# FIA EPTA response to the EBA's Discussion Paper on the Commission's Call for Advice on the Investment Firms Prudential Framework

FIA EPTA welcomes the opportunity to respond to the EBA's Discussion Paper on the Call for Advice on the Investment Firms Prudential Framework (DP) dated 3 June 2024, and would like to make preliminary comments before responding to question 1.

We note that this DP offers limited discussion points and suggests many proposals for changes with no associated questions. We also believe that these proposed changes intend to borrow further requirements and methodologies existing in CRR. The IFR/IFD regime was already heavily based on CRR regulations (i.e., regulations designed for deposit taking credit institutions) and any additional attempt to amend IFR with CRR requirements would further defeat the original intention of having a bespoke and more proportionate regime which acknowledges that investments firms have a very different risk profile from credit institutions (with no lending, deposit and exposure mainly to K-NPR or K-CMG).

It is very important to recognise that prudential regulations have a key impact on the functioning of capital markets and policies should be proportionate and should achieve the right balance between mitigating prudential risk while promoting competition, competitiveness and the overall goal of improving the EU's capital markets within the CMU. It will be important to recognise the global regulatory environment applicable to investment firms outside the EU (noting that the EU is the only jurisdiction to apply Basel type rules to investment firms), and to calibrate prudential rules to no more than what is necessary to safeguard the resiliency of the financial markets. Doing otherwise will risk damaging the level of competition in EU liquidity provision and make it harder for investment firms to support the objectives of the CMU.

**Challenges and Overregulation**

It is important to acknowledge that EU capital markets are currently lagging behind those in the US and Asia. The IFR/IFD framework already is the most stringent prudential framework targeting Investment Firms globally. FIA EPTA identifies a shift in the EBAs DP away from the underlying principles that were the original driver for IFR back towards a bank driven CRR approach for investment firms, raising the risk of overregulation, specifically:

:

- **Exacerbating Existing Trends**: Further adoption of CRR-type requirements may intensify the ongoing trend of firms increasing their liquidity provision activities outside the EU, which could further weaken our EU capital markets. This contradicts the Union's priorities in light of the CMU.

- **Increased Regulatory Complexity:** Additional bank-derived regulation would add further layers of complexity, making compliance more challenging and costly for firms. This effectively creates higher barriers to entry for new firms and makes it more difficult for established firms to grow inside the EU. Ultimately risks deterring firms from starting new operations in the EU, reducing the attractiveness of our markets compared to other jurisdictions.

- **Undermining of IFR/IFD's Original Purpose**: A shift towards CRR risks undermining the original intent of the IFR/IFD framework, which was specifically designed to establish a tailored and proportionate regulatory regime that recognizes the unique risk profiles of investment firms, distinct from those of credit institutions. This fundamental difference in risk profiles underscores the need for a differentiated regulatory approach.

- Many important proposed changes in this DP are not subject to consultation questions. Any proposed changes should be submitted to consultation with relevant questions and evidenced with data that would show that such changes are necessary and proportionate. We have nevertheless provided some comments on these proposed changes.

- Many important concerns raised to the attention of the EBA in the past have not been sufficiently addressed in this DP, which represents a missed opportunity to implement targeted changes to some aspects of IFR that have a significant impact on EU liquidity and competitiveness. We have again highlighted these areas of concern in this DP.

FIA EPTA would like to provide comments to Q1 (removal of the threshold) as well as more general comments on the classification, consolidation and use of group capital test (noting that that there is no question in section 1 of the DP on classification and in section 8 consolidation, therefore, all of these comments are provided under question 1).

