Asset Management & Funds Policy Team
Financial Conduct Authority
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By email: cp26-28@fca.org.uk

18 September 2026

Dear Asset Management & Funds Policy Team,

RE: CP26/28: The UK AIFM Regime – Discussion Chapters

UK Private Capital is the industry body and public policy advocate for the private capital ecosystem in the UK. With a membership of 600 firms, we represent UK-based private capital firms, as well as professional advisers and a large base of UK and global investors. In our terms, private capital includes private equity, venture capital and direct lending funds within private credit, all of which make long-term investments to grow businesses and support economic growth. Our members invested £25bn into the UK economy in 2025, with the industry now backing 13,000 UK businesses, 90% of which are SMEs. These companies together employ 2.5m people and contribute 7% to UK GDP.

We welcome the opportunity to respond to the discussion chapters 13 (Depositaries), 14 (Prime Brokers) and 16 (Removing the Business Restriction) of CP26/28. UK Private Capital intends to submit a separate response to discussion chapter 17 (Prudential Consolidation) and other chapters of CP26/28 by the relevant deadlines.

Executive Summary

We welcome the FCA's proposals to reform the UK AIFM Regime. This is a critical opportunity for the FCA to drive meaningful reform, and we support its objective of removing overly prescriptive or redundant rules to reduce the administrative burden on AIFMs. We also welcome the FCA's stated intention to ensure that its rules are proportionate and support firms to enter, grow, compete, innovate and operate internationally, with requirements better aligned to firms' size and activities.

The direction of travel is aligned with our longstanding call for a simpler, more proportionate and internationally competitive regulatory framework. We particularly welcome the FCA's recognition that the new framework should enable firms to stop "lower-value compliance activities" and operate more efficiently, while continuing to deliver the intended regulatory outcomes.

However, we urge the FCA to go further. The reforms should better reflect the commercial realities of how private capital firms operate and ensure that requirements are calibrated to a firms' size and the risks they are intended to address. Done well, this should reduce unnecessary cost and complexity, give firms greater flexibility and strengthen the UK's attractiveness as a leading hub for private capital firms and investment.

We emphasise that any regulatory change carries inherent cost for firms, so disruption must be justified by meaningful improvement. Reform should reduce burdens through clearer and more proportionate requirements. Where reforms reduce cost and complexity, firms that are ready to adopt them should be able to benefit as soon as practicable following publication of the final rules. This is consistent with the FCA's intention to consider where requirements can be removed ahead of 2028 so that firms can realise the benefits sooner.

Against that background, we highlight the following areas where the FCA can go further:

- The existing rules on AIF depositaries are difficult to reconcile with the nature, structure and investment strategy of closed-ended private capital funds. They have resulted in unnecessary duplication and added costs that are ultimately borne by investors. We remain firmly of the view that the FCA should remove the requirement for AIFMs to appoint a depositary, while permitting them to do so where there is a commercial need, for instance to access certain European NPPRs. Importantly, feedback from the Institutional Limited Partners Association (ILPA), which represents investors in private capital globally, also indicates that the benefits of mandatory depositary arrangements are not universally considered to justify their cost. See our response to Question 28 for further detail.
- We urge the FCA to take this opportunity to develop a lighter touch regime for private capital funds which choose to appoint a depositary. This could take inspiration from certain EU regimes, such as the Luxembourg regime in respect of professional depositaries of assets other than financial instruments and the "depo-lite" regimes applicable to non-EEA AIFs registered for marketing under NPPR in some EU jurisdictions. Where a depositary is required or needed, the FCA should start from first principles and design a regime proportionate to the characteristics of private capital funds and managers. These EU regimes demonstrate that it is possible to streamline the requirements applicable to depositaries of private capital funds.
- We strongly support the FCA's preferred option of removing the AIFMD business restriction entirely. The restriction creates unnecessary complexity without a commensurate regulatory benefit, and its removal would give firms greater flexibility to structure their business efficiently.
- As above, burden-reducing changes should be made available without unnecessary delay. If, for example, the FCA removes the AIFM business restriction or mandatory depositary requirements, firms that are ready to adopt those changes should be able to do so as soon as practicable following publication of the final rules.

Discussion Chapter 13: Depositaries

Question 28: Should all large and medium UK AIFMs continue to appoint a depositary for each unauthorised AIF they manage? If not, why not?

We welcome the FCA's recognition that the existing rules relating to the AIF depositary regime are based on the UCITS regime and so were initially designed and tailored to the needs of open-ended vehicles investing in liquid custodial assets (e.g., listed equities). The rules have always been difficult to reconcile with the nature, structure and investment strategy of closed-ended private capital funds.

