms which meet EU AIFMD requirements to be treated as meeting some or all of the UK requirements set out in ALT?

1.4 **Changes to perimeter guidance**

1.4.1 A further general point is to note that the FCA did not consult on its perimeter guidance in relation to AIFs, and in particular has not provided any changes that it proposes to make to PERG 16 (and in particular 16.2) and PERG 8.37. This makes it difficult to assess the full impact of the proposed measures included in the Consultation Paper, since the exact perimeter of the new regime remains unclear. We note that the FCA has stated, in paragraphs 1.12 and 1.13 of the Consultation Paper that elements of the existing PERG 16 guidance have been imported into the definition of an AIF under the HM Treasury proposals and that "These legal changes will not require us to change our rules". However, the FCA also states elsewhere in the Consultation Paper (for example, paragraph 3.3) that it considers that some structures which are currently treated just as CISs should instead be categorised as an AIF. It is not explained whether the FCA considers this to be a wilful failure by firms in applying the rules (in which case, we would expect to have seen enforcement action); inadvertent failure by firms to understand the current requirements (in which case, we would expect the FCA to set out how it seeks to change the guidance in PERG 16.2 on application of the regime); and/or the current perimeter being wrongly set (in which case, again, we would have expected to see the proposed changes to PERG 16.2 and an explanation of where the changes will be made).

1.4.2 The current PERG 16.2 guidance makes reference to the ESMA Key Concepts Guidelines. Will the FCA continue to refer to these guidelines or will PERG 16 be updated to incorporate some or all of the provisions in the key concepts paper that are considered by the FCA to remain current? Similarly, some of the provisions in PERG 16 (such as the responses to questions 2.38, 2.46 and 2.50) make reference to the recitals to AIFMD. Does the FCA intend to retain the substance of these recitals in its updated perimeter guidance and, if not, is there expected to be a change for existing structures that currently consider themselves to fall outside the scope of AIFMD. The impact of any changes to PERG 16.2 will likely be felt in the context of structures currently treated as CISs and so be within the scope of Chapter 3 of the Consultation Paper.

1.4.3 There are other structures such as securitisation vehicles that would not typically be a CIS or an AIF. We include commentary on this specific situation below.

1.5 **Level 3 measures**

1.5.1 As mentioned in the previous paragraph, a related point to the lack of visibility of any changes to PERG is to note that the FCA has not set out whether it intends to adopt or incorporate any of the current ESMA or European Commission guidance and Question and Answer documents. There is a large body of materials at the EU level which were produced in the run-up to implementation of AIFMD and following. This includes the various measures currently contained within the retained Level 3 measures section of the online Handbook.

1.6 **Status of PERG 16 in relation to debt securities**

1.6.1 We wanted to flag one specific point on the continued application of PERG 16. This relates to debt securities issued by SPVs and is particularly relevant to the repackaging market (i.e. secured notes issued by bankruptcy-remote SPVs, which typically reference a bespoke portfolio of assets and/or a swap).

1.6.2 The stated purpose of PERG 16 is to explain the scope of the regulated activities relating to the AIFMD as it was implemented in the UK through the RAO. Parts of the proposed new regime won't be based on the AIFMD, so the PERG guidance on those parts will clearly no longer apply.

1.6.3 We assume, however, that the rest of PERG 16 will continue to apply. The updated COBS 1.1.6G supports this, stating that: "PERG 16 contains general guidance on the businesses to which the UK AIFM regime applies".

1.6.4 That includes PERG 16 Q2.44, which confirms that debt securities will generally not be considered an AIF. This currently cross refers to a European Commission impact assessment, but we see no reason why this would no longer apply under the new regime, considering the Treasury and FCA's stated policy aims.

1.6.5 Notwithstanding the above, we ask the FCA to: (i) reconfirm that an SPV issuing debt securities of the type described in the answer to Q2.44 will continue not to be an AIF where the arrangements meet the debt exemption in paragraph 5 of the CIS Order; and (ii) confirm that its position on such structures has not changed.