**About FIA EPTA**: The European Principal Traders Association (FIA EPTA) represents the leading Principal Trading Firms in the EU and UK. Our members are independent market makers and providers of liquidity and risk transfer for markets and end-investors across Europe, providing liquidity in all centrally cleared asset classes including shares, bonds, derivatives and ETFs. FIA EPTA works constructively with policymakers, regulators and other market stakeholders to ensure efficient, resilient and trusted financial markets in Europe. More information about FIA EPTA and independent market makers is available on: www.fia.org/epta and www.wearemarketmakers.com

**Q1. What would be the operational constraints of potentially removing the threshold?**

FIA EPTA believes that the removal of the €5bn threshold for reporting purposes would create an undue administrative burden on smaller investment firms which represent a large proportion of investment firms subject to IFR. The removal would not serve any discernible purpose and does not seem to be proportionate to the objective to "enable the monitoring of both the €30bn and €15bn threshold" (section 26). Firms below or close to the €5bn threshold are unlikely to breach the €15bn or €30bn threshold unless in exceptional circumstances (e.g., significant change in business model) and so the burden of reporting would be disproportionate to the benefit obtained by requiring firms below the bn threshold to report.

If the EBA is concerned with its obligation to notify investment firms breaching the €30bn or €15bn threshold, an alternative and more proportionate approach would be to remove such obligation and leave the notification requirement on investment firm groups or their NCAs, which are able to monitor as firms approach the threshold via existing prudential reporting.

We note the EBA comment that this would result in an intensified reporting burden but expressed the view that firms have to perform the calculation in any case. We do not agree with the assessment that, as a result, requiring such reporting is not unduly burdensome relative to its stated purpose. The reporting requirements would indeed be administratively more burdensome and challenging for the following reasons:

- Entities use different accounting standards for different undertakings in the investment firm's group. Forcing all entities to calculate and report under IFRS would be very costly.
- FX translation of entities in the investment firm's group with different functional currencies is not straight forward.
- Consolidation can be complex and not something that firms would ordinarily do on a monthly basis.

In addition, the removal of the €5bn threshold for reporting purposes would create additional significant barriers to entry, thereby discouraging third-country firms from operating in the EU.

**Additional comments on classification, consolidation and Group Capital Test (GCT)**

Whilst the IFR/IFD has only been applicable to investment firms for a few years, a number of challenges have become apparent, namely in relation to the classification methodology, the extraterritorial application of the IFR/IFD regime, as well as the disproportionate application of governance and remuneration requirements across investment firms of varied sizes. Moreover, the current governance and remuneration requirements are largely identical to those applied to credit institutions, although investment firms have a completely different risk profile compared to banks. In particular, investment firms who deal on own account have no clients nor do they provide client services, they do not take deposits nor do they extend loans. It is not in line with the original objective of creating a bespoke prudential regime for investment firms to simply apply largely identical governance and remuneration requirements to investment firms as are applied to banks - e.g., requirements and methodology for identified staff, restrictions on variable compensation, high earners disclosures.

More specifically with regard to the classification methodology and the associated balance sheet threshold, the current framework envisages a €100mn threshold above which firms are classified as Class 2 investment firms subject to IFR/IFD (there are other criteria, for example firms that deal on own account are automatically classified as class 2 investment firms), a €15bn threshold above which

investment firms are classified as class 1 minus and required to apply CRR/CRD but not become licensed as credit institutions, and the €30bn threshold above which firms are required to become credit institutions and apply the full scope of CRR/CRD, despite still not conducting any banking activities.

We understand and support the policy rationale for seeking a method for classifying firms, however the current methodology fails to adequately assess genuine systemic risk. There are a number of reasons for this:

1. Nominal balance sheet size for firms that do not participate in maturity transformation is a wholly inadequate metric for determining the risk profile of a firm. It may give an indication as to the size of a firm's trading book, but it does not allow for any conclusions as to the systemic risk (or absence thereof) of a firm.

2. The current balance sheet methodology penalises firms who operate as market makers by failing to recognise their hedging activity as risk reducing, and still requires that firms calculate their gross nominal balance sheet.

3. The current structure with three different balance sheet thresholds that move firms between entirely different regulatory regimes is unnecessarily complex and creates meaningful step changes in firms' regulatory obligations, acting as a disincentive to expanding their business within the EU. Moreover, given the classification methodology only leaves one category for firms dealing on own account that would not trigger application of rules intended for banks, the original objective of creating a bespoke regime for investment firms has not been achieved.

