The Association of Real Estate Funds
Head Office: 3 Waterhouse Square
London EC1N 2SW
+44 (0)20 7269 4677
info@aref.org.uk
www.aref.org.uk

Asset Management Unit
HM Treasury
1 Horse Guards Road
SW1A 2HQ

Response by email: AIFMR@hmtreasury.gov.uk

9th June 2025

HM Treasury Consultation: Regulations for Alternative Investment Fund Managers

We, the Association of Real Estate Funds[1] (AREF), welcome the UK Government's aim to streamline the regulations for Alternative Investment Fund Managers (AIFMs) and their depositaries. We support the aim to simplify the regulations and make them more proportionate. We agree that this should assist in attracting capital into the UK to invest in the infrastructure and housing through Alternative Investment Funds (AIFs).

We are particularly pleased to see that the Government is considering removing the legal liability of the external valuer and removing this concept from legislation. We have proposed in our response how legislation could be changed to achieve this.

During an open call with our members to discuss changes to the regulations for AIFMs in the UK, HM Treasury and the Financial Conduct Authority ("FCA") confirmed that they would be interested in hearing about anything not mentioned in their consultation and call for input, respectively, which they should take into consideration. We believe that both the Government and the FCA should consider whether the protections provided by the AIFM regulations are required for certain fund structures and in particular circumstances. A couple of examples of this are:

- An exempt unauthorised unit trust (EUUT) has a trustee and the requirement for the fund to have a depositary as well is not providing any additional protection for investors and can be seen as an unnecessary cost.
- Where a Reserved Investor Fund (RIF) has only professional investors, they may see no need for a depositary and prefer to give consent for the RIF to opt out of operating as an AIF and operate only as a Collective Investment Scheme (CIS). This may be achieved by making an amendment to the RIF legislation in the next Financial Services and Markets Bill.

Currently EU AIFMs enjoy market access to UK professional investors, UK AIFMs do not have similar market access to EU professional investors. As part of the Government's desire to reset the UK's relationship with the EU, we would like to see that market access for UK AIFMs to EU professional investors should be equivalent to market access for EU AIFMs to UK professional investors. Not only would this provide more choice for EU pension schemes; it would provide a wider market for UK AIFMs' services.

During the call with HM Treasury and the FCA it was suggested by an AREF member that, as part of the review of AIFMD, the FCA and HM Treasury should consider whether it would be more appropriate for a UK real estate investment adviser to not require FCA authorisation in certain cases where this is currently required. In a real estate context, for example, the regulatory regime could perhaps be applied in a way that is more proportionate if an investment adviser did not require authorisation where both of two conditions are met: (1) the advice is provided to a regulated UK or EEA AIFM, and (2) the advice is provided in all material respects in relation to investments that are not regulated under FSMA (i.e. bricks and mortar) and any FSMA-regulated advice is incidental (e.g. the purchase of

[1] The Association of Real Estate Funds represents the UK real estate funds industry and has around 50 member funds with a collective net asset value of more than £50 billion under management on behalf of their investors. The Association is committed to promoting transparency in performance measurement and fund reporting through the AREF Code of Practice, the MSCI/AREF UK Quarterly Property Funds Index and the AREF Property Fund Vision Handbook.

a property that is wrapped in an existing SPV). We recognise this has wider FSMA implications, but it could help avoid undue regulatory cost.

As well as our members, we have liaised with other real estate and/or funds focussed associations in producing feedback to the consultation. The responses to the questions in the consultation can be found below.

If you would like to discuss any aspect of our response, please contact Jacqui Bungay (jbungay@aref.org.uk), Head of Policy at AREF. Also, as our members invest in real estate and other real assets for various types of open-ended and closed-ended funds, we are always willing to assist the Government by sharing this wealth of knowledge and experience.

Yours sincerely

Paul Richards

CEO, The Association of Real Estate Funds

Responses to consultation questions

Requirements for sub- threshold Alternative Investment Fund Managers

Policy Proposal to remove legislative thresholds

Question 1: Do you agree with the proposal to remove the legislative thresholds from the AIFM Regulations, enabling the FCA to determine proportionate and appropriate rules for AIFMs of all sizes?

In principle we agree with the proposal to remove legislative thresholds, particularly where related to the calculation of leverage. However, the success of this measure does depend on the proposals of the FCA to bring in an appropriately proportionate regime for small AIFMs, especially in relation to internal organisation requirements, reporting obligations and the need for a depositary in a real estate context. We would strongly suggest the proportionate and appropriate regime for small AIFMs is based on the existing regime for operators of UK collective investment schemes as a starting point.