Closed-ended private capital funds typically invest in illiquid non-custodial assets, such as unlisted debt or equity, and operate on a capital-call basis. They raise capital over a time-limited fundraising period and subsequently call on those commitments as required in tranches. Private capital funds are typically established for a 10-year period, which may be extended. Most, if not all, capital is committed by investors at the inception of a fund and cannot be redeemed during the life of the fund.

Private capital funds typically make only a limited number of investments, normally around 5-10, and are marketed to sophisticated institutional investors, such as pension funds, banks, insurers and sovereign wealth funds, who undertake their own detailed due diligence and engage in side-letter negotiations to secure contractual protections for their investments. Many of the functions undertaken by depositaries are therefore of limited additional value or duplicate functions carried out by others in the context of private capital funds. For example:

- **Cash-flow monitoring:** many private capital funds use independent administrators to approve and reconcile payments. Requiring depositaries to repeat these checks increases expense and operational burden and is duplicative without any corresponding benefit to investors. We welcome the FCA's acknowledgement that this element of a depositary's service is an "unnecessary duplication" of the AIFM or fund operator's own processes. For further information, please see our answer to Question 33.
- **Asset verification:** this role is played by a variety of service providers including independent auditors and lawyers who confirm portfolio holdings during annual audits. For funds that are currently out-of-scope of the requirements and do not need to appoint a depositary, the audit process continues without issue, which suggests that the asset verification role played by depositaries adds very little benefit for private capital funds.
- **Other oversight functions:** checks for compliance with an AIF's investment restrictions are typically conducted by fund managers themselves with the assistance of legal counsel. In many cases investors themselves will verify an AIF's compliance with any investment restrictions.

In the light of the specificities of the private capital context and the FCA's own acknowledgement that at least some of the services typically provided by depositaries are of little added value, the requirement for an AIFM of any size to appoint a depositary is difficult to justify and imposes an unnecessary cost burden which is ultimately borne by fund investors.

Importantly, feedback from the investor community also indicates that the benefits of mandatory depositary arrangements are not universally considered to justify their cost. ILPA, which represents institutional investors and other limited partners investing in private capital globally, has told UK Private Capital that:

"ILPA members have expressed mixed views on mandatory depositary requirements, with some not considering the associated cost justified from a cost-benefit perspective. Where investors do see value in depositary arrangements, these could be required contractually rather than imposed as a mandatory regulatory requirement across all private capital funds."

This is particularly relevant for professional-only private capital funds, where the costs of mandatory depositary arrangements are ultimately borne by investors. The fact that investor views themselves are mixed reinforces the case against a mandatory requirement. Where those investors do not consider the additional oversight to represent sufficient value, there is a strong case for allowing the fund and its investors to determine contractually whether those services are required.

In addition, UK listed closed-ended investment companies (CEICs) that qualify as AIFs are already subject to extensive board, governance, audit, disclosure and company law requirements, which further weakens the case for requiring such entities to appoint a depositary.

We urge the FCA to remove the requirement for AIFMs to appoint a depositary while permitting them to do so if there is a commercial need (for instance to access certain European NPPRs). If the FCA is minded to require large and medium sized AIFMs to continue to appoint a depositary, please see our answer to Question 29 on how the regime could be made more proportionate.

We note however that currently small AIFMs that are not subject to depositary requirements must instead comply with CASS 6. We disagree with the FCA's proposals that small AIFMs be required to comply with CASS 6 and, similarly, if the depositary requirement is removed for medium and large AIFMs, such AIFMs should not have to comply with CASS 6. CASS 6 compliance can be costly and time consuming. We therefore ask the exclusion in CASS 6.1.16BA to be expanded to include all AIFMs in respect of AIFs that hold predominantly private, non-custody assets. This is because many of the requirements under CASS 6 (such as those relating to reconciliation exercises, annual audits and resolution packs) would be a disproportionate burden for AIFMs, particularly those managing private capital assets.

Question 29: Could the depositary regime be made more proportionate for certain types of unauthorised AIF, and if so how?

If the FCA retains a requirement for AIFMs to appoint a depositary, the investor feedback outlined above reinforces the case for a targeted exemption for AIFMs in respect of AIFs that:

- (i) are closed-ended;
- (ii) are offered to professional investors only; and
- (iii) invest predominantly in non-custody assets,

regardless of the AIFM's categorisation based on the NAV of the AIFs and CIS it manages. This would remove unnecessary costs that are borne by investors, ultimately contributing to better returns. The option of appointing a depositary should nevertheless remain available where an AIFM considers it commercially necessary or appropriate, as outline above.

