

MEMO# 32572

July 1, 2020

European Banking Authority Issues Consultation Papers on Draft Technical Standards on Implementation of the Investment Firms Review

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July 1, 2020 TO: ICI Global Members

ICI Global Regulated Funds Committee SUBJECTS: MiFID, EMIR, AIFMD, UCITS V RE: European Banking Authority Issues Consultation Papers on Draft Technical Standards on Implementation of the Investment Firms Review

In early June, the European Banking Authority (EBA) issued (1) a Roadmap on Investment Firms outlining its approach to the numerous mandates it received under the Investment Firms Regulation (IFR) and Investment Firms Directive (IFD) and (2) four consultation papers on draft regulatory technical standards and implementing technical standards under the IFR/IFD. Comments on the consultations are due by September 4, 2020.[\[1\]](#)

The consultations cover:

- Draft RTS on identification of material risk takers for remuneration;[\[2\]](#)
- Draft RTS on instruments for investment firms remuneration;[\[3\]](#)
- Draft RTS on the prudential requirements and classification of investment firms;[\[4\]](#) and
- Draft ITS on reporting and disclosures for investment firms.[\[5\]](#)

The EBA intends to submit the final draft RTS and ITS to the European Commission in November/December 2020.

ICI Global has focused on the impact of the remuneration provisions of the IFR/IFD on global fund managers. We will hold a member call shortly to begin discussing our response to the two remuneration-focused consultations (notice of the call will be sent separately). At this time, we do not intend to comment on the second two consultations.

Draft RTS on Identification of Material Risk Takers for Remuneration

The IFD requires investment firms to identify all staff whose professional activities have a

material impact on the investment firm's risk profile or assets under management. The EBA's draft RTS lay out a common set of criteria that must be applied to identify such staff (referred to as "identified staff" or "material risk takers"). Modeled after the prescriptive approach for identifying material risk takers applied under the CRD IV RTS and the draft CRD V RTS, investment firm staff can qualify as material risk takers by meeting either quantitative or qualitative thresholds.

Qualitative Criteria. The qualitative criteria aim to identify staff in key areas and functions whose impact on the firm's risk profile, in EBA's view, will always be material, as well as staff with the authority to take risks above thresholds defined based on the investment firm's capital figures or assets that it manages. Specifically, all members of the management body or senior management must be identified. In addition, staff with managerial responsibility for certain functions, including money laundering and terrorist financing, economic analysis, outsourcing, and IT/information (where that role relates to the safeguarding of assets or client money, or the execution of client orders or trading activities) are within scope. The EBA specifies that the qualitative criteria are not exhaustive and that firms will need to continue to consider whether other categories of staff, not caught by the qualitative criteria, may nevertheless have a material impact on the firm's risk profile and therefore need to be identified as material risk takers.

Quantitative Criteria. Levels of remuneration are used for identifying staff based on quantitative criteria. The EBA notes that, where individuals are awarded very high total remuneration, this is usually linked to the impact of their professional activities on the investment firm's risk profile or the assets it manages. The quantitative criteria proposed in the draft RTS are set at the same level as those that will apply to banks under the new CRD V proposal, which the EBA proposes for cross-sectoral consistency. The quantitative criteria include (1) staff earning more than the higher of €500,000 and the average level of pay for the management body and senior management, (2) staff earning more than €750,000, (3) for firms of 1,000 staff or more, staff that are in the top 0.3% of earners, and (4) staff whose remuneration is equal to or greater than the lowest total remuneration of certain staff included under the qualitative criteria. Staff earning up to €750,000 may be excluded if the investment firm determines that the relevant staff member does not in fact have a material impact on risk. Excluding staff earning more than €750,000 requires approval from the local regulator, while exclusions for staff earning more than €1,000,000 requires approval from the EBA, which will be given only in "exceptional circumstances."

For investment firms that are part of a group, the criteria generally need to be applied at both the individual and group consolidated basis.