Policy Proposal for the Small Registered Regime

Question 2: Do you agree that the Small Registered Regime should be removed, as it adds significant complexity to the regulatory perimeter?

Yes, we agree that the Small Registered Regime should be removed. The process for becoming a Small Registered AIFM has materially evolved and now provides minimal benefit in terms of barriers to entry or speed to market. The creation of a more efficient, fit for purpose lower tier firm in the authorised space seems an appropriate replacement for those making the transition into the regulated arena. However, one aspect of the Small Registered Regime that was beneficial was the distinction for Property AIFMs, and we are of the view that this asset class distinction is both valid and helpful, but this should be addressed by the changes in regulation being developed by the FCA.

Question 3: What should we take into consideration when we review the SEF/RVECA regulations?

N/A

Question 4: How should the Government approach the regulation of Venture Capital fund managers in future?

N/A

Question 5: Do you agree with the proposal to require managers of unauthorised property collective investment schemes and internally managed investment companies to seek FCA authorisation?

Even prior to and since the introduction of AIFMD, a FCA authorised operator has been required for a UK collective investment scheme, although the operator and the small registered AIFM do not need to be the same entity. If the FCA's new regime for small AIFMs is no more onerous than the existing regime for operating a collective investment scheme, then, subject to appropriate transitional periods (see below), it would seem reasonable that small AIFMs could replace the operator and no additional burden be placed on the fund or investors.

Closed-ended investment companies are excluded from the definition of collective investment scheme and have never required an authorised operator, although they may appoint external managers or advisers which are FCA authorised. The burden of seeking regulation for registered, internally managed investment companies is discussed below but inevitably the burden of increasing compliance or reorganising management has significant potential to reduce returns to existing investors in such vehicles and we urge caution in bringing existing, registered internally managed vehicles within the perimeter so that any such detriment is minimised (see further comments in responses to questions on investment companies below).

Question 6: What would be the impact of requiring these firms to seek authorisation?

Firms seeking authorisation will need time and possibly capital investment to put themselves in a position to meet the organisational and regulatory capital requirements necessary for FCA authorisation. An appropriate transitional period is essential for such firms to organise themselves and undergo the authorisation process.

HMT and the FCA should seek to ensure the proportionate regulatory regime imposed on such AIFMs does not automatically increase costs to the vehicles, and the investors in those vehicles, that they manage. A clear example would be the costs of having to appoint a depositary in circumstances where there are no custodial assets already necessitating the appointment of a custodian.

A significant cost increase may be unavoidable for internally managed investment companies, which will be detrimental to the investors in those vehicles unless management is externalised at no additional annual cost. The necessity of such vehicles falling within the regulatory perimeter, rather than any external manager or adviser, should be reconsidered particularly if the investors are all professional investors and there is no risk of consumer detriment. If not, HM Treasury might consider a permanent exclusion for pre-existing vehicles.

Policy Proposal for Listed Closed-Ended Investment Companies

Policy Proposal for regulation of managers of Listed Investment Companies

Question 7: Do you agree with the Government's proposals for the future regulation of Listed Closed-Ended Investment Companies?

We support AIFMs of Listed Closed-Ended Investment Companies ("LCEICs") continuing to be regulated under the AIFM regulations for the reasons set out in the Government's consultation paper, provided that (as mentioned in paragraph 4.15 of the consultation paper), the FCA adopts suitable proposals to streamline and remove certain duplicative requirements from the AIFM Regulations insofar as they apply to AIFMs of LCEICs.

Question 8: Are there any unintended consequences associated with Listed Closed-Ended Investment Companies, including those which are internally managed, being in scope of AIFM Regulation?

By appropriately tailoring the AIFM regulations which apply in respect of LCEICs, the FCA should reduce the likelihood of unintended consequences arising from the inclusion of LCEICs within the scope of those regulations.

However, it will be very important to ensure that this distinction is carried over into in other legislation which cross-refers to or otherwise applies to "AIFs" more generally. In our view, failure to do so would be very likely to give rise to unintended consequences (as has been seen in the past where rules have been applied equally to LCEICs and other AIFs).

For example, MiFID cost disclosure and product suitability regulations (insofar as they apply to manufacturers/distributors of LCEICs), the FCA Consumer Duty, the Consumer Composite Investments regime and ESG related regulations – all of which apply to AIFs/AIFMs – should be carefully reviewed to ensure that AIFs which are LCEICs are only brought within scope to the extent it is appropriate and proportionate to do so in light of their structure and other regulatory obligations.