As explained in our response to Question 28, many of the depositary's functions are duplicative and unnecessary.

If the FCA is not prepared to remove the requirement or adopt the exemption proposed above, some of the burden could be mitigated by a lighter-touch depositary regime for funds investing predominantly in non-custody assets. This could draw on approaches adopted in certain EU Member States, including Luxembourg, and the 'Depositary-Lite' arrangements applicable to certain non-EU AIFs marketed under NPPR. Such a regime should not require a depositary to perform functions that are duplicative or poorly suited to private capital funds. For example, cash-flow monitoring and other oversight functions linked to checks for compliance with the fund's investment restrictions could be removed.

A lighter-touch regime could reduce depositary costs for AIFMs and, ultimately, investors who would benefit from the lower depositary fees payable by the fund. If this model is adopted, we think it should also be possible for the AIFM and the depositary to contractually agree additional depositary services that the fund may need, for example to access other European jurisdictions with different requirements.

Question 30: Should a small UK AIFM not be required to appoint a depositary for each unauthorised AIF it manages, but be able to opt to do so?

For the reasons set out in our answer to Question 28, we do not believe that a small UK AIFM should be required to appoint a depositary. We support the FCA's proposal to allow small UK AIFMs to appoint a depositary but not be required to do so.

We recognise that depositaries add value in specific contexts. For example, some international regulators such as the German regulator (BaFin) require AIFMs to appoint a depositary to access NPPRs. In our view, the FCA's proposals would provide a welcome degree of flexibility for small AIFMs to appoint a depositary where it is commercially necessary and justifiable to do so, without imposing undue burden and cost.

We ask the FCA to extend CASS 6.1.16BA to small AIFMs where such AIFMs manage AIFs with predominantly private, non-custody assets.

Question 31: Should an AIFM be able to appoint more than one depositary for the same AIF so that they can carry out different functions? What impact might this have on competition?

Yes, to the extent that the FCA retains a requirement for AIFMs to appoint a depositary, we believe it is important for firms to have the flexibility to appoint more than one depositary for the same AIF. In our view, the current requirement to appoint a single depositary is not always compatible with the operational realities of a private capital firm operating globally. We believe that the requirement for AIFMs to appoint a single depositary restricts competition and therefore adds cost.

Question 32: Does our analysis of how responsibilities could be shared between depositaries performing functions for the same AIF capture all relevant aspects? Is there anything else that we should consider?

We would also welcome confirmation from the FCA that multiple depositaries can split their roles not only by function, for example one depositary being appointed for safekeeping and another for cash monitoring, but also by asset class, geography or pools of assets. This would provide further flexibility in the appointment of multiple depositaries, recognise that different assets may need different depositary functions, and help foster depositary specialisms and competitive pricing proposals.

Question 33: Do you agree with our proposed approach to the cash monitoring function? Please explain any pros and cons.

We welcome the FCA's acknowledgement that the current scope of a depositary's cash-monitoring function is unnecessarily duplicative of actions taken by the AIFM and/or fund operator. We also agree that a depositary's oversight is unlikely to add materially to investor protection, as any relevant errors or systemic fraud are likely to be detected and prevented by the AIFM's or fund operator's own cash reconciliations.

We therefore support the FCA's approach to discontinuing the current AIFMD Level 2 requirements on depositaries to, for example, reconcile cash-flow movements and/or identify outliers. In practice, since AIFMs frequently undertake cash-monitoring functions, we welcome the FCA's proposal to make cash monitoring the responsibility of an AIF itself or of the AIFM on the AIF's behalf.

We do not believe that it should be necessary for a depositary to oversee the performance of an AIFM in this regard, as this adds a layer of cost without a concomitant improvement in investor protection.

Question 34: Would allowing greater flexibility in depositary models be beneficial to the market for providing oversight services? If not, why not?

As discussed above, our preference is for the depositary requirement to be removed. However, if the depositary requirement is retained, we welcome the FCA's recognition that the single depositary model is unduly restrictive and support its proposal to allow an AIFM to appoint more than one depositary for a single UK AIF. This would allow AIFMs to diversify service providers, reduce cost and avoid duplication of roles and responsibilities.

