Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

Feedback Statement - Consultation Paper 135:

Consultation on Competent Authority Discretions in the Investment Firms Directive and the Investment Firms Regulation

June 2021

Contents

1. Introduction

The Investment Firms Directive[1] (IFD) and the Investment Firms Regulation[2] (IFR) apply from 26 June 2021. The Central Bank of Ireland's (the Central Bank's) consultation paper on Competent Authority Discretions in the IFD and the IFR (CP135) signalled the Central Bank's proposed approach and perspectives in relation to provisions contained within the IFD and the IFR where the competent authority can or must exercise its discretion.

Stakeholders were invited to provide observations and comments on these proposals. The closing date for comments was 26 March 2021 and one response was received.

The Central Bank is grateful for the time and effort of the party which responded to the consultation. Their response to the consultation is available at the following address: https://www.centralbank.ie/publication/consultation-papers

Having considered the submission received, the Central Bank has taken notice of comments provided and key points of concern identified and provided further guidance on its proposed approach, where necessary.

Additionally the Central Bank intends to issue in due course a new implementation notice setting out the manner in which the Central Bank will exercise key Competent Authority discretions contained in the IFD and IFR. This notice will also include details of the manner in which the Central Bank will exercise the Member State remuneration related discretions to be granted to the Central Bank by the Minister of Finance.

As set out below this Statement also confirms the Central Bank's intention to revise the reporting requirements for investment firms set out in Regulation 8 of the Central Bank Investment Firms Regulations[3] as per the proposals set out in CP135. Investment firms should apply these revised reporting requirements from 1 July 2021.

Additionally, in the interest of clarity, this Statement confirms that Alternative Investment Fund Managers and UCITS Management Companies with MiFID II top-up permissions should continue to comply with the current prudential regime specified in their condition of authorisation pending further engagement with the Central Bank on the prudential regime applying.

Markets Policy Division
Central Bank of Ireland
24 June 2021

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[1] Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU.

[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] S.I. No. 604 of 2017 Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2017.

2. General Response

In general the respondent considered that the manner in which the Central Bank proposed to exercise the NCA discretions as set out in the Appendices to CP135 was reasonable and proportionate. However, the respondent recommended that the Central Bank consider the costs and benefits (to both firms and clients) of increasing the regulatory overhead for firms that are not systemically relevant.

Central Bank Feedback:

The Central Bank notes the general response received. The Central Bank aims, in the policy decisions it makes, to balance the cost and overhead of any increased regulatory burden on authorised entities with the benefits arising from appropriate and proportionate prudential requirements to be applied.

3. Specific Responses

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 as outlined above?

Response:

The respondent considered the Central Bank's proposal to apply the discretion on a case-by-case basis to be reasonable, subject to establishing reasonable timelines for firms to comply with the requirements where the discretion is applied for the first time.

Central Bank Feedback:

CP 135 set out the Central Bank's intention to exercise this discretion on a case-by-case taking into account the circumstances of individual firms and any other relevant factors.

The Central Bank recognises that firms impacted by the exercise of this discretion will require time to prepare for the application of a new prudential regime. Therefore, where possible and subject to the firm engaging with the Central Bank as set out below, the Central Bank will take into account firms' need for adequate time to prepare for the application of a new prudential regime and will signal its intention to exercise this discretion sufficiently in advance of the effective date of the new prudential regime applying to the particular firm.

The Central Bank expects that firms should give due regard to the RTS on the criteria for subjecting certain investment firms to the CRR developed by the EBA under IFD Article 5(6) to identify whether they may be subject to this discretion and to begin necessary preparations to ensure they are in a position to comply if/when the Central Bank exercises this discretion.

The Central Bank expects a firm to engage with the Central Bank at in a timely manner where there is a planned change in a firm's business model/level of activities that may lead the firm to meet the criteria set out in the first sub paragraph of Article 5(1) of the IFD, specifically where the firm's balance sheet is projected to operate above the threshold of €5 billion for a sustained period of time, and which may give rise to a decision by the Central Bank to exercise this discretion.

Conclusion:

No change is proposed to the manner in which the discretion will be exercised by the Central Bank.

