

# EFAMA's response to the EBA consultation papers on the implementation measures of the new regulatory framework for investments firms

4 September 2020

## GENERAL COMMENT

EFAMA<sup>1</sup> welcomes the opportunity to respond to the EBA consultation papers on the draft RTS on the prudential requirements and classification of investment firms, Draft RTS on criteria to identify categories of staff whose professional activities have a material impact on an investment firms' risk profile or assets it manages, Draft RTS on payout instrument on variable remuneration and Draft ITS on reporting and disclosures for investment firms.

### Introductory remarks

In light of the current COVID-19 circumstances and the already existing ambitious time table for the implementation, EFAMA calls for the EBA to carefully consider these circumstances and request the EC **to postpone the date for the application of the IFD/IFR framework (26 June 2021) and the time table of the level 2 measures (such as the deadline of 26 December 2020 for providing drafted RTS and ITS).**

There is a need to combine the postponement of Level 2 measures with postponement also of the application date of the framework as such. In particular, the level 2 measures (such as the calculation of the K-factors) must be implemented within the application deadline of 26 June 2021 (notably to analyse the categorisation of the investment firm in the meaning of Article 12 IFR). The first set of Level 2 measures proposed by the EBA are very detailed. **Moreover, the new EBA proposals for a Draft RTS on prudential consolidation of an investment firm group would extend the scope of consolidation in a significant way by including group constellations which are not defined in the IFR** (See our response below). **This would lead to the situation that entities which are currently not in scope of the IFD/IFR framework will be affected by the new prudential consolidation.**

### Draft RTS on the prudential requirements and classification of investment firms (EBA/CP/2020/06)

- **The Draft RTS on calculation of fixed overhead requirements** – EFAMA welcomes the Draft RTS to specify the calculation of the fixed overheads requirements (FOR) and to provide additional items for deductions below. In further details:
  - **Distribution of profits' (Article 1(1) of the Draft RTS):** We support the proposed approach that firms shall calculate their fixed overheads by subtracting certain items from the total expenses after distribution of profits. This is in line with the definition of the 'expenses' of the International Financial Reporting Standards which does also not include distribution of profits.
  - **'Payments related to contract-based profit and loss transfer agreements' (Article 1(6)(e) of the Draft RTS):** We expressly support the approach that 'payments related to contract-based profit and loss transfer agreements' shall also be deducted from the total expenses. Distribution of profits and contract-based profit transfers are comparable models for sharing profits, the amount of which is dependent on the performance of the subsidiary entity. Just like dividends, profit transfers are based on the residual of the companies' income and expenses. Only in cases of yearly profitability (all or parts of) profit may be transferred to the parent company. If the subsidiary entity makes no profits, no payment to the parent company is required. To the contrary:

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<sup>1</sup> The European Fund and Asset Management Association, EFAMA, is the voice of the European investment management industry, representing 28 member associations, 59 corporate members and 23 associate members. At end 2018, total net assets of European investment funds reached EUR 15.2 trillion. These assets were managed by almost 62,000 investment funds, of which more than 33,000 were UCITS (Undertakings for Collective Investments in Transferable Securities) funds, with the remaining funds composed of AIFs (Alternative Investment Funds). [www.efama.org](http://www.efama.org)

In cases of losses, the parent company as owner of the subsidiary entity is obliged to vouch for the loss. Therefore, contractual profit transfer agreements work both ways, i.e. result in the obligation to transfer profits in good times and to receive financial backing from the parent company when the firm is loss-making.

- **‘Expenditures from taxes’ (Article 1(6)(c) of the Draft RTS):** For the same reasons we support the proposed approach to deduct expenditures from taxes where they fall due in relation to the annual profits of the investment from the total expenses. The respective taxes only occur if the company is profitable and thus create no additional risk for the company.