We would suggest the following targeted amendments:

1. The €15bn threshold should only trigger the application of capital rules (CRR) with the exclusion of governance and remuneration requirements (CRD). We note that the EBA recognised the importance of remuneration rules for attracting and retaining talent (in the GCT section). This consideration equally applies for the purposes of the threshold. This would not increase the riskiness of the reclassified investment firm as the remuneration and governance requirements in IFD are largely based on CRD requirements, with very few differences.

2. Maintain the €30bn threshold, including the possibility for NCAs to waive the credit institution license requirement on a case-by-case basis as per CRR3/CRD6, but complement it with secondary criteria that take into account the nature, scale, and scope of a firm's activities and its specific risk profile to determine whether application of a credit institution license requirement is warranted. This would allow for a more proportionate application of the credit institution license requirement, rather than it applying it automatically purely based on size of gross nominal balance sheet that exists today. This would also be aligned with methodologies for banks that consider a range of quantitative and qualitative criteria.

We note that the EBA has emphasised the relatively small number of Union parent investment holding companies of investment firms who have chosen to apply for the group capital test (GCT). In our view this is due to the fact that within the large category of investment firms, the subset of firms who are both headquartered in the EU and have meaningful global operations is small despite representing a critical mass that supports the functioning, efficiency, and liquidity of EU capital markets.

We want to take this opportunity to emphasise the importance of having a mechanism like the GCT available to Union parent investment holding companies of investment firms in the EU to maintain the competitiveness of EU headquartered firms on a global scale. In the absence of the GCT, the current IFR/IFD framework would have extensive extraterritorial application for investment firm groups that are consolidated in the EU. In particular, the extension of the IFR/IFD requirements on governance and remuneration to operations outside of the EU in the absence of the GCT would significantly undercut the competitive nature of EU headquartered investment firms. Global application of these requirements would undermine the ability of EU firms to compete on an even footing with their peers in non-EU markets in particular as far as access to talent pools is concerned. It would also diminish their ability to innovate in the EU and contribute to making EU markets more competitive, as there will be significantly less skills and experience transfer from non-EU jurisdictions into EU markets.

Having the GCT available to EU headquartered investment firm groups allows them to compete on a level playing field with their peers headquartered in non-EU jurisdictions, by allowing them to forego the requirements and application of IFD governance and remuneration requirements to their non-EU subsidiaries. This is particularly important as the EU is the only major global financial services jurisdiction that has chosen to apply governance, remuneration, and capital requirements derived from the Basel Framework, being the primary global standard for prudential regulation of banks, to non-bank investment firms.

Should it be the intention to restrict use of the GCT to small firms only, then other carveouts from prudential consolidation should be made available to EU headquartered firms to allow for the disapplication of - at the very least - the IFD/CRD governance and remuneration requirements to non-EU subsidiaries to enable EU headquartered firms to compete on a level playing field in the non-EU markets they are active in.

If the main concern is to set a minimum amount of capital requirements, we would suggest the EBA consider disassociating the capital component from the governance and remuneration requirements (i.e., by allowing firms to apply Article 7 for capital but Article 8(3) or 8(4) for any other purposes). This would mean a competent authority may require the application of Article 7 of IFR only for the purposes of the calculation of capital requirements, without performing prudential consolidation of other aspects (i.e., governance and remuneration).

It is therefore of critical importance that a viable alternative to the GCT is fully developed and implemented before accessibility and application of the current GCT mechanism is restricted.

Beyond this, we would highlight that there should be broader recognition for the adequacy of the own funds requirements in sophisticated jurisdictions (from a prudential policy perspective), such as the United States, Australia, Singapore, the United Kingdom etc. NCAs should be able to determine the adequacy of the prudential standards in the non-EU jurisdictions that the firm's subsidiaries are active in, not on the basis of whether those standards result in exactly the same absolute level of requirements as expected under the IFR in the EU, but on the basis of whether the prudential rules in that non-EU jurisdiction achieve a similar outcome. We would also highlight that in any event NCAs are able to assess the risk posed by foreign entities through the ongoing Supervisory Review and Evaluation Process (SREP).