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?

Response:

The respondent requested that the Central Bank clarify any supplementary criteria that the Central Bank will apply to support its assessment that the conditions outlined in IFR Article 6(3) are met.

Central Bank Feedback:

CP 135 sets out that the Central Bank will exercise the discretion in IFR Article 6(3) to exempt firms from Part Five of the IFR on a case-by-case basis where all the conditions set out therein are satisfied.

The Central Bank will communicate any additional criteria, identified on a case-by-case basis, used to support the conditions set out in IFR Article 6(3) to relevant firms following the submission of a request to the Central Bank to exercise this discretion.

Conclusion:

No change is proposed to the manner in which the discretion will be exercised by the Central Bank.

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?

Response:

The respondent recognised 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 respondent proposes that the Central Bank consider the application of simpler standards for Class 3 firms.

Central Bank Feedback:

CP 135 set out the Central Bank's intention to require all Class 3 investment firms to perform an assessment of their internal capital and liquid assets.

The Central Bank recognises that the internal capital adequacy assessment processes and internal risk assessment processes established by small and non-interconnected firms should be commensurate to the nature, scale and complexity of the individual firm. Therefore, the Central Bank understands that Class 3 investment firms may establish a simpler, more appropriate internal capital and liquid assets assessment process than that undertaken by Class 2 firms.

However, the Central Bank continues to expect that all investment firms undertake a regular and proportionate exercise to assess and maintain the adequacy of the quantity, quality and distribution of internal capital held. We note that the requirement to perform an assessment of internal capital and liquid assets represents an additional requirement for a limited number of currently authorised investment firms.

Conclusion:

No change is proposed to the manner in which the discretion will be exercised by the Central Bank.

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?

Response

The respondent indicated its approval of the proposal to exercise this discretion on a case-by-case basis 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.

Central Bank Feedback

CP135 set out the Central Bank's intention to exercise the discretions set out in Articles 15(4), 17(2), 18(2), 19(3), 20(3) and 33(4) on a case-by-case basis. The Central Bank notes that the purpose of these discretions is to ensure the smooth application of the prudential regime for investment firms where there is a material change of the business activities of the investment firm or where there are missing historical data points required to calculate the relevant K-Factor and the firm has submitted projections to the Central Bank in line with Regulation 9 of European Union (Markets in Financial Instruments) Regulations (as amended) (S.I. No. 375 of 2017).

The Central Bank may exercise the discretion under IFR Article 15(4) where there is a material change in the activities of an investment relative to a previous reporting period. For example the Central Bank may exercise this discretion on a case-by- case basis under certain circumstances such as, but not limited to, where an investment firm is seeking authorisation for a new investment activity or where an investment firm is significantly expanding its activities and the K-factor is no longer reflective of the proposed level of activity.

While the notion of "material change" is not defined in the IFR the Central Bank may, inter alia have due regard to the specification of the notion of a material change in the RTS for Own Funds Requirements for investment Firms based on Fixed Overheads[4] developed under IFR Article 13(4) whereby a change in the business activities of an investment firm may be considered material if the relevant K-Factor capital requirement would change by at least 30% or there is an absolute change of EUR 2 million.

Conclusion:

No change is proposed to the manner in which the discretion will be exercised by the Central Bank.

[4]https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Draft%20Technical%20Standards/2020/RTS/961461/Final%20draft%20RTS%20on%20prudential%20requirements%20for%20Investment%20Firms%20%28EBA-RTS-2020-11%29.pdf

4. Member State Discretions under Article 32 of the IFD

As set out in the Public Consultation Feedback Statement on the Exercise of National Discretions under the IFD published by the Department of Finance in May 2021[5] the Minister for Finance intends to set the default threshold after which restrictions in variable remuneration apply at €300 million and to grant the Central Bank the power to specify a lower threshold taking into account the nature and scope of an investment firm's activities, its internal organisation and, where applicable, the characteristics of the group to which it belongs.

While not specifically consulted on in CP135, the Central Bank intends to exercise the discretions set out in IFD Articles 32(5) and (6) which will be granted to the Central Bank on a case-by-case basis. Further detail on these discretions and the case-by-case manner in which the Central Bank will exercise them will be set out in the implementation notice.