- **Draft RTS on K-factor calculation**

**Q1: Is the proposed articulation of the K-factors calculation methods, in particular between AUM and CMH and ASA, exhaustive or should any other element be considered?**

- Broadly speaking, EFAMA supports the limited approach taken by the EBA in considering the requirements on the K-Factors in the IFR are clear and often do not require further specification. We also welcome the approach of no double counting (AuM of fund portfolios that an investment firm managers by way of outsourcing are not taken into account for K-Factor calculation (Art. 17(2) IFR. We would however like to clarify a few points regarding the proposed method for the calculation of the K-factor AUM (Assets under Management) and the explanations made by the EBA:
  - Art 3 (b) should be amended to clarify that derivatives instruments should be included at market value. This is consistent with current market practices and clients’ expectations for discretionary portfolio management, and it would be very burdensome to implement a new, different methodology
  - Article 8 (Methods for measuring cash trades for the purpose of COH): the drafting of this article should make clear that repos and securities lending are not included in cash trades
  - EFAMA would also like to call for a clarification that where an AIF or UCITS ManCo delegates functions such as portfolio management to an investment firm on a contractual basis than they are **out of scope of prudential consolidation**
    - **Rationale** - Articles 2 and 3 of the Draft RTS on prudential consolidation of investment firm groups could be understood in a way that such a contract would qualify as a significant influence without participation or capital ties. This would lead to the situation that the investment firm and the management company would be qualified as an investment firm group with the effect that the investment firm must carry out consolidation of the management company **although this case is already comprehensively covered by the UCITS and AIFM Directives.**

• **Q9: The methods for calculating the K-factors in a consolidated situation may allow for further specifications. Is there any K-factor for which the calculation in the context of the consolidated basis would require further specifications? What aspects should be considered?**

- EFAMA disagrees with the approach that ‘the MiFID part of the AUM of asset management companies and of third country entities that would have been asset management companies had they been authorised in the Union’ would count towards the AUM of the group as it is proposed in Article 11(3)(c) of the Draft RTS.

- **Rationale** – The approach would contradict the objective of the new framework to simplify the prudential requirements: **Asset management companies are themselves not covered by the scope of application of the IFD/IFR framework, even if they provide additional MiFID services.** The approach proposed by the EBA would, however, result in an (indirect) obligation of asset managers being part of an investment firm group to calculate the MiFID part of AUM based on the K-factor approach established in the investment firm regime although this approach does not apply to them in particular. The objective of the new framework was that the rules on own funds introduced by the IFR will remain largely unchanged compared with the current CRR ones and that their implementation should therefore not represent a challenge for the industry.
- **Draft RTS on prudential consolidation of investment firm groups (Article 7(5) of the IFR)**

**Q6:** Do you have any comment on the elements included in this Consultation Paper for the application of the aggregation method?

- **In general, we disagree with the scope of group constellations in Articles 2 to 5 of the Draft RTS as the approach taken by EBA goes beyond the scope of delegation.** Such an extension of the scope is not covered by the mandate given in Article 7(5) IFR which states that the EBA shall develop draft RTS to specify *‘the details of the scope and methods for prudential consolidation of an investment firm group, in particular for the purpose of calculating the fixed overheads requirement, the permanent minimum capital requirement, the K-factor requirement on the basis of the consolidated situation of the investment firm group, and the method and necessary details to properly implement paragraph 2’* of Article 7 IFR. That mandate limits the EBA to develop details on the scope for prudential consolidation within the given definitions provisions of the IFR. Article 7(5) IFR does not provide for a mandate to define a scope that is – in contrast to Article 18 CRR – not within the scope provided for under the IFR.
- Moreover, the new proposals in Articles 2 to 5 of the Draft RTS are in considerable contradiction to the approach taken by the IFR definition of an investment firm group with reference to Article 22 of Directive 2013/34/EU. In particular, the cases defined in Article 22 of that Directive would be undermined by the proposed Articles 2 to 5 of the Draft RTS.
- In addition, constellations referred to in Articles 3 and 4 of the Draft RTS go even beyond the scope of Article 22 of Directive 2013/34/EU and thus outside the defined scope of a “consolidated situation” and an investment firm group under the IFR. Furthermore, Articles 2 to 5 of the Draft RTS considerably deviate from the current regulations on own funds on a consolidated basis for groups consisting of investment firms only (i.e. without any credit institutions) according to Article 98 CRR II. **This is not in line with the purpose described in Recital 12 of the IFR to mirror the existing treatment of such investment firm groups under the CRR and CRD.** The EBA itself states the need to ensure such a consistency in Recitals 3 and 4 of the Draft RTS. In this context, it is not appropriate to copy a draft RTS established under the CRR in 2017 with divergent legal basis that did not enter into force - also due to the justified criticism of the banking industry. Furthermore, according to Article 7(2) and Recital 12 of the IFR, the parent undertaking of an investment firm group should be required to comply with the requirements of the IFR based on the consolidated situation of the group. **We therefore strongly disagree with defining new responsibilities such as that an investment firm being a subsidiary in an investment firm group (for instance as part of a holding structure) should ensure that other entities within the group that are not subject of the IFR implement arrangements, processes and mechanisms to ensure proper consolidation. Notwithstanding the above, we urge the EBA to clarify that such obligation for the parent undertaking of an investment firm group**

