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8 October 2026

HM Treasury AIFMR Policy Team
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Dear Sir/Madam

Draft Regulations for Alternative Investment Fund Managers – Draft SI and Policy Note (July 2026)

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 HM Treasury for the opportunity to respond to the proposed Alternative Investment Fund Managers Regulations 2026 (the "**draft Regulations**") on the replacement of the current Alternative Investment Fund Managers Regulations 2013 (SI 2013/1773) and onshoring of the UK's AIFM regime. We have separately submitted responses to the Financial Conduct Authority's Consultation Paper 26/28 which contains further proposals for the UK's AIFM regime.

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.

Our comments on the draft Regulations relate solely to regulation 3 and the proposed changes to the definition of an alternative investment or **"AIF"**. We note that some additional language has been incorporated into the definition of an AIF. We also note from the Policy Note which accompanied the draft Regulations that the intention of this amendment is "in order to make it clearer", to "clarify the existing scope of the regime" and to "limit the opportunities for regulatory arbitrage". This appears to be in contrast to the analysis of the FCA which has stated (in paragraph 3.4 of its Consultation Paper on The UK AIFM Regime, CP 26/28) that: "*If the definition of an AIF changes as proposed, some current CISs will fall within the revised AIF definition and will be required by law to be re-categorised as AIFs*". This uncertainty is unhelpful for firms that are currently operating or establishing investment structures, and for overseas firms that may be considering establishing fund management businesses in the UK.

This uncertainty in the scope and intention of the changes to the definition of an AIF are in large part driven by uncertainties in the revised drafting. We are concerned that certain of the proposed changes will cause additional confusion and greater uncertainty, and not result in the intended clarity. Furthermore, it introduces an element of needing to understand the intentions of a party. This will provide considerable difficulties of interpretation if the regulator were to take enforcement action in respect of a particular structure.

There is already detailed and helpful guidance provided by the FCA on the definition of an AIF contained in section 16.2 of its Perimeter Guidance Manual (**"PERG"**) which forms part of the FCA's Handbook of Rules and Guidance. The FCA has not consulted on any changes to this section, which means that it is difficult to comment on the FCA's proposals or on HM Treasury's draft Regulations. In the absence of visibility on how the FCA envisages the perimeter changing, it is difficult to comment on how the changes to the definition of an AIF will be interpreted. On its face, many of the changes that HM Treasury have proposed to the definition are simply to incorporate guidance from the relevant provisions of PERG 16.2 into the legislation. However, we are concerned that this may lead to confusion in interpretation. In addition, the current regulation derives directly from EU legislation and should be read in the context of the recitals to the original EU Directive together with Level 3 guidance which will no longer form part of the regulatory background. As we discuss below, aspects of the changed definition are ones that become highly fact specific and look to the intentions and aspirations of business founders in a manner that is not suited to inclusion within statute. These provisions would instead be better retained in PERG (updated as necessary to the extent the FCA considers that the current guidance is no longer fit for purpose and has consulted appropriately).

To explain our comments in greater detail, we have set out the proposed new definition and underlined the key changes in text:

"3.—(1) "AIF" means a collective investment undertaking, including a sub-fund of such an undertaking, which—

(a) raises, has raised or intends to raise capital from a number of investors, with a view to investing it in accordance with a policy as to how the capital is to generate a return or investment outcome or the benefit of these investors, and

(b) is not a UK UCITS,

but does not include an entity or arrangements excluded by paragraph (3) or (6)."

Taking the three key changes in turn:

Application to individual sub-funds of umbrella structures

In the current legislation, reference is made to "an investment compartment". The response to question 2.63 and 2.64 of PERG 16.2 makes it clear that an investment compartment is similar to a sub-fund, and that a sub-fund will not ordinarily be a separate AIF in its own right. Instead, an AIFM of an umbrella scheme is managing the umbrella fund as a whole. In changing this element of the definition to make express reference to "a sub-fund", does HM Treasury intend to signal a change in policy and that an individual sub-fund should henceforward be treated as a standalone AIF in its own capacity? We assume that this is not the intention (as umbrella funds would presumably result in having AIFs within an AIF) but would be grateful if HM Treasury could make this clear.

Raising of capital – now and in the future

The reference to an AIF being an undertaking which "has raised or intends to raise capital" again appears, on its face, to introduce into legislation the commonly understood position based on the PERG 16.2 guidance already in place. However, by inserting it into legislation, we are concerned that this could result in the court (or the FCA as the relevant enforcement body) being required to look into the motives of a fund-raising, and lead to questions of timing. Referencing a person's intentions into the legislation adds an unnecessary complexity that is better served by FCA guidance.

By way of an example of the uncertainties this change gives rise to, we ask the following question. At what point does an undertaking "intend to raise capital"? Is this only at the very moment of conception of the undertaking (presumably not), only within a fixed period (if so, is this within weeks, months or years?) or at any point in the distant future? How certain does an undertaking need to be that they *will* raise capital or will seek to do so? For example, would it also apply to a person who is aware that they may have a desire to raise capital at some point in the future but where there is no certainty that the conditions for doing so may arise?

It may be helpful to explain the concern with an example based on structures that are familiar to Committee members. An institutional investor and a property developer wish to enter into a joint venture to develop a small portfolio of commercial properties. It will be set up as an English limited partnership (**"ELP"**) in which the two parties are the only limited partners. Each have a joint share in the general partner and appoint its directors. Based on the current definition and guidance, such a structure would not be an AIF and would instead be treated as a residual collective investment scheme. Under the proposals set out by the FCA in CP26/28, the ELP would be a "joint venture vehicle" and also continue to be treated as a residual CIS under the amended FCA regime. However, the parties may have agreed that the joint venture will operate for an initial period of, say, five years after which they may seek to exit the structure. The exit may be through a sale of the assets, through one party buying the other out, or by opening the structure out into a pooled fund by admitting third party investors. They may look to acquire other assets and include third party investors at an earlier time, but only if the initial portfolio develops according to the business plan and market conditions are right. Currently, market practice would be to treat the structure as a residual CIS until the point at which third party marketing commenced or the structure was revised to make it eligible for third party investors (at which point it would be recategorized as an AIF and an AIFM (and, if necessary, depositary) would be appointed). However, it is possible that this example structure never reaches the point of opening up to third party investors and is instead wound-down or exited without having become an AIF; or the two parties may decide that they never want or need additional capital and continue to operate it as a JV. It would be disproportionate to regulate a structure such as this as an AIF from the outset since it may never get to the point of raising external capital. Similarly, it would introduce additional cost to have to create a new vehicle at the point of opening out to third party investors to avoid the situation of inadvertently being considered to be managing an AIF from the outset (with the potential tax and transaction costs also applying).

The Committee's preference would be to remove the reference to intention from the legislation and allow the FCA, following proper consultation, to retain this element of the perimeter in PERG. This will allow for nuance and more detailed guidance to be provided which is not capable of being conveyed in legislation in a sufficiently precise manner.

Investment policies

In respect of the final amended part of the definition relating to the investment policy, our only comment is to note that there is a typo. We assume it should state that it relates to a policy as to how to "generate a return or investment outcome FOR the benefit of these investors".

We hope the above feedback will be useful to you. 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 email at hannah.meakin@nortonrosefulbright.com in the first instance.

Yours faithfully



Hannah Meakin
Chair, CLLS Regulatory Law Committee

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