Draft RTS on Instruments for Investment Firms Remuneration

The IFD requires that 50% of the variable pay of material risk takers be made in "instruments," defined in the IFD as (1) shares or equivalent ownership interests, subject to the legal structure of the investment firm concerned, (2) share-linked instruments or equivalent non-cash instruments, subject to the legal structure of the investment firm concerned, (3) Additional Tier 1 or Tier 2 instruments or Other Instruments which can be fully converted to Common Equity Tier 1 instruments or written down and that adequately reflect the credit quality of the investment firm as a going concern, and (4) non-cash instruments which reflect the instruments of the portfolios managed. National competent authorities may approve the use of "alternative arrangements fulfilling the same objectives" if an investment firm does not issue any of the specified instruments.

The draft RTS define the (1) Additional Tier 1 and Tier 2 instruments that may be used, and

(2) categories of instruments that may be used as “alternative arrangements fulfilling the same objectives.” The draft RTS define classes of instruments that can be used as Additional Tier 1 instruments and Additional Tier 2 instruments very similarly to how they are defined under the current CRD IV regime. A very limited number of CRD IV institutions use Additional Tier 1 and Tier 2 instruments, and we believe that these provisions are not relevant for most investment firms. The EBA states that no firms currently use any arrangements that it would view as being “alternative arrangements.” We therefore believe that these provisions are also of limited relevance to investment firms.

Draft RTS on Reclassification and Prudential Requirements

The consultation on reclassification and prudential requirements includes the EBA’s proposals on its mandates relating to (1) the reclassification of certain investment firms to credit institutions, (2) capital requirements for investment firms at solo level, and (3) the scope and methods of prudential consolidation for investment firm groups.

Draft ITS on Reporting and Disclosures for Investment Firms

The consultation on reporting and disclosure for investment firms includes the EBA’s proposals on the ITS for supervisory reporting, under which the EBA is mandated to develop the reporting requirements for investment firms, and specifically regarding own funds, levels of minimum capital, concentration risk, liquidity requirements, and the level of activity in respect of small and non-interconnected firms. It also includes proposed ITS on investment firms’ disclosure of own funds and RTS on disclosure of investment policy.

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endnotes

[1] The roadmap is *available at* https://eba.europa.eu/sites/default/documents/files/document_library/Regulation%20and%20Policy/Investment%20firms/884436/EBA%20Roadmap%20on%20Investment%20Firms.pdf. The roadmap sets out the intentions of the EBA’s upcoming workplan to ensure transparency about the EBA’s work and expected timelines.

[2] https://eba.europa.eu/sites/default/documents/files/document_library/Publications/Consultations/2020/CP%20on%20RTS%20on%20IS%20under%20IFD/884631/EBA-CP-2020-09%20CP%20on%20RTS%20on%20IS%20under%20IFD.pdf.

[3] https://eba.europa.eu/sites/default/documents/files/document_library/Publications/Consultations/2020/%20CP%20on%20RTS%20on%20instruments%20for%20IF%20remuneration/884630/EBA-CP-2020-08%20CP%20on%20RTS%20on%20instruments%20for%20IF%20remuneration.pdf.

[4] https://eba.europa.eu/sites/default/documents/files/document_library/Publications/Consultations/2020/CP%20on%20draft%20RTS%20on%20prudential%20requirements%20for%20Investment%20Firms/884615/EBA-CP-2020-06%20CP%20on%20draft%20RTS%20on%20prudential%20requirements%20for%20Investment%20Firms.pdf.

[20Investment%20Firms.pdf](#).

[5] https://eba.europa.eu/sites/default/documents/files/document_library/Publications/Consultations/2020/CP%20on%20Reporting%20and%20disclosures%20for%20investment%20firms/884616/EBA-CP-2020-07%20CP%20on%20Reporting%20and%20disclosures%20for%20investment%20firms.pdf.

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