pursuant to Article 7(1) sentence 3 IFR does not go beyond and is limited by the boundaries applicable to a subsidiary under the laws of the country it is established under (e.g. data protection or corporate law rules of such country).

## Draft RTS on criteria to identify categories of staff whose professional activities have a material impact on an investment firms' risk profile or assets it manages (EBA/CP/2020/09)

- **General points**

- EFAMA is concerned that the EBA has not taken into account the ESMA principle-based remuneration requirements under UCITS and AIFMD, despite being explicitly part of its mandate under Art 30 (4) of IFD.
- In addition, we stress **the need for the remuneration requirements under IFD / IFR to apply from the first full remuneration year after the implementation date**. If these requirements were to come into force halfway through a performance year, this will create multiple issues for both firms and employees alike.
- We suggest the EBA to **fundamentally revise its proposal on a Draft RTS on criteria to identify categories of staff** and to **better calibrate the criteria** by fully reflecting the different business models of investment firms and the principal based approach outlined by ESMA in its remuneration guidelines due to the following reasons:
  1. **We strongly disagree that the EBA follows only the approach taken under the remuneration framework of the CRD V applicable for (inter alia systemically relevant) banks**, ignoring that different legal bases and rationale exist under the IFD and CRD V. One of the essential differences in this respect is that the CRD V explicitly distinguishes on Level 1 between qualitative and quantitative criterion to identify categories of staff. According to Article 92(3)(c) CRD V, categories of staff whose professional activities have a material impact on the institution's risk profile shall include staff members entitled to significant remuneration in the preceding financial year (staff member's remuneration is equal or greater than EUR 500 000 and the staff member performs the professional activity within a material business unit and the activity is of a kind that has a significant impact on the relevant business unit's risk profile). These requirements do not apply under the IFD remuneration framework. This is certainly not a mistake by the legislator of the IFD at Level 1, because the IFD was adopted at the same time as the new remuneration rules under CRD V. Therefore, if the legislator had wanted comparable quantitative rules with fixed quantitative remuneration limits to apply in the IFD as well, it could have arranged for this accordingly. We therefore strongly disagree to shift quantitative criteria applying for (inter alia systemically relevant) banks to investment firms on Level 2 for which such rules are not envisaged at Level 1 at all.
  2. **Second, we are quite concerned that the Commission's Recommendation 2009/384/EC and the existing remuneration guidelines pursuant to Directives 2009/65/EC (UCITS Directive), 2011/61/EU (AIFMD) and (2014/65/EU) are not taken into account**. Attention should be drawn to subparagraph 1, sentence 2 of Article 30(4) IFD, which foresees close consultation with ESMA and its active participation and guiding role in drafting the RTS, which yet is to be integrated. Both are particularly relevant in light of the **clear mandate given in Article 30(4) IFD, which in contrast to the mandate under Article 94(2) CRD explicitly mentions that the RTS shall be developed by EBA in consultation with ESMA and that EBA and ESMA**. This applies even more as investment firms such as portfolio managers without a licence to hold client money or to deal on own account (investment firms defined under Article 4(1)(2)(c) CRR of the current regime) do not qualify as institutions. Until the coming into force of the IFD, they are (and have been) out of scope of