In addition, we comment on the presence of an independent board and the board's ability to change the fund manager with unlisted funds. There are unlisted funds, particularly evergreen ones, that have an independent board and/or the ability to change the fund manager. There is a risk of creating artificial distinctions between listed and unlisted funds.

Question 9: If the Government were to consider an alternative approach, such as removing certain Investment Companies from scope of the regulation, should this be limited to closed-ended investment companies listed on the London Stock Exchange, or should other types of closed-ended investment company be captured?

As noted in our response to Question 7 above, in our view, the management of Listed Closed-Ended Investment Companies should fall within the scope of the future AIFM regulation (albeit subject to the modified regulations described in our response to Question 7).

However, one area which we would recommend that the Government specifically considers (and in relation to which the Government should ensure that the final AIFM regulations are clear) is whether closed-ended investment companies listed on the Specialist Fund Segment (SFS) of the London Stock Exchange's Main Market should be regulated in the same way under the AIFM Regulations as LCEICs listed in the closed ended investment funds category LSE's Main Market and admitted to the FCA's Official List. In our view, LCEICs admitted to trading on the SFS should be treated in the same way as those listed on the Official List as, although they are not subject to the UK Listing Rules, they are subject to the DTRs, MAR, Prospectus Regulation Rules and other regulations, and are frequently certified as investment trusts by HMRC. The SFS is aimed at institutional, professional, professionally advised and knowledgeable investors who need a lesser degree of consumer protection, which justifies these companies falling outside the UKLR.

Question 10: Do you consider there to be any duplication in AIFM Regulation and other regulatory requirements imposed upon Listed Closed-Ended Investment Companies, which the FCA should account for when proposing rules?

Yes, and we have responded separately to the FCA's call for input in relation to the proposed AIFM regulations on this question.

Additional Proposals

Definitions and other perimeter issues

Question 11: Do you agree with the proposal to transfer definitions underpinning the regulatory perimeter to legislation?

We agree with the proposal to transfer definitional language contained in the UK AIFM Regulations 2013 and in the onshored Level 2 regulations to the Regulated Activities Order ("RAO") to ensure that the RAO contains the full definitions and exclusions both from the regulated activity of managing an AIF and from the specified investment of a unit of share in an AIF.

However, we disagree with the proposal to transfer any definitions currently contained in FCA guidance. One of the real strengths of the UK implementation of key concepts has been the very practical guidance offered by the FCA in PERG Chapter 16 on what is and what is not an AIF. Given the huge market practice that has built up applying and

relying on these examples, we consider it vital that they should not be overridden in any way by moving the definitions into legislation. To that end, we note and agree with the comment in the consultation paper that HMT does not intend to change the definitions or regulatory perimeter as part of this transition, and we consider it would be most appropriate for these examples to remain as guidance in PERG.

That being said, as a result of onshoring changes, there are some definitional gaps we have noted, and suggest these be fixed as part of this process. These include:

- Definition of "holding company": This was previously defined by Regulation 2(2)(a) of the UK AIFM Regulations 2013, by a cross-reference to the AIFMD (where it is defined in Article Art 4(1)(o)):

  "Unless otherwise defined – (a) any expression used in these Regulations which is used in the directive has the same meaning as in the directive".

  This Regulation was deleted, and now reads:

  "(2) Unless otherwise defined –

  (a) ...

  (b) any expression used in these Regulations which is used in a …EU regulation made under the directive [which forms part of [assimilated] law] has the same meaning in that regulation; and

  (c) any other expression used in these Regulations which is defined for the purposes of the Act has the meaning given by the Act."

Therefore, the only place the AIFMD definition is written out in full is in PERG Chapter 16.6 (Exclusions) question 6.2 guidance. It is not the same definition as used in the FCA Glossary, which refers to the Companies Act 2006 term, and therefore we consider that the original AIFMD "holding company" definition should be incorporated into the RAO as part of this exercise.

- Definition of "securitisation special purpose entity": Similarly, this term was defined by Regulation 2(2)(a) of the UK AIFM Regulations 2013, by cross referring to the definition in AIFMD (where it is in Article 4(1)(an)). PERG Chapter 16.2, qu 2.37 writes out that definition, however this was not updated when Regulation (EC) No 24/2009 of the European Central Bank was recast (by Regulation (EU) No 1075/2013 of the European Central Bank), and therefore incorporates an out-of-date description of a "securitisation". We suggest this be updated when including the definition in the RAO. We note this is not the same definition used in the FCA Glossary.