## 2. Conditions for investment firms to qualify as small and non-interconnected

**Q2-Would you suggest any further element to be considered regarding the thresholds used for the categorisation of Class 3 investment firms?**

FIA EPTA has no comments.

**2.2 Transition of investment firms between Class 3 and Class 2 categories**

Q3. **Do you have any views on the possible ways forward discussed above regarding the transition of investment firms between Class 2 and Class 3 should be introduced?**

FIA EPTA has no comments.

**3. Fixed overheads requirements (FOR)**

**Q4. Should the minimum level of the own funds requirements be different depending on the activities performed by investment firms or on firms' business model? If yes, which elements should be considered in setting such minimum?**

FIA EPTA believes that the FOR should not be changed. Changing the existing requirements would add complexity. Any risk not sufficiently captured would be covered in Pillar 2. The original intention of the regime was to design a more simple and proportionate regime.

**3.3 Deductibles related to specific business models**

**Q5. Is it necessary to differentiate the deductibles by activity or by business model for the purpose of calculating the FOR? If yes, which items should then be considered and for what reasons?**

FIA EPTA believes that it is not necessary to differentiate the deductibles by activity or business model as this would add complexity to a regime that was intended to be simpler.

**3.4 Expenses related to tied agents**

Q6. **Are expenses related to tied agents material for the calculation of the FOR to the extent to require a dedicated treatment for their calculation? If yes, are the considerations provided above sufficient to cover all the relevant aspects?**

FIA EPTA has no comments.

**3.5 Expenses related to non-MiFID activities**

**Q7 Should the FOR be calculated distinguishing the costs related to non-MiFID activities, which criteria should be considered? What kind of advantages or disadvantages would this have in practice?**

FIA EPTA has no comments.

**3.6 Expenses related to foreign exchange rates difference**

**Q8. Should expenses related to fluctuation of exchange rates be included in the list of deductions for the calculation of the FOR? If yes, which criteria should be considered in addition to the ones suggested above?**

FIA EPTA has no comments.

## 4. Review of existing K-factors

**Q9.Should the concept of 'ongoing advice' be further specified for the purpose of calculating the K-AUM? If yes, which elements should be taken into account in distinguishing a recurring provision of investment advice from a one-off or non-recurring one?**

FIA EPTA has no comments.

**Q9. Should the concept of 'ongoing advice' be further specified for the purpose of calculating the K-AUM? If yes, which elements should be taken into account in distinguishing a recurring provision of investment advice from a one-off or non-recurring one?**

FIA EPTA has no comments.

### 4.7 Daily Trading Flow (K-DTF)

**Q10. Does the K-DTF provide a proper level of capital requirements for the provision of the services Trading on own account and execution of order on behalf of clients on account of the investment firm? If not, what elements of the calculation of the K-DTF present most challenges?**

FIA EPTA believes that any formula that seeks to estimate operational risks would have sufficient shortcomings to render such formula not particularly useful. This is true whether operational risk is estimated under the current K-DTF or under any previous CRR approach like the Basic Indicator Approach (e.g., BIA is based on past profits which is not reflective of current operational risks). We have no reason to believe and we have not seen any data that would evidence that one approach is superior to another. Operational risk is very wide and depends on business models and the type of activity and any proxy would inherently fail to consider these specificities.

A significant amount of resources have been dedicated to calibrate K-DTF at the time of the new regime and material resources allocated by investment firms to comply with the new operational risk framework that was materially different from the approach under CRR. Any operational risk not sufficiently covered by the proxy would be taken into account in the firm's own assessment of risks within Pillar 2 and can be assessed by NCAs via the SREP process. Based on the above we would suggest no change to the existing operational risk requirements and in all cases no further CRR type of requirements should be introduced as this would, as noted above, defeat the original intention of having a bespoke and more proportionate regime for investments firms.