1.6.6 This confirmation matters because the (sizeable) repackaging market relies on the debt exemption as the primary means of ensuring that transactions fall outside the scope of the UK AIFM regime. Repackaging transactions typically don't feature the tranching of credit risk and so won't be able to avail of the updated SSPE exemption, meaning strong comfort from the FCA on the continued application of Q2.44 (read together with the debt exemption) is important.

**Responses to specific Chapters and questions**

Please note that we do not comment on each question and only set out those questions for which we have comments to provide.

| | **Chapter 2 – Size Thresholds** |
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| 1 | **Do you agree with our proposed size calculation, i.e. the aggregate NAV of all CIS and non-CIS AIFs and non-AIF CIS, managed by the AIFM?** |
| | We have no comments on the size thresholds that are proposed.<br><br>It is unclear from the Consultation Paper what the rationale is for including CISs within the calculation of NAV. Given many of the detailed provisions in ALTS do not then apply to residual CISs, it is unclear what the FCA is seeking to achieve by including the NAV of CISs within the calculation. Many existing investment groups hold permission for the regulated activity of establishing, operating and winding-up a CIS in a different group entity to their AIFM permissions. Including CISs within the calculation may also act to encourage existing firms to maintain this distinction which would in turn mean that the FCA's aim of increasing the competitiveness of the UK for financial services and creating a proportionate system would not be achieved. It would also mean that any intended benefits of treating operators of CISs in a similar manner to AIFMs would not be achieved. |

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| | We also consider it to be unclear whether the proposed ALTS 2.3.2 will require a UK AIFM to double count structures for which it acts as AIFM or operator. ALTS 2.3.2 states that a firm must "*determine its AIFM classification by aggregating the NAV of both the AIFs managed by it and the residual CISs operated by it*". This suggests that a firm should count the NAV of an individual vehicle each time it appears in a structure. AIFMs and residual CIS operators may have structures that involve master-feeder structures (which may both be AIFs) – this is acknowledged by the FCA in the Research paper "The UK alternative investment fund market: Evidence from regulatory reporting" dated 3 September 2026 which expressly removed double counting for master feeder structure (see pages 8-9). Similarly, the drafting of ALTS 2.3.2 would suggest that firms will need to count the individual NAV of AIFs and then also the NAV of asset-holding vehicles (such as trusts or limited partnerships) below the AIF which may not constitute an AIF but which are nonetheless CISs. Employees of an AIFM may participate through carry vehicles or co-investment vehicles which operate by investing directly into an AIF, so resulting in double counting. The risk of double counting may incentivise firms to place the management and operation of such asset holding or co-invest vehicles outside the UK. This would in turn add extra operational costs for investors and not further the competitiveness objective.<br><br>A more granular drafting comment on ALTS 2.3.2 is that the provisions in 2.3.2R(2)(a) to (c) are potentially confusing. By including residual CISs into the definition of AIF and AIFM may lead to firms being unclear as to whether they must also make similar adjustments to definitions in other sections of the Handbook (including elsewhere in ALT). Instead, it may be clearer to use a different term in this section.<br><br>We note that the draft ALT Sourcebook does not contain transitional provisions. Please can the FCA outline in detail the transitional proposals for firms that currently operate as small registered AIFMs. The statement in paragraph 1.9 of the Consultation Paper does not give firms (and small registered AIFMs in particular) sufficient clarity to allow them to start planning for implementation of the new regime.<br><br>Please also refer to our comments in response to Chapter 3 in relation to this question. |
| | **Chapter 3 – Residual CIS operators** |
| 3 | **Do you foresee any challenges and practical issues because of the Treasury's clarification of the definition of an AIF, and the potential for some non-AIF CISs to be reclassified as AIFs?** |
| | The Committee notes and welcomes the intention of this section in looking to create a more streamlined set of requirements that apply to residual CISs and their operators. However, we are concerned that the draft requirements create a number of uncertainties.<br><br>***First, in terms of scope and definitions of both AIFs and CISs***. We note the FCA's observation in paragraph 3.3 of the Consultation Paper that "The complexity of the differing definitions of CIS and AIF has resulted in some CIS that should, in our view, be categorised as AIFs instead being categorised by firms as CISs only." Paragraph 3.4 also suggests that the HM Treasury draft legislation will be "amending the definition in legislation, to clarify grey areas that have led to different interpretations" and that "If the definition changes as proposed, some current CISs will fall within the revised AIF definition".<br><br>This is in contrast to the way HM Treasury has described the proposed changes to the definition of an AIF in its July 2026 Policy Note. In paragraph 4.8 of the Policy Note, HM Treasury states that it is simply seeking to clarify the definition, "reflecting some of what was previously in FCA guidance" and aims to limit "the opportunities for regulatory arbitrage". |