The National Private Placement Regime

Question 12: Do you agree with the proposal to maintain the National Private Placement Regime? Do you have any concerns with how the Regime currently operates?

We agree in principle with this proposal. The UK's NPPR process using the FCA Connect notification is straightforward and quick. It is also familiar to non-UK AIFMs, reflecting the conditions of Article 42 of the EU AIFMD for full-scope managers. HMT may want to consider whether or not it is proportionate for third country small and medium AIFMs to have to comply with all of the pre-investor requirements currently set out in FUND 3.2 and reporting requirements in FUND 3.3 and 3.4. This would also turn on how these requirements will apply to UK AIFMs following any changes: it is important that third country AIFMs have a compliance burden that is no less onerous than that for UK AIFMs.

As a related point, while the initial NPPR report is relatively straightforward, the ongoing Annex IV reports which are then required to be submitted are a burden (in terms of cost and time) for many UK real estate managers who use non-UK funds and then market those funds into the UK. This consultation process provides an appropriate opportunity for the FCA to consider whether continuing to require these ongoing reports is actually useful to the FCA in the exercise of its regulatory functions.

Marketing Notifications

Question 13: Should the requirement to notify the FCA 20 days prior to marketing be removed and what impact would this have for firms and investors?

We agree with this proposal. It would be helpful to streamline the FCA approval process so that marketing of AIFs by full-scope AIFMs in the UK is not more onerous than for third country AIFMs under NPPR. We assume that HMT would also remove the requirement in Article 55 of the UK AIFM Regulations 2013. If there is objection to removal of the 20 day notification period, HMT should consider moving this requirement to the FCA Handbook where the FCA can provide guidance on what constitutes a material change taking an approach similar to that in SUP 15.3.27. On a related note, we would encourage the FCA to consider clarifying the notification regime so that, for AIFs with only professional investors, any changes to fund terms that are requested by investors (and are therefore investor-favourable) that do not, in the AIFM's reasonable opinion, materially adversely affect other investors, would not in any event require pre-notification or pre-approval by the FCA.

Private Equity Notifications

Question 14: Should the requirement for AIFMs to notify the FCA in relation to acquisition of non-listed companies, be removed or should this information be provided elsewhere?

We agree with the proposal to remove the requirement for AIFMs to notify the FCA in those circumstances. We do not consider that there is much value in firms being required to report that information elsewhere unless the FCA will review and be able to act on that data. In our view, it is the responsibility of firms to comply with the rules applicable to them, e.g. the asset stripping rules, and the FCA would be able to assess compliance by the firms exercising its normal supervisory functions.

External Valuation

Question 15: Should the liability for external valuers be reviewed, and would any additional safeguards be required?

We have campaigned for several years requesting that the liability for external valuers be reviewed, and (in the context of regulatory reform) have proposed additional safeguards.

It is not appropriate for external valuers (appointed to UK AIFs) to face unlimited liability as required under the current Regulation 24(5) of The Alternative Investment Fund Managers Regulations 2013 ("Regulation 24(5)"). Valuation professional bodies require valuers to hold approved Professional Liability Insurance for the work they undertake. Such insurance cannot be obtained with unlimited liability, so the current AIFM regulations effectively prevent firms that are members of and regulated by professional bodies from accepting appointments as external valuers.

No wonder that in its multi-firm review[2] of valuation processes for private market assets (published: 5th March 2025), the FCA found that it was rare for fund managers to use external valuers. The increased use of external valuers would likely assist AIFMs in addressing the risks and conflicts identified in this review.

This means that AIF investors lose out, as they are unable to benefit from valuations that are transparently external and independent from the AIFM. AIF investors are placing reliance upon an AIFM's internal valuation methodologies, which runs counter to principles of investor protection and good corporate governance. Reform of legislation should better allow for AIF investors to benefit from independent determinations of asset value by external valuers.

We share the view that growth in the market for external valuation services would indeed be facilitated by removing the legal liability of the external valuer.

We agree with the feedback in consultation paper paragraph 5.18 "*that this liability makes valuers cautious about taking on business and makes it challenging for them to obtain professional indemnity insurance. This particularly*

[2] https://www.fca.org.uk/publications/multi-firm-reviews/private-market-valuation-practices#lf-chapter-id-detailed-findings-policies-procedures-and-documentation

impacts funds investing in longer-term assets which may be more complex to value". Such funds include funds that hold underlying real estate.

