18 February 2026

Via Electronic Mail: noncompeteclauses@businessandtrade.gov.uk

Department for Business and Trade
Old Admiralty Building
Admiralty Place
London
SW1A 2DY
United Kingdom

Re: Working paper on options for reform of non-compete clauses in employment contracts

MFA[1] appreciates the opportunity to submit these comments in response to the Government's invitation of views on options to reform non-compete clauses in employment contracts and input on alternative policy options, which would support the UK's growth mission.[2] MFA represents the global alternative asset management industry. Of MFA's 180-plus alternative asset manager members, over half have a significant presence in the UK, either as their headquarters, with offices typically in the European Union, U.S., and elsewhere, or as a significant component of a U.S.-based firm.

Institutional investors—like pension plans, university endowments, charitable foundations, and other institutional investors—rely on MFA members to meet financial obligations, diversify their investment portfolios, and manage risk. To be effective managers of institutional capital, employment in the alternative asset management industry is concentrated with highly specialised, high-income workers. "The UK investment management industry supports approximately 123,300 jobs. Approximately 44,900 people are employed directly by investment management firms, with the remainder employed in industries such as custodian banks, transfer agents and wealth managers."[3] Accordingly, we share the Government's commitment to a dynamic labour market that enables people across the country to benefit from a breadth of employment opportunities and thereby drive economic growth.

While we understand the Government's focus on seeking opportunities to reduce barriers for the businesses, entrepreneurs, and investors who are important to boosting economic growth, the presence of restrictive covenants in the alternative asset management industry is unique. This is not simply because the industry

[1] Managed Funds Association (MFA), based in Washington, D.C., New York City, Brussels, and London, represents the global alternative asset management industry. MFA's mission is to advance the ability of alternative asset managers to raise capital, invest it, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 180 fund manager members, including traditional hedge funds, private credit funds, and hybrid funds, that employ a diverse set of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors diversify their investments, manage risk, and generate attractive returns throughout the economic cycle.

[2] DEPARTMENT FOR BUSINESS & TRADE, POLICY PAPER, WORKING PAPER ON OPTIONS FOR REFORM OF NON-COMPETE CLAUSES IN EMPLOYMENT CONTRACTS (26 Nov. 2025) ("**Policy paper**").

[3] *Operational and Structural Evolution*, Investment Management in the UK 2024-2025: The Investment Association Annual Survey (Oct. 2025).

largely consists of highly specialised, high-income workers, but because of the intellectual property and proprietary interests which they protect and the contractual terms on which they are offered. As a result, restrictive covenants in the alternative asset management industry are distinguishable from those that are often the focus of broad-based academic studies on the use of non-compete clauses.

Reforms to non-compete clauses for the alternative asset management industry's highly specialised, high-income workforce are unwarranted. The landscape in the UK already strikes a balance between protecting legitimate business interests and the rights of employees, with any restriction that goes beyond what is reasonably necessary to protect those legitimate interests being unenforceable. Moreover, the doctrine against restraint of trade, "[b]ased as it is on public policy… has regularly had to adjust to social change,"[4] and is therefore capable of evolving to address questions of reasonableness with respect to duration, width, and the interests of both parties and of the public in modern times. Any additional statutory limitation would be a blunt tool that insufficiently recognises the variety of industries and roles in which there is a substantial reliance interest in non-compete clauses. The current position of assessing restrictions on a case-by-case basis is preferable.

We note that the Policy paper relies heavily on data from the U.S.,[5] specifically, the Federal Trade Commission's vacated-as-unlawful "Non-Compete Clause Rule."[6] Such data may be unrepresentative for a variety of reasons, including the significant legal differences between: (i) the U.S.'s patchwork of federal and divergent state laws and the UK's statutory labour laws; (ii) the U.S.'s employment-at-will doctrine and the UK's termination requirements; and (iii) employee classification in either country, among other reasons.

For example, in the context of the U.S.'s state employment law landscape, while the Policy paper refers to the few states which have banned or restricted non-compete clauses, the majority of other states which have found it more prudent to set out the conditions under which restrictive covenants are presumed to be valid, rather than the conditions under which restrictive covenants are not permitted or consider the reasonableness of a restrictive covenant on a case-by-case basis.[7] This policy decision relies, in part, on the finding that there is generally a "lack of evidence" to support the "cho[ice] to impose such a sweeping prohibition—that prohibits entering or enforcing virtually all non-competes—instead of targeting specific, harmful non-competes…"[8]

We recommend that the Government closely studies market-standard practices in specific industries in the UK before determining its next steps. The study of industry practice would also reveal the industries (with, for example, highly mobile workforces) in which a policy regarding non-compete clauses may harm the UK's national competitive advantage relative to other jurisdictions in which restrictive covenants are enforceable. Alternative asset management is one such industry.

