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## Response to the Central Bank of Ireland's Consultation Paper 152 on Own Funds Requirements for UCITS Management Companies and AIFMs authorised to perform discretionary portfolio management.

### EXECUTIVE SUMMARY

The Irish Funds Industry Association (Irish Funds) is the representative body for the international investment funds industry in Ireland. Our members include fund managers, fund administrators, transfer agents, depositaries, professional advisory firms and other specialist firms involved in the international fund services industry in Ireland. By enabling global investment managers to deploy capital around the world for the benefit of internationally based investors, we support saving and investing across economies. Ireland is a leading location in Europe and globally for the domiciling and administration of investment funds. The funds industry employs over 17,000 professionals across Ireland<sup>1</sup>, providing services to 8,693 Irish regulated investment funds with assets of just over EUR 3.8 trillion<sup>2</sup>.

We welcome the opportunity to provide comment on the Central Bank of Ireland ('CBI') Consultation Paper 152 - Own Funds Requirements for UCITS Management Companies and AIFMs authorised to perform discretionary portfolio management.

#### **Q1. Do you agree with the proposal to update the own fund requirements applicable to Management Companies and AIFMs given the application of the IFR to MiFID portfolio managers? Please provide reasons for your answer.**

Irish Funds is broadly supportive of the concept of establishing a level playing field between investment firms and management companies (UCITS and AIFMs) with additional MiFID permissions which are providing the same type of discretionary portfolio management services and other additional non-core services.

However, we have a significant concern that by doing this in advance of a coordinated EU-wide approach the CBI is creating an uneven playing field via gold-plating of regulations and potentially imposing an undue cost on the investors whose assets are being managed by these Irish regulated firms. In particular, we note recital 2 of the MiFID II directive states; "*To that end, that Directive aimed to harmonise the initial authorisation and operating requirements for investment firms including conduct of business rules. It also provided for the harmonisation of some conditions governing the operation of regulated markets.*" This proposal goes against this EU-harmonised approach.

While the CBI note in paragraph 9 of CP 152 that the "*Central Bank gave due regard to the risks associated with the potential for UCITS Management Companies and AIFMs to be undercapitalised when compared to MiFID portfolio managers performing similar services*" we believe the CBI can already deal with individual cases of concern through the ICAAP process. Therefore, we would question the need for a one size fits all change that goes directly against the EU-harmonisation approach.

There are two further areas within the current own funds regime where there are inconsistencies between the requirements which apply to Investment Firms and those which apply to UCITS

<sup>1</sup> Source: Economic Impact of the Funds & Asset Management Industry on the Irish Economy, Indecon, 2021.

<sup>2</sup> Source: Central Bank of Ireland, November 2022.

Management Companies and AIFMs which should also be harmonised in line with the CBI's objective as stated in CP152.

Firstly, we think that the current "Eligible Assets"<sup>3</sup> requirement which applies to UCITS Management Companies and AIFMs (which requires a management company/AIFM to hold "*the higher of the Expenditure Requirement or the Initial Capital Requirement in the form of Eligible Assets*") should be harmonised with the liquidity requirement in Article 43 of Regulation (EU) 2019/2033 which requires investment firms to hold an amount of liquid assets equivalent to at least one third of the Fixed Overhead Requirement calculated in accordance with Article 13(1). The CBI's requirement that Eligible Assets be held in an account that is separate to the account(s) used by a management company for the day-to-day running of its business should also be removed. We see no reason why UCITS Management Companies and AIFMs should be subject to a higher liquidity requirement than applies to investment firms under Regulation (EU) 2019/2033.

Secondly, the definition of what constitutes "Eligible Assets" for UCITS Management Companies and AIFMs should be harmonised with the definition of liquid assets in Article 43 of Regulation (EU) 2019/2033.

Additionally, our member firms have also raised a range of questions and concerns with us in relation to a number of other aspects of the proposed new requirements and therefore it would be helpful if the CBI would engage and consult with industry on the contents of a 'Guidance Note' which we feel is required to provide the necessary additional guidance and clarifications needed in relation to the interpretation and implementation of the new requirements.

We also feel that a Guidance Note is needed to ensure the consistent and proportional application of the provisions of the proposed new requirements across the industry and by the CBI's supervision teams.

Given the operational and organisational changes which the new regime will require, we also request that the CBI introduces a 12 month implementation period once the proposed new regulations come into effect.

**Q2: Do you agree with the manner in which the Risk to Client K-Factors are to be calculated and that the Risk to Client K-Factor requirement is not subject to a limit? Please provide reasons for your answer.**

Our members have expressed some concerns to us in relation to the proposed manner in which the Client K-Factors are to be calculated.

Prior to the implementation of the new proposals, the CBI should issue a 'Guidance Note' to provide the clarity needed by firms to enable a consistent interpretation and application of the Client K-Factor requirements. Specifically, this guidance is needed to provide absolute clarity on what AUM must be included in the K-AUM calculation and what AUM can be excluded from the K-AUM calculation and clarity in the calculations of K-ASA, K-CMH and K-COH.