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| | The FCA has not explained where it perceives there to be errors in applying the current definition of an AIF and the PERG 16.2 guidance. It is similarly unclear whether the FCA perceives this to be a wilful misinterpretation by firms (in which case, we would have expected to see enforcement action being taken), errors in the drafting of the definition (in which case, we would have expected to see HM Treasury describing how the legislation will change), or errors in the PERG 16.2 guidance (in which case, firms and advisers will need to understand where these errors are and how they are expected to be addressed in a future iteration).<br><br>As we have commented in the introductory section of this response, it is difficult to comment on this Chapter and the related provisions in the draft Instrument without sight of the proposed changes to PERG (and PERG 16.2 in particular). Nonetheless, the FCA's commentary in Chapter 3 suggests that we should expect a more far-reaching set of changes to PERG 16 and that, instead of simply clarifying the definition, the FCA expects there to be a more significant change to the perimeter of the AIF regime. We would be grateful if the FCA could set out more detail on how it envisages the changes to the definition of an AIF to be interpreted, and also how its guidance on the application of the regime will change. This could potentially have a significant impact on investment firms and operators of residual CISs. It may also act as an incentive for firms to move structures offshore and, in the interim period whilst there is uncertainty on any changes to the perimeter, for new structures that are in the perceived borderline to be established offshore.<br><br>By way of example, where a real estate fund and an institutional investor (A and B) agree to come together to invest in a particular project, to be established as an English limited partnership (C). The fund (A) will be categorised and regulated as an AIF, and the vehicle that is created with B only uses capital contributed by A and B (together with any borrowing). Following guidance in the current PERG 16.2, the joint venture vehicle C would not constitute an AIF (but would likely be a CIS under s235 FSMA and case-law, absent the availability of any exclusions specific to the structure). Under the new defined concept of a "joint venture vehicle" however, C would not fall within the first limb of the definition since A has raised its capital from third parties (albeit that C itself is not raising external capital). Unless A and B were willing to form a joint GP or management vehicle, it could not then fall within the meaning of a joint venture vehicle. In the absence of updated PERG guidance and the ambiguous comments from the FCA in paragraphs 3.3 and 3.4 of the Consultation Paper, it is unclear whether vehicle C would fall to be categorised as an AIF or whether it would continue to be a residual CIS (and, if so, why it should have a different treatment for disclosure and reporting purposes than a near identical structure that does fall within the joint venture vehicle definition).<br><br>***Secondly, in terms of the selection of the categories of residual CIS to receive special treatment*** (for example, in ALTS 9.1.2R(2)). Committee members are, for example, aware of and advise structures that meet the commercial understanding of a typical joint venture but may not fall within the new glossary term of "joint venture vehicle", such as the example provided in the previous paragraph. We assume that the intention would be for such structures (assuming they do not become AIFs under any new PERG 16 guidance produced) to be treated as residual CISs that have to comply with the full requirements for a residual CIS of ALTS 9 and 10, but would be grateful if this could be confirmed.<br><br>***Thirdly, there are other types of vehicle that are currently understood not to constitute AIFs***, whether through recitals to AIFMD and/or provisions in the current PERG 16.2 guidance but which do not benefit from a specific exemption under the proposed regulation 3 of the draft AIFM Regulations 2026. Again, in the absence of draft PERG 16.2 changes and in light of the fact that EU AIFMD will cease to form part of UK retained laws, we would be grateful if the FCA could confirm how such structures will be treated under the new regime? Are they expected to become AIFs, or will they be treated as other residual CISs that do not fall within ALTS 9.1.2R(2) (and equivalent provisions elsewhere)? Many of these structures do not naturally suit the COBS and other requirements currently applicable to a residual CIS, and applying AIFM-style requirements |