In the U.S., the alternative asset management industry is concentrated in New York but there is rapid growth in states which permit non-competition agreements and have passed legislation specifically designed to attract business and employment opportunities. For example, "Florida and Texas have seen rapid and immense job growth

[4] Tillman v. Egon Zehnder Ltd, [2019] UKSC 32, [26].

[5] Policy paper, at ⁋⁋ 19-20, 24-25.

[6] *Ryan LLC v. Fed. Trade Comm'n*, No. 3:24-CV-00986-E (N.D. Tex. Aug. 20, 2024).

[7] *See*, *e.g.*, Florida Contracts Honoring Opportunity, Investment, Confidentiality, and Economic Growth (CHOICE) Act, Ch. 2025-213, 2025 Fla. Laws 2 (to be codified at FLA. STAT. §§ 542.41-542.45).

[8] *Ryan LLC*, at *24.

in the financial sector that is significantly outpacing the rest of the U.S."[9] In Florida, non-compete agreements of up to four years benefit from a presumption of enforceability with respect to covered employees. We note that Florida has tailored this presumption to competitive roles in which a covered employee would provide services similar to the services provided to their former employer or in which it is reasonably likely a covered employee would use the confidential information or customer relationships of their former employer.[10]

The evidence therefore indicates that any additional statutory limitation on non-compete clauses could damage the UK economy, rather than stimulate it, at a time when the relative mobility of workers in general makes any jurisdiction vulnerable to attrition to more favourable jurisdictions. These jurisdictions include the incumbents with which London (as one such incumbent) competes—such as New York City—and emerging jurisdictions—both in the U.S., such as major metropolitan areas in Florida and Texas, and elsewhere, such as Singapore, Dubai, and Abu Dhabi. Accordingly, legislation tailored to permit longer duration non-compete clauses for sophisticated, highly compensated investment professionals could help boost productivity and economic growth potential.

Many large asset managers with offices in London already have offices in competing jurisdictions. Consequently, the introduction of further statutory restrictions on non-compete clauses could likely constrain recruitment within the UK and prompt firms to give serious consideration to relocating employees to more favourable jurisdictions when determining the placement of sophisticated, highly compensated investment professionals. This is a distinct possibility because much of the work of asset managers is location agnostic, with strategic decisions being made as to the most favourable locations to do business, including those jurisdictions in the U.S. and Middle East without statutory limitations on non-compete clauses. Accordingly, legislation tailored to permit longer duration non-compete clauses for sophisticated, highly compensated investment professionals could help boost productivity and invite more business and employment opportunities to the UK. This competitiveness dynamic is particularly relevant in the context of the UK's less favourable personal and business tax environment as well as recent changes to employment law which place more onerous requirements on employers.

Our comments below seek to inform the Government's study of the alternative asset management industry's use of non-compete clauses.

I. Asset managers' use of non-compete clauses also benefits employees

MFA members frequently use non-compete clauses with other contractual safeguards to protect some of their most valuable investment assets and proprietary information. Typically, the secrecy of an asset managers' proprietary information is an inherent part of its value because such information would have little value if it were widely known and, therefore, priced into the markets. Accordingly, asset managers generally limit the use of non-compete clauses only to employees whose departure would run the risk of exposing such proprietary information and result in competitive harm.[11] In such cases, non-compete clauses are used to protect proprietary strategies and

[9] Jack Kelly, *Wall Street Is Going South And Taking $1 Trillion In Assets With It*, FORBES (Aug. 23, 2023), https://www.forbes.com/sites/jackkelly/2023/08/23/wall-street-is-going-south-and-taking-1-trillion-in-assets-with-it/.

[10] *See* FLA. STAT. §§ 542.43(6).

[11] *See* Evan P. Starr et al., *Noncompete Agreements in the U.S. Labor Force*, 64 J.L. & ECON. 53, 64 (2021) (noting that "the incidence of noncompete[] [agreements] is much higher among those who report possessing some type of trade secret or valuable information.").

processes that result from research and development.[12] Asset managers rely on trade secret law to protect their proprietary technologies, processes, and formulae. Non-compete clauses afford asset managers unique protection against cases where departing employees misappropriate their proprietary information.

