

MEMO# 30773

July 10, 2017

EBA Issues Preliminary Recommendations, Requests Data from EU Investment Firms Regarding Proposal on New Prudential Regime

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July 10, 2017 TO: ICI Global Members

ICI Global Regulated Funds Committee SUBJECTS: International/Global RE: EBA Issues Preliminary Recommendations, Requests Data from EU Investment Firms Regarding Proposal on New Prudential Regime

The European Banking Authority (EBA) is continuing to move forward with its work on recommendations for the European Commission (Commission) regarding the design of a new prudential framework for European Union investment firms. The EBA recently presented its preliminary policy recommendations, and it has launched a supplementary data collection to “allow for a complete calibration of all the relevant aspects of the new prudential regime and a final impact assessment of its proposal on regulatory capital requirements.” As explained below, the EBA requests that firms submit data by 3 August.

Background

Last fall, the EBA issued a Discussion Paper outlining a proposal for the design of a new prudential framework for European Union investment firms.[\[1\]](#) The Discussion Paper responded to a Commission Call for Advice requiring the EBA to specify “the appropriate design and calibration of all aspects of a new prudential regime specifically tailored to the needs of different business models of firms and the risks that their operations present.”[\[2\]](#) In a February 2017 comment letter, ICI Global focused on the implications of the Discussion Paper for investment firms that are asset managers, and in particular those that manage regulated funds such as UCITS.[\[3\]](#) Among other comments, the letter made the following points:

- The proposal has the potential to bring positive change to the existing prudential framework for investment firms which, as the EBA has observed, has a number of significant flaws.
- The Discussion Paper lacks essential details without which we and other stakeholders cannot assess with any precision the impact of the proposal.

- Certain aspects of the proposal appear too rooted in banking and do not accurately reflect the business and operations of asset managers.

Recent Developments

At a public hearing with industry stakeholders on 3 July, EBA representatives discussed the state of play of this project and presented the EBA's preliminary policy recommendations.^[4] The policy recommendations reflect some modifications to the proposal as outlined in the Discussion Paper, including the addition of specific details intended to allow investment firms to determine (1) how they would be categorised for purposes of the proposed regime and (2) the capital requirements (and other prudential requirements) that would apply. The recommendations include, for example, proposed size-based thresholds (assets under management and other quantitative measures) for purposes of categorising investment firms (Slide 7), and proposed Initial Capital levels (for the authorization of an investment firm) based on a firm's services and activities (Slide 11).

The EBA's proposed approach to determining minimum Pillar 1 capital requirements for Class 2 investment firms (firms that are not "systemic and bank-like") is outlined in Slides 13-16. The EBA recommends that Class 2 firms be subject to a minimum Pillar 1 capital requirement equal to the higher of: (1) Initial Capital/Permanent Minimum Capital requirement; (2) Fixed Overheads requirement; and (3) capital requirements determined by a "k-factors" formula. The k-factors formula is designed to take into account the risks to customers, the market, and the firm, respectively, presented by a firm's activities. (See Slides 14 and 15 for a description of the k-factors and Slide 16 for the specific coefficient proposed for each k-factor.) The recommendations also address liquidity, reporting, and disclosure requirements (Slides 18-21), as well as remuneration and governance (Slides 24-27).

As a related matter, on 6 July, the EBA launched a supplementary data collection that it intends to use to support the final calibration and impact assessment of the new framework.^[5] Using the templates the EBA has published, **firms are asked to submit data to the appropriate Competent Authorities no later than 3 August 2017**. We encourage members to consider participating in the data collection exercise to help ensure that any final recommendations will be evidence-based. Notably, the EBA has delayed the timing of its Advice to the Commission to the end of September 2017 so that it can incorporate this information.

For its part, the Commission has confirmed that it still plans to publish a legislative proposal by the end of November 2017. The Commission will hold a stakeholders meeting on 17 July to gather feedback on the material presented by the EBA at their public hearing on 3 July. There will be three sessions, including one focusing on asset managers and associated firms. Information gathered will feed into the Commission's Impact Assessment on the proposal for a new prudential regime for investment firms.

We encourage members to evaluate how the proposed calibration of capital requirements and other recommendations would affect their firms if adopted, and to contact us promptly with any comments or concerns. This information will assist us in determining (in coordination with the Investment Association and EFAMA) what, if any, next steps may be appropriate. Please direct any feedback to Patrice Bergé-Vincent by email (patrice@iciglobal.org) or telephone (direct: +44 (0)20 7961 0833; mobile: +44 (0)7795 514 841), or to Frances Stadler (email: frances@ici.org; telephone: 202-326-5822).

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endnotes

[1] See ICI Global [Memorandum No. 30402](#), “EBA Seeks Comment on Discussion Paper Regarding the Design of a New Prudential Regime for Investment Firms,” dated 17 November 2016.

[2] For additional background, see *id.*

[3] See ICI Global [Memorandum No. 30571](#), “ICI Global Submits Response to EBA Discussion Paper on a New Prudential Regime for Investment Firms,” dated 9 February 2017.

[4] The presentation (a slide deck which includes the proposed recommendations) is *available at*

<http://www.eba.europa.eu/documents/10180/1893297/Presentation+Investment+Firms+-+Public+hearing+3+July+2017.pdf/4b85c6fa-99fc-4463-8763-c9d748a940ef>.

[5] Templates and instructions for the data collection are *available at*

<https://www.eba.europa.eu/documents/10180/1901159/EBA+Data+Instructions+MiFID+IFs+-+supplementary.pdf>.

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