the remuneration rules of the CRD IV and V and they are not required to identify risk takers, not even where they are part of a banking group. **The IFD framework lays down new rules for them for the first time regarding the identification of risk takers and the pay-out rules which requires considerable implementation** (insofar as they are classified as category 2). Therefore, the argument presented by the EBA in its hearing that many investment firms are already part of a banking group and that the CRD rules should apply in a comparable manner in avoiding additional implementation effort is not convincing for these firms. This applies even more as the EBA is proposing the most stringent remuneration regime of (inter alia significant) banks for them in disregard of the principal-based approaches in ESMA's remuneration guidelines under the MiFID framework which already cover the main principles of identifying risk takers of investment firms (including portfolio managers) as well as ESMA's remuneration guidelines for asset managers under the AIFMD or UCITS directive which provide comparable business models like portfolio managers. **The adherence to banking rules also for investment firms is not only inconsistent with the IFD's explicit rationale to address the specific vulnerabilities and risks inherent to (esp. category 2 and 3) investment firms by means of effective, appropriate and proportionate prudential arrangements, as the CRD only partially address and therefore not adequately addresses these (ref. Recital (2) of the IFD). It will also lead to the great danger of further fragmentation of the remuneration system in the EU for undertakings which provide heterogeneous business models such as asset managers and portfolio managers.** This was not the intention of the European legislator and the reason for the mandate given to the EBA in Article 30(4) IFD to take due account ESMA's remuneration guidelines.

3. **Third, the banking approach is not designed to properly consider the specificities of different business models of investment firms and the risk associated to their categories of staff.** The EBA itself stated in its previously published announcements on the IFD framework<sup>2</sup> that *'other than the largest 'bank-like' proprietary trading firms, most investment firms commonly have different risk profiles, based on differing investor bases, risk appetites and risk horizons. Similarly, business models and structures typically vary from those in large banks, and correspondingly investment firms can have different pay structures.'* However, the proposed rigid framework of inflexible criteria does not fulfil this approach and the purposes of the European legislator. This applies entirely also to the proposed **quantitative criteria** on identifying staff which should apply in any case for all staff members named in Article 6 of the Draft RTS irrespective of whether the professional activities of these staff members have a material impact on the profile of the investment firm or the assets that it manages. Moreover, the proposed qualitative criteria pursuant to Article 5(4), (7) second alternative, (8) and (9) of the Draft RTS do not distinguish between the fact of whether the professional activities have **a material impact on the profile of the investment firm or the assets that it manages**. In our view, it is not appropriate that the same approach for identifying staff members with material impact on the profile of the investment firm should be applicable for staff members with a material impact of the assets that it manages. Particularly in cases where the investment firm is not dealing on its own balance sheet like portfolio managers, the criteria must be formulated differently and be based on the similar principle-based requirements of the AIFMD and UCITS Directive specified by ESMA in its remuneration guidelines for asset managers. The EBA approach has serious risks to bite on an inappropriate number/ pool of individuals.

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<sup>2</sup> Cf. EBA Report on investment firms, EBA/Op/2015/20, page 78; EBA discussion paper, Designing a new prudential regime for investment firms, EBA/DP/2016/02, page 57.

**Question 2: Is the Article 4 on the application of criteria appropriate and sufficiently clear?**

Broadly speaking, our main concern here is the **lack of proportionality and consideration of the business model related to an asset management company.**

- **Scope (paragraph 1):** In principle, the mandate given to the EBA in Article 30(4) IFD is focussed on developing Draft RTS to specify appropriate criteria to identify the categories of staff whose professional activities have a material impact on the risk profile to the investment firm. It does not include the material impact on the assets that an investment firm manages. However, the general requirements of Article 30(1) IFD also include that topic. It is therefore appropriate to provide clarity in the Draft RTS for these cases as well.

**We see the need to apply a different approach for investment firms with a licence to provide portfolio management to cover their processes for identifying staff members with a material impact on the assets managed.** In particular, we see multiple interactions especially in the remuneration rules introduced under different pieces of EU law which overall amount to a huge practical burden for the affected market participants. In proposing another different approach, investment firms providing portfolio management would be required to comply with different sets of rules regarding remuneration of their personnel: the RTS under the IFD, the ESMA guidelines under the MiFID and contractual provisions (such as provisions to fulfil the AIFMD or UCITS remuneration requirements in cases of delegation of portfolio management of investment funds to investment firms). Applying all these rules required under different, unaligned regulatory regimes within one employment contract is barely possible. Since the services provided by investment firms are comparable to the services provided by management companies within the meaning of the AIFMD or UCITS Directive, it is important that also an equal remuneration regime applies to these investment firms. This applies even more as differences in remuneration requirements could be relevant for the recruitment of highly talented staff if a different regulatory remuneration regime would be applicable. Investment firms providing portfolio management would be disadvantaged by stricter rules. **In avoiding further fragmentation of remuneration systems and in considering the aim of the EU legislator to minimise divergence from existing provisions (Article 30(4) IFD), the criteria to identify categories of staff of investment firms providing portfolio management should be based on the similar principle-based requirements of the AIFMD and UCITS Directive specified by ESMA in its remuneration guidelines for asset managers. We therefore urge the EBA to either add an exemption in the Draft RTS for investment firms with a licence to provide portfolio management services to align the process for identifying staff members as it is required in the ESMA guidelines or make these quantitative thresholds only indicative leaving the assessment as to the risk profile of the firm as the critical element for the definition of MRTs.**