In the context of Regulation 24(5) being reformed (as we propose), there are also advantages for all UK AIFs (holding investment property in the UK):

- being able to align the valuation benchmarks with the financial reporting requirements: both IFRS and UK GAAP implicitly encourage entities to use an independent valuer (by requiring entities to disclose if an independent, suitably qualified valuer were not used).
- it would also simplify the valuation process for UK AIFMs, as they could use the same valuations for compliance with both Accounting Standards and the UK AIFMR.

Context

Regulation 24(5) overrides any contractual limit on liability agreed between the AIFM and the valuer. This simply does not work in practice.

At present few, if any, professional valuers can or will accept appointment as external valuers by an AIFM because of the unlimited liability imposed by Regulation 24(5). Most reputable valuers in the UK are members of professional bodies that require them to have professional indemnity insurance. Moreover, some insurers will also have policy conditions that require all instructions to contain liability caps.

Proposal

We propose an amendment to Regulation 24(5) along the following lines (with in red font amended wording):

24. Valuation

(1) An external valuer must carry out the valuation function described in ***[***section 3.9 of the Investment Funds sourcebook***]*** *impartially, and with all due skill, care and diligence.*

(2) An external valuer may not delegate such valuation function to a third party.

(3) If the FCA considers the appointment of an external valuer does not comply with the implementing provisions, the FCA may require that another external valuer be appointed instead.

(4) Any liability of a full-scope UK AIFM to an AIF managed by it, or to an investor of such an AIF, arising out of the AIFM's responsibility for the proper valuation of AIF assets, the calculation of the net asset value of the AIF and the publication of that net asset value, is not affected by the appointment by the AIFM of an external valuer in respect of that AIF.

(5 (a) Where the AIFM of an AIF and the external valuer agree to limit liability of the external valuer for losses suffered by the AIFM as a result of the external valuer's negligence in performing its tasks (provided the limit of liability agreed is reasonable and proportionate to value of the AIF assets), the external valuer shall only be liable to that limit; and

(b) Subject to Regulation 24(5)(a) and irrespective of any other contractual arrangements[3], an external valuer is liable to the AIFM of an AIF in respect of which the external valuer is appointed for any losses suffered by the AIFM as a result of the external valuer's negligence or intentional failure to perform its tasks.

We are aware of industry stakeholders conferring extensively with contacts at valuation firms, UK fund managers, pension funds and other institutional indirect investors and industry associations, and understand from stakeholders there is widespread consensus:
1) that the proposed amendment is a workable solution; and
2) in support of the proposed amendment.

[3] Delete "*that provide otherwise*"

This proposal is consistent with the analysis expressed in consultation paper paragraph 5.19 (which we endorse) that: "*the external valuer would have contractual liability to the AIFM, and the AIFM would still have legal liability to the fund and its investors; the final responsibility would rest with the AIFM.*"

Explanation of proposal

From a drafting perspective, we are proposing amendments that:

- utilise existing The Alternative Investment Fund Managers Regulations 2013 Regulation 24 words and concepts; and
- are minimal in nature, so the overall Regulation 24(5) policy intent is preserved.

We hope that our proposed Regulation 24(5) amendment is self-explanatory. However, we also make the following comments:

(i) The Alternative Investment Fund Managers Regulations 2013 Regulation 24 deals with the valuation process. The Alternative Investment Fund Managers Regulations 2013 Regulation 24(4) refers to "***the*** *AIFM's responsibility for the proper valuation of AIF assets, the calculation of the net asset value of the AIF and the publication of that net asset value*". The proposed Regulation 24(5) amendment does not affect this AIFM responsibility.

(ii) Under the proposed amendment:

- If the AIFM were to:
  - appoint an external valuer; and
  - agree to limit the external valuer's liability for losses suffered by the AIFM as a result of the external valuer's negligence in performing its tasks

  then the external valuer would only be liable to that limit.
- Regulation 24(5)(b) would still provide a safeguard default option to AIFMs and external valuers who wished to use it, and this default provision would be essentially unchanged. Under the proposed amendment, however, AIFMs and external valuers would have greater flexibility than is permitted under the current legislative approach.

(iii) We suggest that - in relation to the proposed words "(*provided that the limit of liability agreed is reasonable and proportionate to value of the AIF assets*)" – it would be helpful if the FCA were to consult and (in light of consultation) issue guidance on how these words may apply in practice.