**Q11. Would you have any examples where the calculation of the K-DTF based on comparable activities or portfolios results in very different or counterintuitive outcomes? If yes, how could the calculation of the K-DTF be improved?**

The calculation of K-DTF in Article 33(2) requires notional amounts of interest rate derivatives to be adjusted by duration. However, this duration adjustment does not apply to ordinary government bonds. This leads to a disproportionate impact of cash bonds on K-DTF, particularly when a portfolio uses futures/swaps to hedge bonds and risk is flat for both sides. We would suggest that the duration adjustment should also be applicable to bonds to remove this counterintuitive outcome. This should also apply to the K-COH calculation in Article 20 for consistency.

See also our response above to Q10

**4.8 Concentration risk in the trading book (K-CON): scope restricted to the trading book**

We note that there is no question on section 4.8 (K-CON) and we have added our comments in Q11.

Firms trading on own account have a limited non-trading book. Extending K-CON to the non-trading book using a CRR-like methodology would further defeat the purpose of having a bespoke regime for investment firms. This disregards the fact that most CRR provisions, including concentration risk in the non-trading book, were designed for banks whose business model includes mainly lending and deposits and credit risk exposures contribute above 90% of total risk exposure (see data below). From a proportionality perspective, Class 2 and 3 investment firms are inherently not systemic to the wider markets and therefore the primary objective of IFR should be to ensure that firms are sufficiently resourced to wind down in an orderly fashion, rather than capture all possible risks like banks do. The limited concentration risk in the non-trading book for investment firms should already be addressed in Pillar 2 and can be reviewed by NCAs via the SREP process.

**4.10 Clearing Member Guarantee (K-CMG)**

We note that there is no question in the DP on section 4.10 (K-CMG) except for a suggestion that the 1.3 multiplier may be increased. We have therefore added our comments on K-CMG in Q11.

K-CMG has been one of the pillars for the new IFR regime reflecting the specific risk reduction mechanism (guaranteed trades limiting the risk to the clearing member only thus preventing any systemic risk) and business model of investment firms trading on own account (trading mainly in cleared instruments and under the responsibility and guarantee of the clearing member). Yet very few investment firms are effectively using it (we believe fewer than 10 investment firms in the EU). This is because the final calibration of K-CMG (high water mark coupled with 1.3 multiplier) overstates the actual risk of the portfolio and prevents a dynamic management of the risk. The existing high watermark calibration also has the unintended consequence that it disincentivises investment firms to stay in the market in time of stress, hampering liquidity when it is most needed. The reduction in capacity to provide liquidity will be further exacerbated when the transition period for “local” firms (being mostly market makers in fixed income derivatives) ends (in June 2026) as those firms will likely use K-CMG (current K-NPR being particularly punitive for fixed income derivatives).

FIA EPTA believes that the calibration should be changed for the highest of (1) the current margin at clearer without multiplier and (2) the average over the last 3 months with a 1.3 multiplier.

As an alternative, K-CMG could be recalibrated as follow: highest of 5days/30days/90 days average times 1.3 multiplier. This would still be a very conservative model but more aligned with the actual risks of the portfolio.

We note also the EBA comment that “investment firms should be able to provide the history of how many times the K-CMG requirements were not enough to cover the losses of the portfolios associated to it”. It is EPTA members’ observation that K-CMG is materially overstating the actual risk of the portfolio by a factor of 5 to nearly a 100 (see data below). Yet we note that the EBA has not requested data on the relative value of the actual losses in the portfolio compared to K-CMG (requesting only losses above K-CMG) to assess whether actual losses are materially below K-CMG. We also note that that EBA has only requested data from firms using K-CMG, which is not going to be meaningful as few firms are using it.