5. Amendments to the Central Bank Investment Firms Regulations

CP 135 proposed an amendment to Regulation 8 of the Central Bank Investment Firms Regulations and the associated tables set out in the Schedule to align reporting requirements with the classification of investment firms under the IFD/IFR.

No responses were received in relation to this proposal.

Therefore, the Central Bank intends to proceed with the amendments to the Central Bank Investment Firm Regulations as set out in CP135. In addition, as per the Schedules set out in the Appendix to this Statement, the names of some reports will be updated to "FINREP" to align with new names to be introduced by the Central Bank of Ireland in Q3 2021, and interim and annual accounts have been split out as separate reporting items. This applies to all reports with FINREP in the title.

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[5] https://www.gov.ie/en/consultation/0d2081-r/

The Central Bank is aware that new Central Bank Investment Firms Regulations will not be in place as at the application date of the IFD/IFR. However investment firms should apply the revised reporting requirements as attached in the Appendix to this Feedback Statement from 01 July 2021 in substitution for those set out in the Central Bank Investment Firms Regulations pending formal amendment of those Regulations.

6. Other Feedback

Application of IFD/IFR to Alternative Investment Fund Managers and UCITS Management Companies with MiFID top-up permissions

The Central Bank notes that when transposed into Irish law IFD Article 60 and 61 will give rise to an amendment of Regulation 17 of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 and Regulation 10 of the European Union (Alternative Investment Fund Managers) Regulations 2013 in so far as they relate to the level of own funds held.

The Central Bank has received several queries regarding the impact of the application of IFD/IFR on Alternative Investment Fund Managers and UCITS Management Companies authorised to provide MiFID services.

Pending further engagement by the Central Bank on the future prudential regime to be applied, Alternative Investment Fund Managers and UCITS Management Companies authorised to provide MiFID services should continue to comply with the current prudential regime specified in their conditions of authorisation. The Central Bank will engage separately in relation to any proposed change in the future prudential regime to be applied.

Appendix:

General reporting requirements for investment firms

8. (1) In this Regulation "data item" means an account, record, report, return or other information referred to in column 1 of each of the Parts of the Schedule;

(2) A fund administrator shall submit to the Bank all data items specified—

(*a*) in Part 1 of the Schedule, and

(*b*) on the Online Reporting System in respect of the fund administrator.

(3) An investment business firm who is not a fund administrator shall submit to the Bank all data items specified—

(*a*) in Part 2 of the Schedule, and

(*b*) on the Online Reporting System in respect of the investment business firm.

(4) A MiFID investment firm which meets the criteria set out in Articles 1(2) of Regulation EU 2019/2033 or has been granted a derogation under 1(5) of Regulation 2019/2033 (a Class 1 minus firm) shall submit to the Bank all data items specified—

(*a*) in Part 3 of the Schedule, and

(*b*) on the Online Reporting System in respect of the MiFID investment firm.

(5) A MiFID investment firm which does not meet either the criteria set out in Articles 1(2) and the criteria set out in Article 12(1) of Regulation EU 2019/2033 and has not been granted a derogation under 1(5) of Regulation 2019/2033 (a Class 2 firm) shall submit to the Bank all data items specified—

(*a*) in Part 4 of the Schedule, and

(*b*) on the Online Reporting System in respect of the MiFID investment firm.

(6) A MiFID investment firm which meets all the conditions set out in Article 12 of Regulation EU 2019/2033 (a Class 3 firm) shall submit to the Bank all data items specified—

(*a*) in Part 5 of the Schedule, and

(*b*) on the Online Reporting System in respect of the MiFID investment firm.

