

Irish MiFID Industry Association
response to
Consultation Paper 135
on
“Competent Authority Discretions in the Investment Firms Directive and the Investment Firms Regulation”

The Irish MiFID Industry Association (IMIA) represents c. 40 MiFID investment firms authorised in Ireland. The IMIA welcomes the opportunity to comment on Consultation Paper 135 on “Competent Authority Discretions in the Investment Firms Directive and the Investment Firms Regulation”.

The IMIA recognises the benefits of the new prudential regime, tailored to Investment Firms, that IFR/IFD represents. The IMIA hopes that the discretions afforded to Central Bank by the IFR/IFD regime will be applied in a manner that is proportionate to the nature and scale of businesses within the scope of the regime, and the level of risk that they represent.

Scope

Question 1: Do you have any comments on the manner in which the Central Bank proposes to exercise the discretions set out in Appendices 1 and 2?

In general, the IMIA believes that the manner in which the Central Bank proposes to exercise the discretions is reasonable and proportionate. As a general point, the IMIA proposes that the Central Bank carefully consider the costs and benefits (to both firms and end clients) of increasing the regulatory overhead for firms that are not systemically-important.

Section I: Application of the CRD regime to Investment Firms

Investment firms with Consolidated Assets between EUR 5 billion and EUR 15 billion

Question 2: Do you have any comments on the Central Bank’s proposal to exercise the discretion to apply the requirements of the CRR to investment firms on a case-by-case basis?

The IMIA considers the Central Bank’s proposal to apply the discretion on a case-by-case basis to be a reasonable approach, subject to establishing reasonable timelines for firms to comply with the requirements in cases where the discretion is applied for the first time. Such timelines should be consistent with those expressed elsewhere in IFR/IFD for firms which change categorisation.

Investment firms included in Consolidated Supervision under CRDIV

Question 3: Do you have any comments on the Central Bank's proposal to exercise this discretion to allow investment firms included in consolidated supervision under CRR to apply the CRR regime on a case-by-case basis?

The IMIA welcomes the Central Bank's proposal to exercise this discretion on a case-by-case basis.

Section II: Liquidity Requirements

Exemption from Individual Liquidity Requirements when subject to Consolidated Supervision

Question 4: Do you have any comments on the Central Bank's proposal to exempt investment firms subject to consolidated supervision from the application of the liquidity requirements on a case-by-case basis where the Central Bank is satisfied that all relevant conditions have been met?

The IMIA welcomes the Central Bank's proposal to exercise this discretion on a case-by-case basis. The IMIA proposes that the Central Bank facilitate regulated firms by clarifying any supplementary criteria that the Central Bank will apply in order to arrive at its assessment that the conditions outlined in IFR Article 6(3) are met.

Exemption from Liquidity Requirements for Class 3 Firms

Question 5: Do you have any comments on the Central Bank's proposal, taking into account the guidelines issued by the EBA, to only exercise the discretion to exempt Class 3 firms from the requirement to hold one third of their FOR in liquid form on an exceptional basis?

The IMIA recognises the importance of the FOR for Class 3 firms, and, given that such firms may also include short-term debtors and receivables in accordance with IFR Art.43(3) in their Liquid Assets calculation, supports the Central Bank's proposal to only apply this exemption on an exceptional basis.

Exemption from Consolidated Liquidity Requirements

Question 6: Do you have any comments on the Central Bank's proposal to exercise this discretion to exempt investment firms from the application of the consolidated liquidity requirements on a case-by-case basis?

The IMIA welcomes the flexibility offered by the Central Bank's proposal to apply the consolidated liquidity requirements exemption on a case-by-case basis. The IMIA recommends that the Central Bank's supervision teams communicate at the earliest opportunity with individual firms for whom the exemption will be applied.

Section III: Assessment of Internal Capital and Liquid Assets

Requirement for a firm to perform an assessment of internal capital and liquid assets

Question 7: Do you have any comments on the Central Bank's proposal to require all Class 3 firms to perform an assessment of internal capital and liquid assets?

The IMIA recognises that it is good practice for firms to review their own risks and ensure they have adequate capital and liquidity regardless of their size. However, for smaller Class 3 firms, the preparation and regular review of an internal capital adequacy assessment may represent a material overhead. Smaller firms are likely to employ a high degree of estimation in assessing both the probability and impact of their risks, given the likely absence of an actual loss history. For this reason, the outcome of Class 3 firms' Internal Capital Assessment may be of limited value relative to the actual and opportunity cost of preparation. Consequently, the IMIA proposes that the Central Bank consider the application of simpler standards for Class 3 firms.

Section IV: K-Factor Adjustment

Question 8: Do you have any comments on the Central Bank's proposal to exercise this discretion and to replace missing historical data points based on business projections of an investment firm

The IMIA approves of this proposal, but requests that the Central Bank publish clear and measurable guidelines so that firms and supervisory teams may both determine a "material change in the business model" on a consistent basis. For example, a change in a firms' regulatory approval may be deemed material, but a passport application less so. A merger or acquisition may be deemed material if it exceeds certain quantitative criteria. The publication of clear and unambiguous criteria for determining materiality is particularly important to Low Impact firms who do not benefit from a dedicated supervisory team.

Section V: Amendments to the Central Bank Investment Firms regulations

Question 9: Do you have any comments on the Central Bank's proposed amendments to the Central Bank Investment Firms Regulations as outlined in Appendix 3?

The IMIA has no further comment on the proposed amendments.