

MEMO# 33539

May 18, 2021

EBA Issues Draft Regulatory Technical Standards on Disclosure of Investment Policy by Investment Firms; Member Call Scheduled for May 24 at 9:00 am (ET)

[33539]

May 18, 2021

TO: Global Advocacy Coordination Advisory Committee
ICI Global Regulated Funds Committee RE: EBA Issues Draft Regulatory Technical Standards on Disclosure of Investment Policy by Investment Firms; Member Call Scheduled for May 24 at 9:00 am (ET)

In late March, the European Banking Authority (EBA) published a consultation paper on draft regulatory technical standards (RTS) on disclosure of investment policy by investment firms.^[1] The draft RTS are meant to gather from investment firms disclosures designed to help stakeholders understand investment firms' potential influence over the companies in which they have voting rights and the impact of investment firms' policies on aspects such as the governance or management of those companies.

Comments are due by July 1, and ICI Global intends to submit a comment letter. We are hosting a member call on May 24 at 9:00 am (ET) to discuss the consultation paper and gather member feedback. We will be joined by attorneys with Sidley Austin LLP.

You can join the call using the information below:

[Click here to join the meeting](#)

Or call in (audio only)

[+1 253-617-4981,,356726796#](#) United States, Tacoma

Phone Conference ID: 356 726 796#

[Find a local number](#) | [Reset PIN](#)

Background and Summary of Consultation Paper

The EBA received a mandate under Article 52(3) of Investment Firms Regulation (IFR)^[2] to develop, in consultation with the European Securities and Markets Authority (ESMA), RTS to specify templates for investment policy disclosure of in-scope investment firms.^[3] IFR sets out a requirement for in-scope investment firms to disclose the following information:^[4]

- Proportion of voting rights attached to shares held;
- Voting behaviour;
- Use of proxy advisor firms; and
- Voting guidelines.

These proposed disclosure requirements would be satisfied by the use of templates (containing quantitative information) and tables (containing qualitative information).^[5] This information will be published on a yearly basis.

The objective of this disclosure is "to publicise information about the intended influence of investment firms on companies in which they hold shares. For instance, investment firms may adopt policies that promote better governance in the companies in which they have invested, or ensure that these companies are managed with a long-term perspective."

Discussion Questions for Member Call

On our May 24 call, we intend to discuss with you the following:

- These disclosure requirements would apply to investment firms' "direct and indirect" voting rights in applicable companies. "Shares held directly means shares held by the firm on its own account or under its management on behalf of clients by virtue of discretionary portfolio management arrangements. Shares held indirectly means shares held by their subsidiaries or other undertakings, where the investment firm exercises significant influence or control over this undertaking or where close links exist." Is this standard appropriate and workable? Why or why not?
- These disclosure requirements would be made by investment firms only with respect to "companies whose shares are admitted to trading on a regulated market? ." The IFR and the draft RTS are silent on the domicile of the investee company, and as such it is unclear whether the disclosure requirement would apply where the investee company is a non-EU issuer with shares admitted to trading on an EU regulated market. The EU Second Shareholders Rights Directive (SRD II),^[6] which imposes similar disclosure requirements, applies only to EU incorporated issuers with shares admitted to trading on EU regulated markets. Should we advocate for confining the scope of the disclosure requirement to EU incorporated issuers with shares admitted to trading on EU regulated markets?
- This proposal also would extend to shareholder proposals (IFR focuses on management proposals only). Should we comment on this proposed expansion? If so, how?
- The templates and tables would gather quantitative and qualitative proxy voting information from investment firms. To give just a few examples, an investment firm would be required to provide:
 - A description of the validation process for negative votes;
 - The number of full time equivalents used to analyse resolutions and examine voting records, excluding external resources such as proxy advisor firms; and
 - An explanation of any material change in the rate of approval.

Are the specific disclosure items in the proposed templates and tables appropriate? Would any create any compliance challenges? Would any of the information collected be problematic from a policy perspective? If so, which, and why?

- The proposed disclosure requirements would apply on an individual and on a consolidated basis.^[7] There is therefore risk of duplication of reporting, as more than one entity within the consolidation group may be required to comply with the disclosure requirement (e.g., the consolidating entity and the investment firm, where different, on the basis that both entities would be considered to indirectly hold shares in the in-scope issuer). Is the proposed standard appropriate and workable? Why or why not?
- In-scope investment firms that do not exercise their voting rights would nonetheless be required to disclose their voting behaviour in the suggested template (i.e., IF IP2 - Voting Behaviour). The template specifically calls for disclosure of the number of meetings at which a firm may have been entitled to vote (e.g., IF IP2.01, Row 2). Should we advocate that in-scope investment firms should not be obligated to make any voting behaviour disclosures where they have not exercised their voting rights? Should we advocate for introducing a new field in IF IP2 that would allow in-scope investment firms to state that they have not exercised their voting rights?
- Are there any other aspects of the proposal on which we should comment?

Matthew Thornton
Associate General Counsel

Nhan Nguyen
Counsel, Securities Regulation

endnotes

^[1] Available at

https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Consultations/2021/Consultation%20on%20draft%20RTS%20on%20disclosure%20of%20investment%20policy%20by%20investment%20firms/972104/CP%20Draft%20RTS%20on%20disclosure%20of%20investment%20policy%20by%20investment%20firms.pdf.

^[2] Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014.

^[3] Only investment firms that do not meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) IFR (Class 2 investment firms) must disclose information about their investment policy. Moreover, the IFR specifies two materiality thresholds for the application of this disclosure requirement: it applies only to (i) Class 2 investment firms with on- and off-balance sheet assets on average greater than EUR 100 million over the four-year period immediately preceding a given financial year; and (ii) those companies whose shares are admitted to trading on a regulated market (in

the European Economic Area) and in which the proportion of voting rights exceeds 5 percent of all voting rights issued by the company.

[4] The disclosure requirements would apply to investment firms on an individual and on a consolidated basis, which would treat entities within an investment firm group as if they were a single investment firm (see section 3.1(8) of the [EBA Consultation Paper](#) on the draft RTS). The scope of consolidation is based on the draft RTS on prudential consolidation referenced under Article 7(5) of IFR. *Available at* https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Draft%20Technical%20Standards/2021/973355/Final%20Report%20Draft%20RTS%20methods%20of%20consolidation.pdf.

[5] The proposed templates, tables, and related instructions are *available at* www.eba.europa.eu/eba-launched-public-consultation-regulatory-technical-standards-disclosure-investment-policy.

[6] Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement (OJ L 132, 20.5.2017, p. 1).

[7] See section 3.1(8) of the [EBA Consultation Paper](#) on the draft RTS