Part 3

MiFID investment firms which meet the criteria set out in Article 1(2) of Regulation EU 2019/2033 or MiFID investment firms which have been granted a derogation under Article 1(5) of Regulation EU 2019/2033 (Class 1 minus firms)		
Data Item (1)	**Reporting Frequency (2)**	**Reporting Deadline (3)**
Annual Audited Accounts (Upload)	Annual	6 months after firm reporting year end
FINREP Annual Audited Accounts	Annual	6 months after firm reporting year end
Related Party Annual Accounts Upload (if required)	Annual	6 months after firm reporting year end
Annual Ownership Confirmation	Annual	6 months after firm reporting year end
Annual Conduct of Business	Annual	3 months after calendar year end
Investments Product Template	Annual	3 months after calendar year end
Annual PCF Confirmation	Annual	2 months after calendar year end
ICCL Report	Annual	20 working days after calendar year end
ICAAP Questionnaire (if required)	Annual	Initial reporting deadline is 20 working days after calendar quarter in which ICAAP is reviewed by the firm. All subsequent reporting deadlines shall be the anniversary of the initial reporting date.
FINREP Quarterly Management Accounts	Quarterly	20 working days after calendar quarter end
Management Accounts Budget vs Actual (if required)	Quarterly	20 working days after calendar quarter end
FINREP Monthly Management Accounts (If required)	Monthly	20 working days of calendar month end
Monthly Metrics Report	Monthly	20 working days after calendar month end
If Authorised for MiFID Investment Service 4		
Assets Under Management	Quarterly	20 working days after calendar quarter end
If subject to Part 6 of these Regulations		
Monthly Client Asset Report	Monthly	20 working days after calendar month end
If subject to consolidated supervision		
FINREP Consolidated Annual Audited Accounts	Annual	6 months after firm reporting year end
FINREP Consolidated Annual Management Accounts	Annual	20 working days after firm reporting year end
FINREP Consolidated Interim Management Accounts	Annual	20 working days after firm reporting half year end