Clarity is also required by industry from the CBI in relation to the definitions of "financial entity" and "investment advice of an on-going nature" used in the proposed regulations.

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<sup>3</sup> [Section 6 – Eligible Assets \(Minimum Capital Requirement Report – Guidance Note for AIFMs and UCITS Management Companies\)](#)

In relation to K-COH – client orders handled – we would also ask for clarification that the co-efficient for both cash trades and derivatives is 0.01% as we note that in the IFR regulation the K-COH co-efficient for cash trades is 0.1%.

We have a concern in relation to the requirement to calculate the K-AUM whereby financial instruments with a negative fair value shall be included in absolute value as this approach is not consistent with the approach which is applied to the calculation of portfolio values for UCITS and AIFs in the UCITS Regulations or the AIFM Regulations. This will create additional operational risk and costs for firms to operate. The proposed approach also fails to reflect the fact that in many cases, similar investment strategies are being provided to both collective investment funds and discretionary portfolio clients, which will now require different levels of regulatory capital to be provided for notwithstanding the fact that the underlying risk exposures will be the same. It is worth noting that in the FCA handbook on MIFIDPRU the K-AUM requirements do not use absolute values, with section 4.7.7 stating that *“When measuring the amount of its AUM, a firm may offset any negative values or liabilities attributable to positions within the relevant portfolios, so that AUM is equal to the net total value of the relevant assets.”*

Finally, we would strongly advocate that the Client K-Factor amount be subject to the same Euro 10m limit which currently applies to the ‘initial capital requirement and additional amount’ for firms providing collective portfolio management services under both the UCITS Regulations and the AIFM Regulations. Where firms have specific risk exposures where capital is required to be held, we think that the ICAAP process is the more appropriate means of addressing this requirement rather than an across the board unlimited capital requirement based on gross asset values which may lead to excess capital being held by firms, potentially resulting in undue costs having to be passed on to underlying investors.

**Q3: Do you agree that UCITS Management Companies and AIFMs should be able to benefit from transitional arrangements up to the period ending 30 June 2026? Please provide reasons for your answer.**

We agree that UCITS Management Companies and AIFMs should be able to benefit from transitional arrangements.

However, we have some concerns in relation to the application of the requirements during the proposed transition period.

Once the proposed new regulations come into effect, we request that the CBI provide an implementation period where firms will be able to update their internal reporting procedures and IT systems to enable them to calculate the Client K-Factor requirements and to complete the new reporting template once the new template has been issued by the CBI.

The approach being taken by the CBI is not consistent with the approach which applies to similarly regulated firms in other EU members states. As a result, member firms will not be able to avail of group-wide/parent company IT initiatives and/or process changes and enhancements to enable them to produce the new required capital calculations and complete the reporting templates. Member firms may instead have to seek additional budget approval for, and develop, Ireland-specific processes and IT reports in order to enable them to appropriately comply with the new requirements which will likely take at least 12 months to achieve.

We also think that an implementation period of at least 12 months is required once the proposed regulation comes into effect to address the concerns raised by some members in relation to the

proposed provision which states that the amount of own funds required to be held by a management company resulting from the calculation shall not be required to exceed the sum of twice their fixed overheads requirement for the period up to the end of June 2026. In the period up to June 2026, where a firm needs to increase its own funds to meet the additional capital requirement arising from the changes proposed by the CBI, such firms will need a reasonable amount of time to thoughtfully engage with their board and shareholder(s) in order to arrange for the provision of the additional capital required.

**Q4: Do you agree that:**

**a) the frequency of submission of the Minimum Capital Requirement Report should remain as that currently in place; and**

**b) the format of the Minimum Capital Requirement Report should be amended to allow for reporting of compliance with the updated own funds requirements?**

**Please provide reasons for your answer.**

We agree that:

a) the frequency of submission of the Minimum Capital Requirement Report should remain as that currently in place; and

b) that the format of the Minimum Capital Requirement Report should be amended to allow for reporting of compliance with the updated own funds requirements.

As part of the implementation process, we also request that the CBI reviews the other reporting requirements (such as the monthly metrics report and the ICAAP report) to remove any additional or overlapping reporting requirements which may become redundant and therefore unnecessary once the new reporting requirements come into effect. We also request that the CBI conducts a comprehensive testing regime for the reporting system which member firms will be required to engage with to ensure that the system is both efficient and resilient for those firms.

**Q5: Do you agree that the requirement to undertake an assessment of internal capital be set out in the Central Bank UCITS Regulations and the AIF Rulebook? Please provide reasons for your answer.**

A number of member firms have pointed out that the requirement which the CBI currently imposes, and which it is proposing to continue, whereby it requires in-scope firms to conduct an ICAAP process and to submit an ICAAP report to the CBI on an annual basis is not consistent with, and goes beyond, the requirements currently imposed by a number of EU regulators on UCITS Management Companies and AIFMs engaged in the provision of similar services. We would therefore like to further engage with the CBI so that we could better understand the rationale for this additional obligation on in-scope UCITS Management Companies and AIFMs in the absence of an EU-wide requirement to do so.

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