| Data 1. EPTA Members K-CMG Compared to Actual Losses in Portfolio (April to June 2024) | Percentage |
|---|---|
| Average (Max loss over CMG) | 8.01% |
| Mini (Max loss over CMG) | 1.11% |
| Max (Max loss over CMG ) | 18.92% |

| Max average loss over CMG including only loss days | 1.44% |
|---|---|
| Max average loss over CMG including all days | 0.52% |

If the intention is to genuinely offer K-CMG as a true alternative to K-NPR, it must be recognised that currently K-CMG has not actually been adopted by investment firms and the reasons for this non-adoption should be assessed. It is also particularly critical to recalibrate K-CMG as a credible fall-back option, considering the end of the transition period for key EU market makers trading in fixed income derivatives and the willingness (noting our strong concern) to introduce high multipliers on K-NPR (SSA) and despite the option to use the ASA (which remains untested for investment firms).

**4.11 Assets under safekeeping and administration (K-ASA)**

**Q12.What are the elements of the current methodology for the calculation of the K-ASA that raise most concerns? Taking into account the need to avoid complexifying excessively the methodology, how could the calculation of the K-ASA be improved to assess those elements?**

FIA EPTA has no comments

**Q13. Clients' asset protection may be implemented differently in different Member States. Should this aspect be considered in the calculation of the K-ASA? If so, how should that be taken into account in the calculation?**

FIA EPTA has no comments.

**5.1 Non-trading book positions**

We note there is no question on section 5.1 non-trading book positions but we would like to make the following comments (added in question 11).

Firms trading on own account have limited credit risk exposures outside of their non-trading books. Introducing a framework that is inspired by the standardised approach for credit risk would further defeat the purpose of having a bespoke prudential regime for investment firms and disregard the fact that most CRR provisions were designed for banks whose business model includes mainly lending and taking deposits, with risk exposures mainly driven by credit risk (more than 90%). A materiality threshold would also further complicate the ruleset given the number of different thresholds that already exists under IFR. Any credit risk in the non-trading book of investment firms should be limited and would already be addressed in Pillar 2 and be reviewed by NCAs via the SREP process.

**5.2 Non-trading book positions in crypto-assets**

**Q14. Should crypto-assets be included into K-factor calculation, either as a new K-factor or as part of K-NPR?**

The lack of clear and explicit trading book treatment and computation is an obvious and we think easily remedied gap. A failure to address this in IFR would potentially leave as the only available guidance the BCBS Prudential Treatment of Crypto-assets proposals, which were not drafted with investment firms in mind. This would be an illogical and potentially unproductive outcome, given that the principle that different business types should have different prudential frameworks is now long established, the crypto framework for CASPs under MiCAR being the latest and most relevant example.

We want to emphasize that at present supervisors are interpreting the existing guidance and CRR3 rule proposals in different ways. Two main points of friction are the lack of clarity and the bank-focused nature of the CRR regulation, which we think impedes the maturity of the crypto market. The existing CRR regulation is not appropriate for investment firms acting as a market maker. Given that a market maker has opposing long and short positions in highly correlated instruments (which are price-sensitive to the same instrument), resulting from having a bid as well as an offer in multiple markets, netting should reflect the low resulting market risk from offsetting positions. The need for a “look-through” and netting methodology similar to how K-NPR treats equity positions is underscored by the fact that institutional adoption of crypto assets is ever increasing, as well as the fact that prominent exchanges have listed instruments that are price-sensitive to crypto.

In order to recognize these developments and stimulate the development of a mature and efficient market, we suggest that crypto-assets should be explicitly incorporated into K-NPR. This would require an update to the definition of a trading book position for investment firms. We would recommend this is done specifically within IFR, rather than in CRR, and that the amendment makes clear that, alongside financial instruments and commodities, crypto-assets can be included in the trading book. This would also require that risk-weighting and netting methodologies be incorporated into IFR itself. The proposed risk-weighting in the most recent BCBS paper effectively imposes a 1250% weighting on a wide range of crypto-assets, and for the most part this will vastly over-estimate the risk in trading book positions. A more accurate reflection of the risk would be achieved by adopting an equity or commodity style set of risk weightings with similar “look-through” and netting treatment as described above.

