

Funds Policy Team
Central Bank of Ireland
New Wapping Street
North Wall Quay
Dublin 1

23rd February 2023

Re: Central Bank CP 152 on Own Fund Requirements for UCITS management companies and AIFMs with MiFID top-up permissions

Dear Sir/Madam,

Scope

This consultation paper signals the Central Bank of Ireland's (the "Central Bank's") proposed approach to the own funds requirements for management companies authorised under Regulation 16(2) of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (the "UCITS Regulations")¹ ("UCITS Management Companies") and for Alternative Investment Fund Managers authorised under Regulation 7(4) of the European Union (Alternative Investment Fund Managers) Regulations 2013 (the "AIFM Regulations")² ("AIFMs"). UCITS Management Companies and AIFMs so authorised may perform discretionary portfolio management and provide additional non-core services under those regulations respectively.

Context

The Central Bank has published the attached CP152 on own fund requirements for Irish UCITS management companies and AIFMs which have the additional MiFID top-up licence to provide discretionary portfolio management services (as well as providing collective portfolio management services to UCITS and AIFS which they manage) ("Management Companies").

In the consultation paper, the Central Bank notes that the existing own fund requirements imposed by the Central Bank on Management Companies take into account the value of the portfolios for which Management Companies provide collective portfolio management but do not currently take into account the discretionary portfolio management and additional non-core services provided by such Management Companies.

Responses to Questions

The consultation paper has outlined the following questions for consideration.

Proposal

Question 1. Do you agree with the proposal to update the own fund requirements applicable to Management Co application of the IFR to MiFID portfolio managers?

In general, the membership of the IMIA believes the way the Central Bank proposes to update the own fund requirements as applicable between Mancos with MiFID permission top as both reasonable and proportionate. In the long term the membership believes that such a proposal would both harmonize and simplify the ICAAP returns process going forward. As a general point,

the IMIA would like to know if the Central Bank has carefully considered the costs and benefits (to both firms and end clients) of increasing the regulatory overhead for firms that are not systemically important

Section I: Calculation of the Risk to Client K-Factor Requirement

Question 2: Do you agree with the manner in which the Risk to Client K factors is to be calculated and that the Risk to Client K-Factor requirement is not subject to a limit?

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.

Another observation that was identified upon which more clarity would be sought so as to best avoid any confusion is in regard that the guidance is that UCITS managers have to go to the AIF rulebook for the calculation – also – K-COH is only applicable to AIFMS. On that basis could further guidance be given?

For most firms within the IMIA the feedback was that their Finance teams were already familiar with the process and methodology and feel there are no issues with the calculations on the basis that they will be implemented as per the current process. Alternatively for the firms as bound by both the UCITS and AIFM Regulations the calculation of assets under management was their only key consideration upon which no major objections were raised to the requirements as set out in the proposed regulations or proposed amendment to Chapter 3 of the AIF Rulebook.

Section II: Transitional Arrangements

Question 3: 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?

The response received from this question to the IMIA was positive in its support that UCITS Management Companies and AIFMs should also be able to limit the increase in their own fund’s requirement arising from the introduction of a K-Factor requirement to twice their fixed overheads requirement for the period up to end June 2026.

The potential benefit for firms with a long lead in for the adoption of the transitional arrangement is that they will have ample time to build their historical data in excess of the 3-, 6- and 9-month rule. This will allow firms to both compare and contrast this methodology as opposed to the previous methodology of the CRR. Firms will also benefit from the increase in the own fund’s requirements being limited to twice the own funds requirements under the CRR or where a firm may limit its own funds requirements under the IFR to twice its fixed overheads requirement. However, firms retain a concern that the adoption of the new methodology may become a cumbersome process for them going forward.

Section III: Reporting

Question 4: 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?

Broadly speaking, the IMIA agreed that the currently frequency of the submission of Minimum Capital Requirements remain in place in accordance with Regulation 98 of the Central Bank UCITS Regulations or Chapter 3 of the AIF Rulebook, as relevant.

The IMIA agrees with the Central Bank proposal to amend the Minimum Capital Requirement Report to allow for reporting of compliance with the updated own funds requirement under proposed Regulation 100A of the Central Bank UCITS Regulations or under the proposed revision of Chapter 3 of the AIF Rulebook.

Furthermore, the membership believed it would like to see consistency and similar alignment in the format of the MCR Report going forward. On that basis the key observation was noted in that firms could potentially see a challenge if financial groups comprised of firms regulated under different regimes (Management Company and MiFID) would then be subject to two different reporting cycles, which may create operational and efficiency challenges.

Section V: Requirement to perform an assessment of internal capital

Question 5: 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?

The IMIA in principle recognise the requirements of the assessment of internal capital as set out in the Central Bank UCITS Regulations and the AIF Rulebook as set out in both Annex I and Annex II respectively. Regarding legislative basis for UCITS Management Companies through an addition to Part 11 of the Central Bank UCITS Regulations and, for AIFMs, as an amendment to Chapter 3 of the Central Bank AIF Rulebook, the IMIA was keen to seek a fuller explanation as to how UCITS Management Companies and AIFMs will be required to undertake this assessment of their internal capital in a consistent and comparable manner. The IMIA recommends further guidance be given after the consultation process has been completed.

On foot of this, observations were raised for future applications for Management Companies with MiFID top-ups seeking IPM permissions – it being noted that the current application checklist/form asks firms how they intend to calculate capital in line with existing CRD III requirements.

For AIFMs authorised to provide individual portfolio management services, what changes on the questionnaire will be proposed. The IMIA suggests the Central Bank give further guidance on this matter after the consultation process.

Kind regards

Representatives of the IMIA Management Company Working Group

Ronan Gahan, IMIA Chair