Importantly, non-compete clauses foster the free flow of information and training within a firm that results in the innovation that is so critical to the competitive process in the alternative asset management industry. Restricting asset managers' use of non-compete clauses would impede the sharing of information and training within a given firm and limit the number of employees who have access to each firm's proprietary information.[13] Currently, asset managers use non-compete clauses to allow covered employees to access and understand a firm's strategies and proprietary information in a protected manner. Having access to such information enables employees to gain valuable experience to progress in their careers, and many often go on to start their own firms, increasing competition in this industry. Without the protection of non-compete clauses, firms would be forced to limit severely the number of employees with access to their proprietary information and investment into training and development.

Similarly, the employees without access would be relegated to working on discrete projects without understanding the broader implications of their work. As a result, employees would likely lose out on career-advancing learning opportunities. This is not a hypothetical concern. Employees of asset managers already recognise that if they enter non-compete clauses with their employer then they receive increased access to their employer's proprietary information, which allows them to have a greater impact within the firm. Because of this fact, there have been instances where the employees of asset managers have requested to enter non-compete clauses with their employers. Any additional statutory limitation on non-compete clauses would prevent employees from making such a choice. The ability to rely on non-compete clauses therefore encourages employers to invest in their employees for the long term.[14]

In turn, the use of non-compete clauses allows asset managers to utilise the unique perspectives of each covered employee, which is needed to develop and implement investment strategies for pension plans, university endowments, charitable foundations, and other institutional investors. These investors depend on the innovation that allows asset managers to diversify their investments, manage risk, and generate attractive returns over time.

Significantly, the way non-compete clauses are typically structured in the alternative asset management industry limits harm to employees, as they are typically compensated to a significant degree during the non-compete period via various mechanisms, such as the continuation of their most recent base salary or payment of some other, often larger, amount. The net result is that the use of non-compete clauses by asset managers fosters investment in

[12] John McAdams, *Non-Compete Agreements: A Review of the Literature* at 3 (Fed. Trade Comm., Working Paper, Dec. 31, 2019) (finding that the protection of confidential information promotes innovation by "increase[ing] the returns to research and development.").

[13] *Id*. at 13 ("The bulk of the empirical literature finds that workers signing non-compete agreements, or workers who reside in areas with a higher incidence of [non-compete agreements], receive more training, more access to information, and more access to client lists.").

[14] *See* Starr et al., *Noncompete Agreements in the U.S. Labor Force* ("Focusing…on those who learn of their noncompete before they accept their job offer, our most saturated model indicates that these employees have 9.7%...higher earnings, are 4.3 percentage points more likely to have information shared with them…, are 5.5 percentage points more likely to have received training in the last year…, and are 4.5 percentage points more likely to be satisfied in their job…relative to those employees without a noncompete.").

employees and creates the prospect of more competition once the post-term non-compete period ends. Not only do new firms started by former employees benefit from the use of non-compete clauses, but other new entrants do too. Both benefit from knowing that their startup investment in their own proprietary information will be protected from potential use for some minimum duration.

Non-compete clauses play a crucial role in allowing asset managers to protect their proprietary information, investment strategy, and investors, while balancing the interests of employees. Without the protection of non-compete clauses, businesses may prefer to invest in hiring employees and opening offices in other jurisdictions where their innovation, research and development can be better protected. This is a distinct possibility, as noted above, because much of the work of asset managers is location agnostic, with strategic decisions being made as to the most favourable locations to do business.

II. Asset managers' use of non-compete clauses is uniquely necessary to protect intellectual property and proprietary interests

As discussed in more detail below, non-compete clauses are one of the most effective ways asset managers can ensure protection of their proprietary information, know-how, and investment strategies after their employees with access to such information leave. As noted above, much of the value in asset managers' proprietary information comes from its secrecy, which makes preventative measures, particularly non-compete clauses, necessary. In the alternative asset management industry, non-compete clauses serve to reduce costs and foster new market entry and competition. Also noted above, employees in this industry need to have access to proprietary information and strategies to develop their skills and knowledge, which also allows them to deliver better results and client service for investors.

For example, asset managers often create and market new funds centred around specific portfolio managers, generally one or more individuals, who develop and implement the investment strategies of that fund. To justify the substantial financial commitment required to launch and market a new offering, firms typically require assurances that the individual(s) will not misappropriate the firm's existing or future proprietary information and strategies.