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| | would be even less practicable without incurring considerable additional operational and structuring costs that would provide no clear benefit to the investors.<br><br>***Fourthly, there may be valuation implications for a structure that is recategorized as an AIF or residual CIS.*** Given the additional operational costs and burdens imposed on an AIF compared to a residual CIS, or on a structure that was not previously considered to be a CIS (to the extent any changes to PERG 16 also affect the interpretation of the definition of a CIS), there may be an impact on the valuation of a unit. We are concerned that a recategorization following changes to PERG 16 could result in an adverse effect on the value of participants' existing holdings in those structures. This would not be in the participants' best interests and may result in structures looking to move offshore rather than be recategorized in this manner.<br><br>As an aside, whilst revising the Handbook, the FCA should consider taking this opportunity to rename CISs which are neither AIFs nor UCITS. The name "residual CISs" was intended to apply to structures that were not expected to become an AIF when AIFMD came into force because of the transitional provisions in articles 61(3) and (4) of AIFMD. As is now very clear, there is a large number of structures which are not AIFs (or UCITS) but which are nonetheless CISs – for example, the joint ventures and single investor vehicles covered by the proposed special regime proposed by the FCA. Referring to such structures as "residual" CISs risks being misleading. Other terms the FCA could consider include "alternative CISs", "Non-AIF CISs" (NACs or NACISs), or "other CISs".<br><br>Finally, we note that the FCA's proposed glossary definition of a "carried interest vehicle" as a residual CIS which is available "exclusively to employees or former employees of an AIFM" is narrower than the existing FCA guidance in Q2.34 of PERG 16.2. We urge the FCA to clarify whether this is an intentional change.<br><br>Please also see the general comments in the introductory section of this response on changes to the definition of an AIF and the consequential impacts of this. These points are particularly relevant to the treatment of residual CIS operators, but are not exclusively applicable to them, hence why we have included them in the introduction section rather than here. Nonetheless, our comments on changes to the definitions and lack of draft PERG 16 guidance are also applicable in response to Chapter 3 of the Consultation Paper. |
| 4 | **Do you think that the SYSC and COBS rules that currently serve as guidance should be applied as rules to residual CIS operators? Please explain why or why not. Are there any other rules that you think we should consider applying to residual CIS operators?** |
| | In keeping with our comments on the overall complexity of the new ALT Sourcebook and the FCA's stated objective of creating a regime that is proportionate and supports growth, we anticipate that many of these provisions should be set as guidance or evidential provisions.<br><br>The application provisions of SYSC are extraordinarily complicated, with the proposed changes in the Instrument that accompanies the Consultation Paper adding further layers of complication. At present, the pdf version of SYSC 1 runs to 69 pages. The sheer number of tables and columns in Annex 1 is a clear indication that the current structure is not appropriate or proportionate.<br><br>Similarly, whilst we can see the objective in recasting COBS 18.5 into two sub-chapters, COBS is also now becoming increasingly complicated. This is combined with seeing provisions that are currently contained in COBS (such as the COBS 2.1.4 and provisions on aggregation) being moved into ALTS 3. We are concerned that the benefits of creating a single market-sector rulebook in ALTS will be lost if firms are required to keep cross-referring to alternative application provisions of COBS and SYSC as well as ALTS. Please also see our comments in response to question 36. |