- An approach 'similar to the requirements included within the CRD' would mean, for investment firms providing portfolio management without a licence to deal on own account, that the remuneration rules would **not apply** for them because they are out of scope of the remuneration requirements of the CRD: they do not qualify as institutions within the meaning of the current CRR/CRD which limits the remuneration requirements to institutions. However, since the European legislator has adopted a different interpretation in the IFD framework, namely that these investment firms (category 2 firms) must in principle also draw up a remuneration policy and identify risk takers on a proportional basis, a comparable approach to that under the AIFMD or UCITS Directive must be found. The imperative nature of this approach is expressly stipulated in Art. 30(4) IFD through the inclusion of ESMA in and the specifications of EBA's mandate.

- **Quantitative and qualitative criteria (paragraph 2):** As mentioned in our general remarks, we strongly disagree with the proposed approach to define **quantitative criteria to identify categories of staff of non-systemic investment firms in absence of a legal obligation on Level 1 in the IFD**. In comparison to the legal requirements for banks under CRD V, the IFD does not require that staff members entitled to significant remuneration should be identified as categories of staff whose professional activities have a material impact on the institution's risk profile. We also refer to our general remarks and our answers to question 4 regarding the qualitative criteria.
- **Group approach (paragraph 3 and 4):** We refer to our aforementioned remarks to the quantitative and qualitative criteria. We have the same concerns to apply these criteria on consolidated basis.

Furthermore, we miss a similar group approach on Level 1 of the IFD as it is stated under the new banking regime (Article 109 CRD V) with exemptions for group entities with sector specific requirements such as UCITS or AIF management companies. The reason for this is that these exemptions under Article 109 CRD V were part of the trilogue at a very late stage of the CRD V package without a chance to involve this as a comparable rule under the IFD framework. **In view of a level playing field adequately addressing the rationale for proportionality as expressed in Recital 2 of the IFD between category 1 firms on one hand and category 2 firms on the other hand, we request EBA to support such exemptions also under the IFD framework (for instance as a general comment in its final report or as proposal in its Draft RTS).**

***Question 3:** What would be the appropriate percentage of own funds to determine that a business unit has a material impact on the risk profile of the investment firm? It would be most helpful if respondents could provide a quantitative estimation of the number of staff identified under this criterion at the indicated percentages in addition to the other qualitative criteria within the draft RTS as well as the cost for the application of that criterion.*

**We disagree to implement a qualitative criterion which refers to staff members which have managerial responsibility for a business unit that contributes a percentage amount of the investment firm's total own funds requirements.** This approach results solely from the requirements of the CRD (Article 92(3)(c)) covering staff members entitled to significant remuneration in the preceding financial year, which are not required under the IFD.

Moreover, from a practical point of view, the management responsibility for a business unit should be measured against its capital requirements. **That is not a suitable approach for investment firms which calculate their own capital requirements based on fixed overheads.** Own capital figures are not broken down by business unit based on fixed costs or K-factors. This would therefore lead to a considerable additional administrative burden if the own capital figures only had to be broken down by business units for the purpose of staff categorisation. It would also considerably limit investment firm's ability to adjust its set-up and structure and thus adapt to changing market or strategic demands, and thus bear the potential of an additional regulatory law induced risk.

***Question 4:** Are the qualitative criteria within Article 5 appropriate and sufficiently clear?*

As mentioned in our general remarks, we disagree with the general approach that the proposed qualitative criteria on identifying staff should apply in any case for all staff members named in Article 5 of the Draft RTS irrespective of whether the professional activities of these staff members have a material impact on the profile of the investment firm or the assets that it manages. Qualitative criteria should be stated as examples in the Draft RTS. **The investment firms should be required to assess at least itself if and**



**to what extent the named categories of staff have a material impact on the risk profile of the investment firm or assets it manages.**

This applies even more as the qualitative criteria seem very far-reaching without considering if and to what content the staff members have a material impact on the firm's risk profile or asset it manages. The pure managerial responsibility should be enough to be identified staff. In particular, the differentiation in Art. 5(8) of the draft RTS according to different areas of responsibility can lead to difficulties in practice with regard to the management of outsourcing agreements of critical/important functions. It is also unclear what is meant by management responsibility in terms of "performing economic analysis", especially with regard to portfolio management.