The Policy paper recites two reasons why non-compete clauses may "act as a brake on entrepreneurial activity": first, "by blocking the emergence of new companies", and second, "by making it harder for them to grow" and "scale up" because "existing firms are the primary source of potential hires."[15] However, these rationales are largely irrelevant in the alternative asset management industry. Often, it is the employee's former employer that seeds the new fund launch in return for an economic interest in the new (general partner) entity, as well as exposure to the underlying fund. Firms in this industry are generally unwilling to enter the market unless they can reach a sufficient comfort-level that their highly specialised, high-income workforce cannot immediately take the firm's proprietary information and strategies to a competitor.

The investment strategies employed by fund managers vary widely and are highly proprietary. In fact, investors in funds are subject to confidentiality and non-disclosure agreements when they receive confidential information from these funds. It often takes a considerable investment of time, effort, and resources to develop and refine a strategy, and to develop a track record and sufficient reputation, to market that strategy to potential investors. Non-compete clauses protect this investment. Without being able to rely on non-compete clauses,

[15] Policy paper, at ¶¶ 19-21.

businesses would be disincentivised from investment in innovation and research and development in the UK and may choose to invest in jobs in other more favourable jurisdictions.

Contrary to the Policy paper's claim that "non-compete clauses… put downward pressure on wages,"[16] non-compete clauses may benefit employees in the alternative asset management industry because such clauses are frequently compensated for, thereby enhancing wages. Employees who are subject to non-compete clauses are typically sophisticated, highly compensated investment professionals who can negotiate higher wages based, in part, on the requirement that they execute non-compete clauses. The same is also true when non-compete clauses are added or extended while such professionals are employed by MFA members.

Asset managers do not in principle object to restrictions on non-compete clauses for lower paid, lower skilled workers; but for highly skilled and highly remunerated employees, who are capable of negotiating their own pay and terms and of obtaining specialist legal advice, the same restrictions should not apply. The Government may wish to consider, to the extent salary thresholds are required at all, a tiered system under which no limit on the duration of non-compete clauses would apply for workers receiving a total remuneration in excess of (for example) the additional rate of income tax (currently £125,141). In this tiered system, workers earning up to the salary threshold could not be subject to a non-compete clause in excess of a defined duration, thereby providing a more appropriate balance between the interests of employers, the interests of the employee, and of the public.

In the absence of non-compete clauses, a likely result would be downward pressure on the wages paid to such employees or an increase in deferred payments to disincentivise departure. Indeed, increased weighting toward deferred compensation may be substituted for non-compete clauses,[17] and in such cases, departing employees receive neither the compensation associated with a non-compete clause nor unvested awards of deferred compensation.[18] Moreover, absent non-compete clauses, employers would be likely to condition significant incentive compensation on remaining employed, which would result in individuals forfeiting significant compensation upon resignation—regardless of whether they went to work at a competitor immediately after or not.

Further, many asset managers rely heavily on their traders' and developers' knowledge and innovation in developing algorithms for quantitative trading. If a developer were to leave and immediately join another firm, there is a serious risk that they would improperly take those key assets with them for use at their new employer, thereby exposing, and immediately devaluing, their former employer's trading strategy and harming its competitive position. Consequently, investors, as the clients of those firms, ultimately bear the costs resulting from firms' loss of intellectual property and the increased costs of doing business. More broadly, absent non-compete clauses, firms would be forced to keep proprietary information limited to only a very select group of long-tenured employees, stifling the flow of valuable information and ideas that support innovation and bring value to investors.

In practice, confidentiality, non-disclosure, and non-solicitation agreements are helpful deterrents, but they simply do not afford asset managers the same level of protection as non-compete clauses. Putting aside the difficulties with detecting misuse of proprietary information and proving breach, even if misappropriation of information is detected and proved, it is often too late to do anything meaningful about it. After-the-fact litigation is

[16] Policy paper, at ⁋ 18.

[17] *See* Richard A. Booth, *Give Me Equity or Give Me Death—the Role of Competition and Compensation in Building Silicon Valley*, 1 ENTREPRENEURIAL BUS. L. J. 265, 271 (2006) (arguing that deferred equity compensation is used as a replacement for non-compete clauses for purposes of retaining employees).

[18] *See* Jonathan M. Barnett & Ted Sichelman, *The Case for Noncompetes*, 87 U. CHI. L. REV. 953, 991 (2020).

an inadequate alternative because the harm has already occurred once the information has been divulged. Moreover, litigation over improper use of proprietary investment algorithms can be costly, lengthy, and result in disclosure of proprietary information as part of the litigation process. By contrast, non-compete clauses allow employers to minimise the harm to their interests in the first place by better protecting proprietary misuse during departing employees' non-compete periods.