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| 5 | **Do you have any comments on our proposal to apply enhanced investor disclosure requirements to some categories of residual CIS?** |
| | We agree that there are some types of residual CIS for which investor disclosures are not appropriate (and the cost of preparation would be disproportionate). However, as noted in response to question 3, Committee Members can envisage situations where there are structures that do not fall within list of residual CIS to be given special treatment (for example in ALTS 9.1.2) but for which the enhanced disclosures would be similarly disproportionate and costly. |
| | **Chapter 4 – Valuation** |
| 6 | **Should AIFMs only appoint an independent valuer subject to certain conditions? If so, do you agree with the conditions that we have proposed?** |
| | The minimum requirement for a small or medium UK AIFM would include that the valuation of an AIF's assets and liabilities is carried out separately from the portfolio management function, while a large UK AIFM must ensure that such valuations are carried out independently of its portfolio management function. It is apparent that the former is intended to provide more flexibility, but it is otherwise not clear what the difference between "separate" and "independent" is intended to be. It might be helpful if the FCA could provide some examples. |
| 7 | **Do the baseline rules we propose represent an appropriate standard to set for all AIFMs?** |
| | The Committee notes that the FCA's rules on valuation appear to set out two distinct standards. Large UK AIFMs will be required to ensure that the valuation of an AIF's assets and liabilities is carried out "independently" from their portfolio management function (ALTS 6.2.10G) whereas medium and small UK AIFMs will be required to carry out valuations "separately" (ALTS 6.2.9G). It is unclear from the Consultation Paper what the difference between these two standards is. Clearly as the FCA has chosen two separate standards, there must be a degree of difference and so we would welcome clarification on this point. |
| | **Chapter 5 – Leverage calculations** |
| 8 | **Should we remove the gross and/or commitment method calculations or would you prefer the regime to retain an adjusted version of the calculations?** |
| | We support the removal of the two method calculations as proposed. The gross and commitment methods have caused confusion and are not clearly understood by many within the industry. Committee members are aware of disagreements between participants on how the calculations are to be made. We therefore welcome the replacement of these tests.<br><br>As a broader point in the context of leverage, the Committee asks the FCA to provide clarity on the meaning of leverage. As the FCA will be aware, there was considerable discussion within the industry upon implementation of AIFMD on whether leverage applied to borrowing that was made at portfolio level (for example, within SPVs) that did not have recourse to the investors in an AIF. The understanding was reached through interpretation of the EU AIFMD Level 2 Regulations (including its recitals) and other commentary (such as Q&A documents). Our understanding of the updated definition of "leverage" to be included in the glossary section of the proposed Instrument that accompanies the Consultation Paper is that the current market understanding will remain and that AIFs which only borrow at SPV/portfolio level without recourse to the investors will be treated as unleveraged. However, it would remove uncertainty within the market if this could be confirmed – whether in the Consultation Paper response or through guidance (whether in PERG or ALTS). This becomes particularly relevant in the context of whether an AIF is leveraged or not (for |

