

MEMO# 32147

January 14, 2020

European Banking Authority Issues Consultation on Draft RTS Identifying "Risk Takers" Under the CRD

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January 14, 2020 TO: ICI Global Members SUBJECTS: MiFID, EMIR, AIFMD, UCITS V RE: European Banking Authority Issues Consultation on Draft RTS Identifying "Risk Takers" Under the CRD

At the end of December, the European Banking Authority (EBA) launched a consultation on draft Regulatory Technical Standards (RTS) for the Capital Requirements Directive (CRD) specifying the criteria to identify categories of staff that are "risk takers" for remuneration purposes and updating its 2014 RTS.[\[1\]](#) Responses to the consultation are due February 19, 2020. A public hearing to discuss the draft RTS will take place at the EBA premises in Paris on 28 January 2020, and the EBA plans to submit final draft RTS to the European Commission in June 2020.

Background

These RTS, like the CRD, will apply to entities that are regulated as credit institutions under the CRD, and not directly to investment firms or fund managers. However, the content of these RTS, and particularly how certain terms are defined, is likely to be relevant to the RTS that the EBA is mandated to develop under the Investment Firms Review (IFR) to specify "the categories of individuals whose professional activities have a material impact on the investment firm's risk profile." The EBA is expected to consult on the IFR RTS later this year.

Under the CRD regime, institutions must comply with a series of principles when setting out the remuneration policies for staff whose professional activities have a "material impact on the institution's risk profile (i.e. risk takers)," including with regards to variable remuneration. Among other requirements, risk takers' bonuses are limited by CRD to 100% of the fixed remuneration, with Member States allowed to fix a lower limit. Members of staff of a credit institution are identified as risk takers when they meet the criteria laid out in the CRD, or the qualitative or quantitative criteria outlined in the RTS.

Draft RTS

RTS to identify risk takers at credit institutions have been in place since 2014. However, it was felt that further harmonization was needed with respect to the criteria to identify risk

takers. Specifically, under Article 94 (2) of CRD as amended by Directive (EU) 2019/878 (CRD5), the EBA is required to develop draft RTS to set out criteria to define (a) managerial responsibility and control functions, (b) material business unit and significant impact on the relevant business unit's risk profile and (c) other categories of staff not expressly referred to in Article 92(3) CRD whose professional activities have an impact on the institution's risk profile comparably as material as that of those categories of staff referred to therein. In the consultation, the EBA states that the revised RTS take into account the supervisory experience gained since the entry into force in 2014 RTS and of the results of the EBA's peer review on identified staff.

In the draft RTS, the EBA:

- defines "managerial responsibility" based on hierarchical position of the staff member taking into account responsibilities and reporting lines;
- defines "control functions" in line with the EBA's existing guidelines on internal governance;
- defines "material business unit" in line with the existing RTS, but further requires that firms identify business units that are material, even if they are not allocated internal capital; and
- sets out the criteria for determining "significant impact on the relevant business unit's risk profile" by leaving the definition of thresholds and metrics to institutions but providing a non-exhaustive list of criteria that should be considered (largely the same as the existing RTS)

With respect to the qualitative criteria, the EBA found that the criteria that are already in place have been overall effective, and proposes to slightly revise some of the criteria to ensure that (1) only staff that has a material impact is identified, and (2) some functions that the EBA feels always have a material impact have been added (such as those related to IT risks).

With respect to the quantitative criteria, the CRD itself contains certain criteria, and the existing RTS include additional criteria.^[2] The EBA has proposed to continue to apply additional quantitative criteria because, in the EBA's view, the additional criteria serve as an effective safeguard to ensure complete identification of staff. The EBA proposes to revise the process for exclusions, implementing a prior approval/supervisory review process, rather than the existing approach which requires additional notifications and analysis for exclusion.

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endnotes

[1] The consultation is available at:
<https://eba.europa.eu/eba-consults-revise-standards-identify-staff-material-impact-institution%E2%80%99s-risk-profile>. The 2014 RTS are available at:
[https://eba.europa.eu/sites/default/documents/files/documents/10180/526386/c313a671-269b-45be-a748-29e1c772ee0e/EBA-RTS-2013-11%20\(On%20identified%20staff\).pdf](https://eba.europa.eu/sites/default/documents/files/documents/10180/526386/c313a671-269b-45be-a748-29e1c772ee0e/EBA-RTS-2013-11%20(On%20identified%20staff).pdf).

[\[2\]](#) The additional quantitative criteria identify risk takers as staff with levels of remuneration above EUR 750, 000 and as staff that belong to the 0.3% who have been awarded the highest total remuneration in the preceding financial year.

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