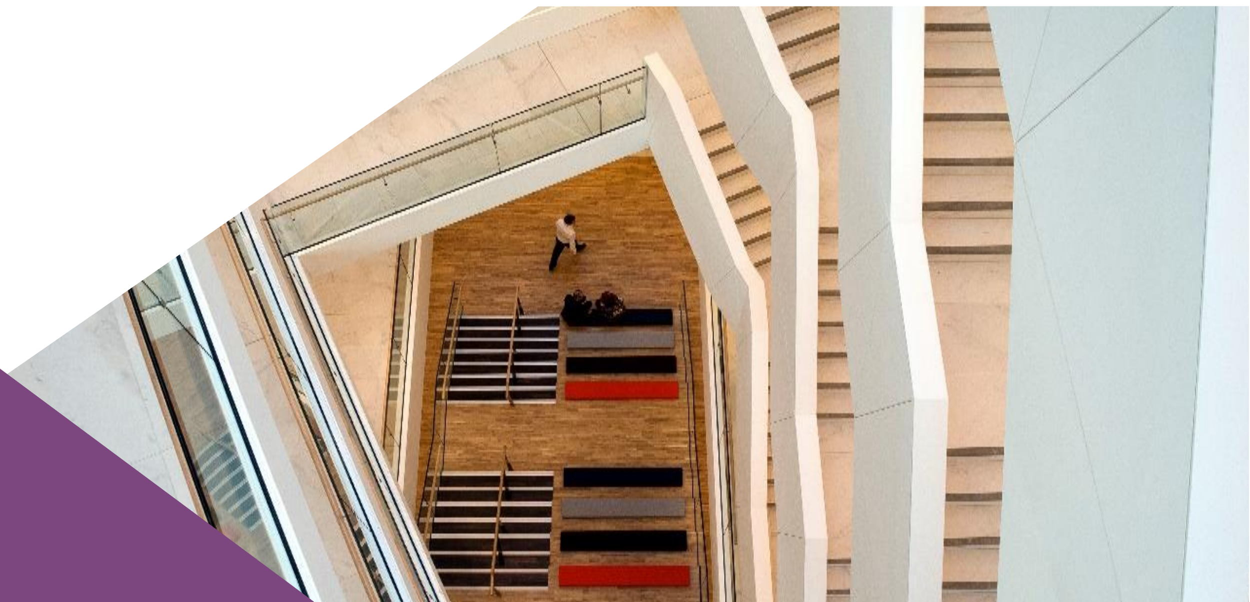
Part 4

MiFID investment firms which do not meet either the criteria set out in Articles 1(2) and the criteria set out in Article 12(1) of Regulation EU 2019/2033 and have not been granted a derogation under 1(5) of Regulation EU 2019/2033 (Class 2 firms)		
Data Item (1)	**Reporting Frequency (2)**	**Reporting Deadline (3)**
Annual Audited Accounts (Upload)	Annual	6 months after firm reporting year end
FINREP Annual Audited Accounts	Annual	6 months after firm reporting year end
Related Party Annual Accounts Upload (if required)	Annual	6 months after firm reporting year end
Annual Ownership Confirmation	Annual	6 months after firm reporting year end
Annual Conduct of Business	Annual	3 months after calendar year end
Investments Product Template	Annual	3 months after calendar year end
Annual PCF Confirmation	Annual	2 months after calendar year end
ICCL Report	Annual	20 working days after calendar year end
ICAAP Questionnaire (if required)	Annual	Initial reporting deadline is 20 working days after calendar quarter in which ICAAP is reviewed by the firm. All subsequent reporting deadlines shall be the anniversary of the initial reporting date.
FINREP Quarterly Management Accounts	Quarterly	20 working days after calendar quarter end
Management Accounts Budget vs Actual (if required)	Quarterly	20 working days after calendar quarter end
FINREP Monthly Management Accounts (If required)	Monthly	20 working days of calendar month end
Monthly Metrics Report	Monthly	20 working days after calendar month end
If authorised for MiFID Investment Service 4		
Assets Under Management	Quarterly	20 working days after calendar quarter end
If subject to Part 6 of these Regulations		
Monthly Client Asset Report	Monthly	20 working days after calendar month end
If subject to consolidated supervision		
FINREP Consolidated Annual Audited Accounts	Annual	6 months after firm reporting year end
FINREP Consolidated Annual Management Accounts	Annual	20 working days after firm reporting year end
FINREP Consolidated Interim Management Accounts	Annual	20 working days after firm reporting half year end

Part 5

MiFID investment firms which meet all of the conditions set out in Article 12 (1) of the Regulation EU 2019/2033 (Class 3 firms)		
Data Item (1)	**Reporting Frequency (2)**	**Reporting Deadline (3)**
Annual Audited Accounts (Upload)	Annual	6 months after firm reporting year end
FINREP Annual Audited Accounts	Annual	6 months after firm reporting year end
Related Party Annual Accounts Upload (if required)	Annual	6 months after firm reporting year end
Annual Ownership Confirmation	Annual	6 months after firm reporting year end
Annual Conduct of Business	Annual	6 months after firm reporting year end
Investments Product Template	Annual	3 months after calendar year end
Annual PCF Confirmation	Annual	2 months after calendar year end
ICCL Report	Annual	20 working days after calendar year end
ICAAP Questionnaire (if required)[6]	Annual	Initial reporting deadline is 20 working days after calendar quarter in which ICAAP is reviewed by the firm. All subsequent reporting deadlines shall be the anniversary of the initial reporting date.
FINREP Annual Management Accounts	Annual	20 working days after firm reporting year end
FINREP Interim Management Accounts (If required)	Annual	20 working days after firm reporting half year end
Management Accounts Budget vs Actual (if required)	Bi-Annual	20 working days after firm reporting year end and, if required, 20 working days after firm reporting half year end
FINREP Monthly Management Accounts (If Required)	Monthly	20 working days of calendar month end
Monthly Metrics Report	Monthly	20 working days after calendar month end
If authorised for MiFID Investment Service 4		
Assets Under Management	Quarterly	20 working days after calendar quarter end
If subject to consolidated supervision		
FINREP Consolidated Annual Audited Accounts	Annual	6 months after firm reporting year end
FINREP Consolidated Annual Management Accounts	Annual	20 working days after firm reporting year end
FINREP Consolidated Interim Management Accounts (If Required)	Annual	20 working days after firm reporting half year end

[6] The requirement for Class 3 firms to submit an ICAAP questionnaire will be finalised following completion of this consultation process.



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