Further, and in the interests of market development and maturity, we would recommend an explicit exemption from, or removal of, the proposed 1% cap proposed in the BCBS paper for positions in market-makers or proprietary trading firms’ trading books.

### 5.3 Operational risk for firms calculating the K-DTF

**Q15.In the context of addressing operational risk for investment firm trading on own account, is there any further element to be considered to ensure that the requirements are proportionate to their trading activities?**

FIA EPTA refers to the answer in question 9 and 10.

**Q16. The discussion paper envisages the possibility to rely on alternative methodologies with respect to the K-DTF. If the respondents suggest an alternative approach, how would this refer to the two activities addressed under the K-DTF (trading on own account and execution on own account on behalf of the clients)?**

FIA EPTA refers to the answer in question 9 and 10.

## 5.5 Investment firms providing other prudentially regulated or non-regulated services

**Q17. When addressing other activities an investment firm may perform, which elements, on top of the discussed ones, should be also taken in consideration?**

FIA EPTA does not have any comments on Q17 as framed about. However, FIA EPTA does have comments on the section 6 (implications of the adoption of the Banking Package) and has provided these comments in this question.

**Introduction**

We note that the EBA DP did not ask any questions regarding the implementation of the banking package, but as per your guidance during the hearing, we would like to address this important topic.

It is our understanding that under current IFR regime, investment firms are able to use, as a standardised approach, either the existing K-NPR or the Alternative Standardised Approach ("ASA" as amended by CRR 3 when effective). We believe that, if our understanding is correct, these existing rules are adequate and should not be changed.

By way of background, it is worth recalling that many investment firms dealing on own account only came in scope for authorisation in 2018 with the introduction of MiFID II and therefore were in scope of prudential rules for the first time since then. These firms have been engaged in providing feedback on the new prudential regime from its earliest stages onwards and have had to make significant changes to their operational set up to implement the new prudential rules effective from June 2021. This has already been resource intensive particularly for smaller investment firms and investment firms have only just reached a stage where they had time to consume, understand and implement the rules under K-NPR (or K-CMG if used).

The new market risk framework under FRTB has been in development since 2016 with implementation originally set for January 2019. This date was then postponed to 1st January 2022 and more recently, for the market risk framework, to 1st January 2026 in recognition of the ongoing challenges related to its implementation and resulting higher capital requirements. This delay has allowed banks additional time to develop systems infrastructure to apply the standard and for the Basel Committee and NCAs to address specific issues. We note also that banks have been reporting under FRTB since 2021 in order to monitor the impact of the new market risk framework.

Investment firms subject to IFR/IFD have never responded to consultations on the banking package (on the assumption they these were directed to credit institutions) or have never been included in the impact assessment, which were restricted to credit institutions. It would be flawed to assume that problem areas identified by banks and impact assessments performed for credit institutions can be translated and applied equally to investment firms as their business models, including their risk weighted assets exposures and structure of the trading book, is very different from credit institutions. Therefore, FIA EPTA suggests that the use of the ASA is retained as an option only. This would permit those investment firms capable of and willing to implement the new market risk framework to assess the feasibility and impact and decide upon its adoption. This would also provide investment firms and NCAs with useful data over time regarding the use of the ASA, in a similar albeit less formal manner as was the case for credit institutions.

This approach would also be aligned with the original intention of IFR which was to acknowledge the distinct nature of credit institutions and investment firms and their distinct risk-bearing activities. Credit institutions hold consumers savings and can pose possible systemic impact, as spill-over effects are different when holding both a banking book and trading book. As rightly stated by the EBA (section 3) "the requirements in the CRR/CRDIV were largely calibrated to secure the lending and deposit functions of credit institutions and these requirements do not effectively capture the actual risks faced by the majority of EU investment firms". Investment firms do not hold any client money and are generally much smaller in scale. Furthermore, the bespoke regime for investment firms already leaves room to reclassify the largest investment firms that are deemed systemically important and applies CRR to them. Any further requirement to use CRR-models would defeat the purpose of having a bespoke IFR, which is already heavily based on CRR.

