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Financial Risks & Governance Policy Division
Central Bank of Ireland
Dublin 2

Sent via email to: fundspolicy@centralbank.ie

22 February 2023

To whom it may concern,

Consultation Paper No 152
Own Funds Requirements for UCITS Management Companies and AIFMs authorised to perform
discretionary portfolio management

With regard to the Consultation Paper referred to above please find attached our responses to the five specific questions requested as part of the consultation process.

Please do not hesitate to contact us if you require any further information or clarification.

Yours faithfully,

A handwritten signature in blue ink that reads 'Karen Nolan'.

Karen Nolan
Director & Designated Person for Capital & Financial Management
For and on behalf of
Man Asset Management (Ireland) Limited

Question 1: 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?

We agree with the proposal to update the own funds requirements applicable to UCITS Management Companies and AIFMs with MiFID Top Up permissions. This will ensure regulatory and prudential alignment with the IFR in respect of all entities conducting MiFID-type activities. This will also maintain a level playing field between own funds requirements for entities providing similar services.

Question 2: 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?

We agree with the manner in which the Risk to Client K-Factors are to be calculated, except for the measurement of AUM as applied in the K-AUM calculation, as further described below. We agree that the Risk to Client K-Factor requirement should not be subject to a limit.

As noted in paragraph 23 of the consultation paper, UCITS Management Companies and AIFMs will not be required to take their collective portfolio management into account in the calculation of the Risk to Client K-Factor. This will avoid double counting.

We note that the proposed method for measuring AUM in relation to financial instruments with a negative fair value is that they be included in the calculation at their absolute value as set out in paragraph 8(a) on page 23 of the consultation paper. We strongly believe that any liabilities or negative values within an underlying portfolio should be netted against the assets/positive values within that portfolio in calculating its AUM. This approach aligns the quantum of the assets clients have entrusted to an investment firm to manage on their behalf with the associated capital requirement. We believe it is an important principle that regulatory measurement of AUM should align well with clients' perception of AUM. We consider it worth noting that the equivalent UK regulation allows AUM to be measured on a net basis, with the following consultation response set out by the FCA in their policy statement PS21/9:

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?

We agree that UCITS Management Companies and AIFMs should be able to benefit from transitional arrangements up to the period ending 30 June 2026. The ability to limit the increase in own funds requirements arising from the introduction of a K-Factor requirement to twice the fixed overheads requirement will facilitate the transition between the two methodologies and smooth the requirement for firms with significant increases in own funds under the new regime. However, we would propose implementing separate transitional arrangements around the collection of historical K-factor data given the calculation is a retrospective one. We consider the proposed transitional provision to be overly punitive without an alternative transitional provision to enable a firm to calculate its K-factor metrics on a basis that does not rely on data relating to a period in advance of the issuance of this consultation paper. We consider such a calculation basis to be more representative than one whereby the Central Bank would replace missing data points with historical projections, as proposed under paragraph 5(e) on page 22 of the consultation paper.

We note that the transitional arrangements outlined in section 34 of the consultation paper refer to the fixed overheads requirement of UCITS Management Companies and AIFMs, however it is not clear whether this should be calculated on the MCR basis or the IFR basis, to which these firms are also subject under S.I. 355/2021.

We propose implementing separate transitional arrangements around the collection of historical K-factor data given the calculation is a retrospective one. We consider this to be a more accurate calculation than the Central Bank replacing missing historical data points in order to determine the K-Factors. For information, the UK applies such transitional arrangements, as follows:

Whilst we note that the consultation paper proposes that the transitional provisions should apply up to 30 June 2026, the consultation does not state a proposed implementation date for the new requirements. We think it would be helpful for the Central Bank to clarify the proposed implementation date and anticipated transition period.

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?**

We agree that the current frequency of submission of the Minimum Capital Requirement Report on a bi-annual basis should remain in place. We consider that more frequent reporting is unnecessary and would increase the administrative burden on firms when they should be focusing their attention on managing risk.

We agree that the format of the Minimum Capital Requirement Report should be amended to allow for reporting of compliance with the updated own funds requirements to ensure consistency of calculation and reporting to the CBI.

As previously noted, the Fixed Overhead Requirement is calculated differently under the IFR and MCR regimes. We would welcome clarity over which version of the Fixed Overhead Requirement calculation should be used in the Minimum Capital Requirement Report.

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?

We agree that any requirement to retain the ICAAP should be set out in the Central Bank UCITS Regulations and the AIF Rulebook.

However, on the basis of proportionality, we believe that the requirement to produce an ICAAP should only apply to firms that do not meet the criteria of "small and non-interconnected".

As the capital requirements for UCITS Management Companies and AIFMs classified as "small and non-interconnected" would be simplified, with such firms no longer required to calculate the own funds requirement under Regulation 18(2) of the Capital Adequacy of Investment Firms Regulations nor required to calculate a K-factor requirement, we believe that the requirement to produce an ICAAP should also be removed.

Furthermore, we consider that firms which are members of a group subject to consolidated supervision by the Central Bank or another competent authority (and accordingly are required to produce an ICAAP, or equivalent, on a prudential consolidation group basis) should be exempt from the requirement to produce an ICAAP.