Moreover, the MiFID services listed in paragraph 8 do not correspond to the terms used in the MiFID, which may lead to difficulties of delimitation.

The inclusion of voting members of the committees without decision-making or blocking powers contemplated by Article 5(7) and 5(9) is far reaching and could potentially go beyond capturing those staff whose professional activities have a material impact on an investment firm's risk profile or assets it manages.

**Question 5: Are the qualitative [quantitative] criteria within Article 6 appropriate and sufficiently clear?**

We strongly disagree to implement quantitative criteria in the Draft RTS because it is not required on Level 1 and does not consider the different risk profiles of investment firms, based on differing investor bases, risk appetites and risk horizons. Their business models and structures typically vary from those in large banks, and correspondingly investment firms have different pay structures in practice. As mentioned in our general comments and our answers to the other questions, **the EBA should be guided by the principal based remuneration requirements stated by ESMA in its guidelines under the MiFID, AIFMD and UCITS Directive, for which no quantitative criteria exist and also the qualitative criteria are explicitly subject to the provision that staff members have a material influence on the risk profile of the company or the managed portfolios.**

In addition to our objection to the inclusion of any quantitative criteria (response to question 5), we would like to add that Article 6(1)(d) of the draft RTS ("the staff member was in or for the preceding financial year awarded total remuneration that is equal to or greater than the lowest total remuneration awarded in that financial year to a member of staff who meets one or more of the criteria in points of 1, 3, 4, 7, 8 or 9 Article 5") no longer has a parallel in CRD, as the equivalent requirement has been removed from the new RTS under CRDV. On that basis, from a consistency perspective this requirements should also be removed.

### **Draft ITS on payout instrument on variable remuneration ([EBA/CP/2020/08](#))**

The IFR provisions on alternative arrangements for the purposes of variable remuneration aim at the **necessary flexibility regarding the use of different types of instruments when paying variable remuneration as long as such instruments are effective in achieving the objective of aligning the interest of staff with the interest of various stakeholders, such as shareholders, creditors and clients, and contribute to the alignment of variable remuneration with the risk profile of the investment firm.**

In this regard, we believe that different type of instruments can be allowed in order to **reflect the diverse legal structures of investment firms**, such as shares (or equivalent ownership interests) and share-linked instruments (or equivalent non-cash instruments) and other arrangements that effectively allow aligning the interests of staff with other stakeholders' longer-term interests, and help to align variable remuneration with the risk profile of the firm.

From a timing perspective, the consultation paper (section Next steps) states that “it is assumed that institutions will have to comply with the RTS with regard to the remuneration awarded for the performance year 2021”. However, a possible requirement to comply with the new rules in six-months’ time could be challenging for a number of firms, in particular with regard to the current COVID-19 situation (it would mean, for instance, that remuneration policies and bonus deferral terms would need to be updated by then). There are other ways regulators could solve that timing gap – such as through the use of transitional guidance.

**Question 3:** *Are the provisions in Article 6 appropriate and sufficiently clear?*

- *Where respondents are of the view that the draft RTS should define a set of specific arrangements rather than providing conditions that such arrangements should meet, comments are most helpful, when they clearly describe the alternative arrangements that investment firms desire to use to ensure that variable remuneration is aligned with the long-term interest of the investment firm and its risk profile.*

In general, the purpose of the IFD is to offer some flexibility to investment firms in the way they use non-cash instruments to pay variable remuneration, provided that such instruments are effective in achieving the objective of aligning the interests of staff with the interest of various stakeholders, such as shareholders, creditors and clients, and contribute to the alignment of variable remuneration with the risk profile of the investment firm (cf. Recital 24 of the IFD). **In this regard, a principle-based approach should be adopted to enable competent authorities to assess the specificities of markets and diverse legal structures of investment firms.** We therefore support the selection of Option A in setting conditions for alternative arrangements that ensure they meet the same objective as the pay out of variable remuneration in instruments without specifying in detail the form such an arrangement should take (e.g. financial instruments or deferred cash on frozen accounts).