However, we are concerned that some of the benefits of the split depositary model proposed by the FCA may be inadvertently undermined by the requirement that, even under the split depositary model, one depositary must carry out 'oversight functions' and maintain a single record of assets. A depositary carrying out 'oversight functions' and maintaining the single record of assets would necessarily need to rely on reporting from any other appointed depositaries. This would introduce significant complexity and add cost, as each depositary would need to ensure that information flows between them and put in place agreements to support this. That cost is ultimately borne by investors in the relevant AIF.

While the FCA notes that this model "does not mean that one depositary would be subordinate to another" or that the "depositary carrying out oversight duties would be overseeing the activities of other depositaries", the commercial reality is that the depositary carrying out the 'oversight functions' is likely to want to verify the information it receives. This would impose further cost and duplication. In our view, in the context of private capital funds investing in non-custodial assets, the FCA's concern that a single depositary ought to have a view of all of an AIF's assets is overstated, as asset verification is already undertaken by independent auditors.

Discussion Chapter 14: Prime Brokers

Question 35: Do you agree with our intention to broadly retain but simplify the existing requirements for prime brokers, subject to any changes we make to the depositary regime? Is there anything else relevant that we should consider?

As it is comparatively rare for our members to appoint prime brokers for their AIFs, we have not responded to this question.

Discussion Chapter 16: Removing the Business Restriction

Question 38: What are your views on the options we have presented on the AIFM business restriction? Are there other approaches that we should consider?

We strongly support the FCA's preferred option of removing the AIFMD business restriction entirely (Option 4). The AIFM business restriction was designed in the context of EU AIFMD and was not designed to take account of the UK's existing regulatory framework. It limits firms' ability to offer complementary services under a single authorisation and introduces significant and, in our view, unnecessary complexity regarding firms' permission profiles.

For example, when AIFMD was transposed into UK law, the UK included a provision covering the ability of AIFMs to perform other regulated activities when performing AIF management activities (Article 72AA of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001). There has, however, been continuing uncertainty as to whether AIFMs require a separate permission to operate a CIS or whether this is included in the general permission to manage an AIF, depending on how close the CIS operation is to their AIFM activities. Question can also arise as to whether the firm is carrying out additional MiFID activities. This case-by-case assessment is an unsatisfactory position that imposes significant burden and cost on firms.

While AIFMs can currently add management of a UCITS and certain MiFID activities into the FCA permission profile, the business restriction continues to add uncertainty, for example where a firm wishes to operate a CIS or certain MiFID activities not permitted under FUND 1.4.3R. Removing the AIFM business restriction would allow firms to structure their business efficiently, rather than maintaining multi-entity structures driven by legacy regulatory requirements. In our view, any concerns around a firm undertaking activities without the appropriate permissions could be managed by the FCA both through the initial authorisation process and later through targeted outreach and, where necessary, the Variation of Permission process.

If the FCA proceeds with removing the AIFMD business restriction, we think this should take effect as soon as practicable following publication of the final rules.

On the other options presented by the FCA:

- Option 1 - apply the AIFMD business restriction to all authorised AIFMs: this option is undesirable as it would simply compound the costs, difficulties and complexities associated with the AIFM business restriction and extend those costs to the smallest firms.
- Option 2 – retain the AIFMD business restriction for medium and large AIFMs: this option would create a "knife edge" scenario for AIFMs looking to scale their business and would, like the current requirement to appoint a depositary, be a significant hurdle. Smaller AIFMs would need to re-evaluate their business models as they approach the relevant threshold and potentially engage in costly restructuring exercises.
- Option 3 – modify the restriction to align it with other regulatory requirements: if the FCA chooses not to pursue our preferred option of removing the AIFMD business restriction entirely, then Option 3 is, in our view, the most coherent alternative. While careful consideration will need to be given to precisely which additional activities are permitted by the modified AIFMD business restriction, we believe that, at a minimum, activities adjacent to core AIFM functions, such as the provision of investment advice, arranging (bringing about) transactions, portfolio management, investment management and operating CISs should be permitted. This is because, in the private capital context, such activities are typically provided intra-group to other connected firms or to sophisticated professional clients. Adopting this option would reduce complexity and help ensure the UK remains a competitive and attractive jurisdiction for private capital firms, particularly as the EU is itself changing the business restriction under AIFMD II to permit AIFMs to undertake a wider range of activities.

If you have any questions or there are points it would be helpful to discuss further, please contact Nick Chipperfield (nchipperfield@ukprivatecapital.co.uk) and Tom Taylor (ttaylor@ukprivatecapital.co.uk).

Yours faithfully,

Tim Lewis
Chair, UK Private Capital Regulatory Committee