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| | example, in the glossary term of "unleveraged closed-ended AIF" and the application of the proposed new risk management framework in ALTS 5).<br><br>There are also other aspects of the treatment of different types of borrowing that are typical within fund structures that it would be helpful for the FCA to address in appropriate guidance. For example, recital 14 of the EU AIFMD Level 2 Regulations makes it clear that temporary borrowing (such as bridging finance or commitment facilities) are not leverage. In removing the AIFMD Level Regulations, it is unclear whether the status quo is expected to remain or whether the FCA will take a different approach. There is also scope for uncertainty as to the treatment of revolving credit facilities – it would be helpful if the FCA could also take this opportunity to set out its view on the treatment of RCFs and other types of lending that are commonly used within fund structures. |
| | **Chapter 6 – Risk management** |
| 12 | **Should all AIFMs be subject to baseline standards, with additional requirements applying according to the type of AIF managed and the size of the firm? If not, what alternative approach would you suggest?** |
| | As we have discussed in the introductory comments, we are concerned that the FCA is looking to create a system with too many different sets of requirements that will lead to confusion and may make the UK market uncompetitive. We note that paragraph 6.3 of the Consultation Paper states that the objective for the risk management framework is "a clearer, more proportionate and more effective regime for AIFMs". Our concern is that these objectives have not been achieved. Whilst it is helpful that the FCA has acknowledged that different sizes of AIFM may have different needs with respect to risk management frameworks, this will also be the case for different investment strategies, target investor-markets and fund structures.<br><br>Recital 74 of the EU AIFMD Level 2 Regulation notes that "*details of the technical and personnel organisation of the compliance function should be calibrated to the nature, scale and complexity of the AIFM's business and the nature and range of its services and activities*". Article 45 of those Regulations also states that the risk measurement and management arrangements should be "*adequate and effective*", whilst article 62 states that an internal audit function is only required "*where appropriate and proportionate*". The provisions in ALTS do not reflect this more flexible approach and instead sets baselines. By setting a baseline, instead of allowing firms to assess what is proportionate and appropriate themselves, the FCA is setting out an expectation that firms are only compliant if they *at least* meet these standards – risking a ratchet effect that firms will increasingly be expected to expand upon the baseline regardless of whether it is appropriate for their individual circumstances. The FCA has not presented evidence or examples of AIFMs that have failed to apply appropriate or adequate systems under the current FUND and UK AIFMD framework to explain why there is this shift from allowing firms to assess what is proportionate and appropriate to instead requiring the bare minimum expected for compliance. This will lead to uncertainty of expectations on firms and may make the UK market seem uncompetitive compared to other regimes for similar types of firm. The FCA should consider whether provisions set out as rules in ALTS 5.3, 5.4 and 5.5 are better recategorized as either Guidance or Evidential provisions alongside clearer guidance (in ALTS 5.2) that AIFMs should be permitted to assess what is proportionate and appropriate based on additional factors than simply whether they are small, medium or large (such as investment strategy, investor-base and fund-vehicle).<br><br>At a more granular level, we note the provision in ALTS 5.2.2 which states that AIFMs must take all reasonable steps to identify "material risks". This is a helpful change from the existing EU Level 2 AIFMD Regulations which requires (at article 40(1)) that AIFMs must identify "all the relevant risks". However, it would be helpful for the FCA to provide additional guidance on what level of granularity it expects of firms here. In the absence of clearer guidance, there is a risk that AIFMs will simply provide the long shopping list of risk factors that are typically included in PPMs or fund |

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| | prospectuses. We note also that article 40(1) is restricted to the risks "to which the AIFs it manages are exposed", whereas limb (2) of ALTS 5.2.2 extends the requirement to "its assets (and where relevant) liabilities". The introductory wording to 5.2.2 refers to the AIFM and only limb (1) specifically references its AIFs. There is uncertainty therefore as to whether limb (2) also only relates to the assets and liabilities of the AIFs or whether it also relates to assets and liabilities of the AIFM. If it is intentional that it should extend to risks to the assets and liabilities of the AIFM, should it be made clear that this only relates to risks that could in turn impact the AIFs it manages and their investors, or is it intentionally broader? |
| 13 | **Should firms managing only closed-ended, unleveraged AIFs be subject only to baseline risk management requirements? If not, what alternative approach would better reflect the risks posed by those firms?** |
| | Yes, we agree that closed-ended unleveraged AIFs should only require a baseline risk management in keeping with the proportionate approach we refer to above. As mentioned in response to Chapter 5 of the Consultation Paper (and question 8 in particular), we would welcome clarity from the FCA on whether portfolio level borrowing and other types of borrowing that is not currently understood to constitute "leverage" for these purposes will continue to be treated in the same way. |
| | **Chapter 9 – Annual report to investors** |
| 20 | **Do you agree with the proposed changes to the requirements applying to an AIF's annual report? If not, please explain.** |
| | We note the requirement to respond to reasonable requests for additional information from an investor, and to provide that same information to all other investors set out in ALTS 10.3.7R(2). This goes beyond the current requirements in COBS 2.1.4, and the equivalent requirements that are being carried across into ALTS 3.3.2R(1)(c) and 3.3.2R(2). Many institutional investors will have specific information and reporting requirements which are typically addressed in a side letter. The information requested may be as a result of specific regulatory requirements, for example, because of obligations arising from its home jurisdiction (as is seen with some German and Canadian investors) or its status (for example, a UK public body investor that has particular reporting needs). It is not always appropriate to share this information with other investors, nor would other investors necessarily want or need that information. These types of situations are already addressed by AIFMs through a combination of side letters, most favoured nations provisions and compliance with COBS 2.1.4. It would be helpful for the FCA to include guidance to explain when a request may be "reasonable", such as where it is to meet specific reporting requirements of the investor.<br><br>Paragraph (2) should then be deleted or at least stated to only be necessary where the lack of disclosure would put the other investors at a material disadvantage, or for investors in the same share or unit class. |
| 21 | **What are your views on requiring small UK AIFMs and certain operators of residual CISs to prepare an annual summary for its investors?** |
| | We agree with the approach towards small UK AIFMs and residual CISs. However, in line with earlier comments in the general introduction this response and also against Chapters 2 and 3 we would be grateful for an explanation of why the FCA has chosen the types of residual CIS to be taken outside the additional reporting in ALTS 10. Assuming that there is no significant change to the perimeter for what does, and does not, constitute an AIF (see above), there are other types of structure that are currently considered not to constitute an AIF but which are treated as "in-scope residual CISs" (to use the FCA's terminology from paragraph 9.24 of the Consultation Paper). This includes, for example, family office vehicles (recital 7 to AIFMD) that are stated not |