- We also welcome the general assumption made by the EBA in its impact assessment that the RTS should not lead to alternative arrangements that are overly burdensome to create and use for the purpose of variable remuneration and respect the principle of proportionality. In our view, the Draft RTS largely reflects that approach.

## **Draft ITS on reporting and disclosures for investment firms ([EBA/CP/2020/07](#))**

In general, we would like to express our **full support for an EU-wide standardisation of reporting obligations under the IFD framework**. Development of supervisory guidance on reporting is an essential element of the practical implementation and for ensuring efficient supervisory monitoring. It is necessary that the investment firms are provided with practical guidance for establishing and handling of reporting and disclosure systems. In this context, we would like to highlight the following main issues:

### **1. Reporting**

- **Fist submission of the reports:** We would like to request the EBA to clarify the expected first deadlines for the first submission for all investment firms (Class 2 and 3). The EBA had stated at the hearing that the deadline for the first submission of quarterly reports by Class 2 investment firms to supervisors should be the 30 September 2021. We understand this to mean that the reporting reference date is to be 30 September 2021 (cf. Article 2(1)(a) of the Draft ITS), but that the reporting remittance date is then only 11 November 2021 (cf. Article 3(1)(a) of the Draft ITS).

For small and non-interconnected investment firms (Class 3), it was not clear at the EBA hearing whether they should submit their annual reports for the first time also on the reference date of 30

September 2021 (with the reporting remittance date of 11 November 2020) or on the reference date of 31 December 2021 (with the reporting remittance date of 11 February 2022). In our view, the first annual report of Class 3 firms should be submitted for the first time on the reference date of 31 December. That would be in line with the proposed reporting reference and remittance dates for the annual reporting in Articles 2(1)(b) and 3(1)(b) of the Draft ITS.

- **Formats of the reports:** We support the proposed approach in Article 9 of the Draft ITS that the data exchange formats and representations should be specified by competent authorities. In particular, the very reduced reporting requirements for small-sized investment firms do not justify high standardised IT solutions. In that context, **we are very concerned with the announcement of the EBA to introduce additional XBRL taxonomies at a later stage which are not part of the consultation paper** (cf. paragraph 12 of the explanations of the consultation paper). This could involve additional administrative burden for a binding IT implementation with a high cost and manpower effect (in particular, for small-sized investment firms) that should be avoided.

Moreover, the implementation of high standardised XBRL taxonomies could also affect the question when investment firms must provide the first reports. Therefore, **the implementation of the XBRL reporting format might not be feasible for the first round of reporting starting in September 2021 depending on the final EBA approach to the transitional period and the availability of the complete programming template sufficiently in advance.** In any case, we believe that the EBA should grant then certain leeway for submissions of regulatory reports in the first two years.

## 2. Disclosure

- **Scope of the disclosure requirements:** We strongly disagree with the proposed detailed disclosure requirements suggested in Article 11 of the Draft ITS with reference to the templates of Annex VI and the relevant instructions set out in Annex VII. **We cannot see that the content has been significantly simplified compared to the CRR rules and that the disclosure framework will bring simpler and more proportionate requirements for investment firms relative to their size and complexity in comparison with the CRR/CRD framework.** We are aware that the EBA states at its hearing that the CRR requirements will be used as a basis for orientation and that the implementation effort on disclosure will therefore be less complex. Such an approach is reasonable for all investment firms which are currently subject of the disclosure requirements of the CRR.

However, limited licence firms such as portfolio managers which will qualify as class 2 firms under the new IFD/IFR framework are not required to disclose certain information under the CRR. The implementation of disclosure processes will therefore be a completely new requirement for them. **Rather, these new disclosure requirements are very extensive and require new internal control and quality assurance processes, which can also run automatically. Such an implementation process is very complex and will lead to an administrative effort that should be limited to the most necessary. We therefore urge the EBA to reduce the templates in an appropriate way.**

- **First submission of disclosure:** The requirements in the Draft ITS on the disclosure requirements for own funds are to apply as early as 26 June 2021, whereby, according to Art. 46(1) and (2) IFR, these are to take place simultaneously with the publication of the annual financial statements. We therefore request the EBA to clarify when the investment firms must submit their first annual disclosure.