Further, the cost and business disruption of engaging in litigation may hurt the firms involved and have a negative impact on the alternative asset management industry as a whole. To the extent that asset managers cannot rely on non-compete clauses, they would be forced to litigate alleged confidentiality breaches much more frequently to protect their proprietary information. There have been many well-publicised cases of such trade secret litigation and the great expense at which the firms involved enforced their rights, including both core litigation expenses (which may be incurred over many years) and collateral expenses, such as those associated with internal investigations, cooperation with law enforcement, etc.

III. The use of restrictive covenants through which employees are compensated should be excluded from the scope of "non-compete clauses"

We support the Policy paper's reasoning that certain clauses governing the payment of discretionary awards (including, in our view, awards determined according to a pre-determined vesting schedule), like "gardening leave," are "an alternative to non-compete clauses"[19] and, therefore, should be excluded from the scope of any policy regarding "non-compete clauses." These terms, like gardening leave or forfeiture-for-competition features of an employment contract, are often used to attract and retain highly compensated investment professionals and do not in fact unfairly penalise former employees for competing.

Specifically, employee forfeiture-for-competition provisions, in which employees voluntarily agree that in exchange for receiving *additional* benefits (usually deferred cash payments or a financial instrument akin to equity), they will forfeit that benefit if they choose to join a competitor before the expiration of a defined period, are not "non-compete clauses" as contemplated by the Policy paper. Rather than restrict employee choice over where and when to work, these agreements give employees multiple choices: (1) they can choose whether to accept the agreement in the first place; and if they do, then (2) they can then choose whether to refrain from competing and receive significant additional financial benefit, or they can choose to compete and forego that benefit.

Accordingly, we encourage the Government to specify that the scope of any policy regarding "non-compete clause" excludes employee forfeiture-for-competition agreements as neither penalty provisions nor post-employment restraints.

IV. The use of restrictive covenants in wider workplace contracts, such as partnership and shareholder agreements and other equity incentive arrangements, should be excluded from the scope of "non-compete clauses"[20]

Wider workplace contracts, such as partnership and shareholder agreements and other equity incentive arrangements, unlike typical employment contracts, reflect complex business relationships among sophisticated parties—partners and shareholders—who own equity in the business. Partnership agreements generally provide

[19] Policy paper, at ⁋ 39.

[20] Policy paper, at "Discuss questions" ("11. Whether restrictions on non-compete clauses should be limited to employment contracts or whether the government should consider applying them to wider workplace contracts").

that partners are entitled to receive certain benefits, such as the receipt of distributions (*i.e.*, profits) derived from the business of the partnership which may also include post-termination payments conditioned on a terminating partner not competing with, or soliciting or doing business with clients of, the partnership. Partnership agreements' restrictions on post-termination competition or solicitation, further unlike typical employment contracts, are more akin to contractual conditions that must be satisfied before post-termination payments, which turn on the contractual performance of the terminating partner, rather than penalty provisions or post-employment restraints.

Once partners exercise their contractual freedom in their partnership agreement, the partners have a substantial reliance interest in the economic bargain reflected in that agreement being enforced in accordance with its terms. This reliance interest is evidenced throughout market-standard partnership agreements; for example, most agreements contain a severability provision providing that the remainder of the agreement survives even if a court finds some provision unenforceable. Moreover, any theoretical public interest regarding competition is outweighed by the very real, substantial unfairness of permitting one or more partners to reap the benefits of the partnership so long as the agreement is favourable and subsequently enjoy the windfall of being excused from the terms of the agreement when it is not.

Accordingly, we encourage the Government to not expand any policy regarding "non-compete clauses" to wider workplace contracts, such as partnership and shareholder agreements and other equity incentive arrangements. A more expansive policy including such agreements would upset fundamental contract principles which incentivise the formation of new firms and expansion of legacy firms around the settled expectations of freely contracting parties. We note that provisions or covenants in such agreements which are post-employment restraints of trade would remain subject to the doctrine against restraint of trade, but we believe that any additional statutory limitation would be inappropriate in the context of these agreements. Importantly, prospective partners are almost always better situated to negotiate on an equal footing than a prospective employee is with respect to an employer, in addition to the heightened sophistication and financial wherewithal of prospective partners.

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We appreciate the opportunity to submit our comments in response to the Government's invitation of views on options to reform non-compete clauses in employment contracts and input on alternative policy options, which would support the Government's growth mission. Please do not hesitate to contact me at rhailey@mfaalts.org.

Yours faithfully,

/s/ Rob Hailey

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