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| | to constitute an AIF but which are not expressly covered by an exemption or singled out for special treatment in ALTS 10.1.2R(2). Other examples of this include holding companies and securitisation special purpose vehicles, although in the UK these are typically not CISs regardless of their status under AIFMD.<br><br>As we have discussed in response to earlier questions, we assume that CISs which fall outside the definition of an AIF but which also do not fall within one of the categories in ALTS 10.1.2R(2) will need to comply with the reporting requirements even if they would, for example, meet a commercial understanding of a joint venture structure even if they do not meet the new Glossary definition of a "joint venture vehicle". |
| | **Chapter 10 – Investor disclosures** |
| 22 | **Have we struck the right balance between removing prescription from the disclosures to professional investors and ensuring that those investors can access the information they need? Are there areas of the rules that could be made more or less prescriptive?** |
| | We note the requirement to provide information to all investors set out in ALTS 9.2.4R(2). A similar point arises here to the one discussed in response to question 20. This goes beyond the current requirements in COBS 2.1.4, and the equivalent requirements that are being carried across into ALTS 3.3.2R(1)(c) and 3.3.2R(2). There maybe situations where specific information is required by an investor, for example, because of requirements that relate to its home jurisdiction (as arises with some German and Canadian investors, for example) or its status (for example, a UK public body investor that is required to meet FOIA requests). It is not always appropriate to share this information with other investors. Paragraph (2) should be deleted, or at least stated to only be necessary where the lack of disclosure would put the other investors at a material disadvantage, or for investors in the same share or unit class.<br><br>Please also see our response to question 21 on the manner in which some residual CISs have been taken outside the scope of these rules (ALTS 10.1.2R(2) for annual reporting, and ALTS 9.1.2 for investor disclosures). Whilst we agree that investor disclosures should not be necessary for certain types of residual CIS, particularly those that have not been marketed or distributed to external investors, it would be helpful to understand why this group has been selected and not others that may have a similar effect.<br><br>Members of the Committee are aware of structures that have not raised capital but which nonetheless constitute residual CISs under the current regime (for example, joint ventures, and family offices where the initial portfolio arose solely through the operation of probate and not through any contribution by the subsequent beneficiaries). Will such structures be required to prepare investor disclosure documentation under ALTS 9.3 and/or 9.4 where there is no intention to raise capital or seek investment?<br><br>As a point of drafting, we note that ALTS 9 uses the term "fund" as a glossary defined term. However, we do not see this in the current Glossary or in Annex A to the draft Instrument that accompanies the Consultation Paper amending the Glossary. We have assumed in reviewing the proposed ALT Sourcebook that it will be defined to include AIFs and residual CISs but would be grateful if the FCA could confirm. |
| 23 | **Do you agree with our approach for AIFM retail disclosures? Do you think it is proportionate to the risks posed by these products?** |
| | It is unclear whether retail investors should also be provided with the information for professional investors in ALTS 9.3, or whether the information in ALTS 9.4 is sufficient? Regardless, we can see scope for confusion for prospective investors when looking at an unauthorised AIF that is |

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| | marketed to both professional and retail investors in both the UK and the EEA – separate disclosures will be required to meet (i) ALTS 9.3 and (ii) 9.4 in addition to the (iii) Consumer Composite Investments documentation; as well as there being EEA equivalent information under (iv) article 23 of AIFMD together with a (v) PRIIPS KID. Each of these requirements are likely to result in similar, but slightly different, information being presented in up to five different ways. This will add unnecessary complexity for AIFMs. This may discourage UK AIFMs from seeking to promote their structures outside the UK and lead to the use of parallel structures with EEA AIFMs. We note that similar requirements will be imposed on incoming AIFMs under the NPPR (ALTS 14.3.5), so a similar effect will be felt there. |
| | **Chapter 12 – NPPR and cross-border marketing** |
| 27 | **Do you have any comments on our proposed guidance on the NPPR?** |
| | Please see our response to question 22 on the complexity of overlapping disclosure requirements. Requiring EU AIFMs to provide the information required by ALTS 9 in addition to the information they are already providing to EEA investors under article 23 AIFMD may act as a deterrent to making use of the UK NPPR.<br><br>It is disappointing that the FCA has not included any proposed changes to PERG in the Consultation Paper. In the absence of visibility on whether there are changes to PERG 8.37 (and, to a lesser extent in this context, PERG 16), it is difficult to comment on the proposed guidance on NPPR as set out in ALTS 14. However, on the assumption that the approach to marketing in PERG 8.37 will not be significantly changing, we have no further comments on ALTS 14. |
| | **Chapter 15 – Consequential changes: operating conditions** |
| 36 | **Do you agree with our approach to consequentials in these sourcebooks? If not, what do you disagree with and what alternative approach would you suggest?** |
| | As mentioned in the introduction to this letter and responses to previous questions (see the response to question 4 in particular), we are concerned that the changes being proposed have resulted in the Handbook becoming more complicated rather than becoming clearer. A key example of this is the addition of yet more options and tables in Annex 1 SYSC 1. If the business restriction is to be removed, this will likely add further complexity to these application provisions. The FCA should use this review as an opportunity to undertake a fuller assessment of these types of provisions as well as considering a firm's journey through the Handbook when designing and reviewing its compliance procedures.<br><br>We note and welcome that the FCA has sought to create a sub-sector specific sourcebook with ALT, and has, for example, moved some of the conduct requirements for AIFMs from COBS (such as COBS 2.1.4) into the ALT Sourcebook. However, there are still some provisions that are retained or have been added into COBS, such as the new sections on best execution for AIFMs being added into COBS 11.2D and retention of some of the provisions of COBS 4.2 through the new COBS 18.5 provisions (and notwithstanding that ALTS 9.2.1 will contain similar provisions).<br><br>The clean draft Handbook text showing proposed changes to SYSC 10 do not match the current version of this Chapter in the online Handbook. See pages 137 to 140 of the draft instrument at the back of the Consultation Paper. For example, the clean text of SYSC 10.1.4R(1) is shown as "is likely to make a financial gain, or avoid a financial loss, to the potential detriment of the client and relation to…" whereas the current online version (at the time of writing this response) reads "is likely to make a financial gain, or avoid a financial loss, at the expense of the client;". It also shows a proposed change to SYSC 10.1.4R(2B), but there is no (2B) in the current version of SYSC |

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| | 10.1. Has the FCA included other changes that are not currently shown in the rulebook (or used an old version that has since been amended)? |

We hope the above feedback has been useful. If you would like to discuss any of these comments, then we would be happy to do so. Please contact Hannah Meakin by telephone on +44 (0)20 7444 2102 or by e-mail at hannah.meakin@nortonrosefulbright.com in the first instance.

Yours faithfully



**Hannah Meakin**
*Chair, CLLS Regulatory Law Committee*

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