In this respect, we believe that the review is also the opportunity to review whether other existing requirements that have been copied from CRR are appropriate. In particular, BRRD has been designed for banks (as the name suggests) and is inappropriate and overly burdensome on investment firms. Indeed, recovery and early interventions are aimed at keeping a firm going, reflecting that the BRRD is designed with banks in mind"[1]. Resolution specifically exists to address how to mitigate the impact of failure without recourse to taxpayer funds and is irrelevant for Principal Trading Firms that do not benefit from taxpayer support and would in all events conduct an orderly wind down. We note that the BRRD regime has not been updated to incorporate IFR. The calculation of the contribution amounts for the resolution funds still solely refers to CRR. This can be seen in the calculation of the derivative exposure values in the Commission Delegated Regulation (EU) 2023/662, which requires firms to meet the CRR requirements on derivatives including the requirements on netting sets, rather than the equivalent sections under IFR.

We would therefore suggest removing investment firms from the scope of BRRD and if necessary, transfer any relevant sections into IFR/IFD for inclusion in other existing supervisory document (e.g. ICARA).

In addition, we provide below some comments on the FRTB methodologies, although the complexity of the topic would warrant a separate discussion.

**Alternative Standardised Approach ("ASA")**

We welcome providing investment firms with the option to use the ASA but note that it is unlikely to be suitable for all firms, taking into account the large variety of investment firms in terms of size and complexity of the business models. ASA is unlikely to be the default option for most investment firms. We also believe that ASA will render quite similar and even perhaps sometimes more risk based market risk capital requirements than K-NPR (based on the standardized model in CRR2) and K-CMG. However, this is strongly dependent on the trading book of an individual investment firm.

Indeed, as rightly mentioned by the EBA in the DP, FRTB is characterised by a high granularity and risk sensitivity, counterbalanced by a material complexity in its implementation and use. The design of the R-SbM is significantly different from the design of K-NPR, and therefore could pose significant implementation challenges for a large subset of investment firms.

In particular, even our larger members noted the steep cost and complexity of implementing and validating FRTB. The computation itself would require a substantial change in policy frameworks, data, processes, models and controls, infrastructure (with change in risk systems and data availability

[1] EBA Investment firms Report 2015 s3.3.10

challenge). In addition, the costs and administrative burden of external validation and granular reporting would be disproportionate to the size and complexity of investment firms even for those firms already using K-NPR.

FIA EPTA therefore believes that the FRTB Alternative Standardised Approach should remain as an option for investment firms under Article 22(b), regardless of the size of their trading books (see below) i.e. option (b) in paragraph 145 of the DP. This would leave time to those investment firms able to implement the new market risk framework to assess the feasibility and impact (without formal consultation) and decide upon its adoption. It would be unreasonably resource intensive and significantly operationally challenging for both EU institutions and investment firms to conduct the same (or even simplified) consultation process as the one that was applied for banks since 2016 (formal consultation with stakeholders, formal impact assessment, EBA regular and ad-hoc quantitative impact assessment and phase in arrangement like initial reporting).

As an example, some FIA EPTA members providing liquidity as options market makers already noted that the jump to default requirement is not well calibrated for market makers in options. The calculation can result in arbitrary capital requirements that are not reflective of the actual risk. While FRTB is arguably more granular in bucketing and netting positions, the steep shocks render unusually large requirements that are not in line with the short holding periods of typical market makers. This impact would be even more acute for proprietary trading firms that are the main liquidity providers in some segments (e.g. fixed income derivatives and less liquid options) and could therefore impair liquidity in those areas.

For the reasons mentioned above, we believe that the ASA should remain an alternative approach, as it is current the case under IFR 22, and that that no change to IFR is needed.

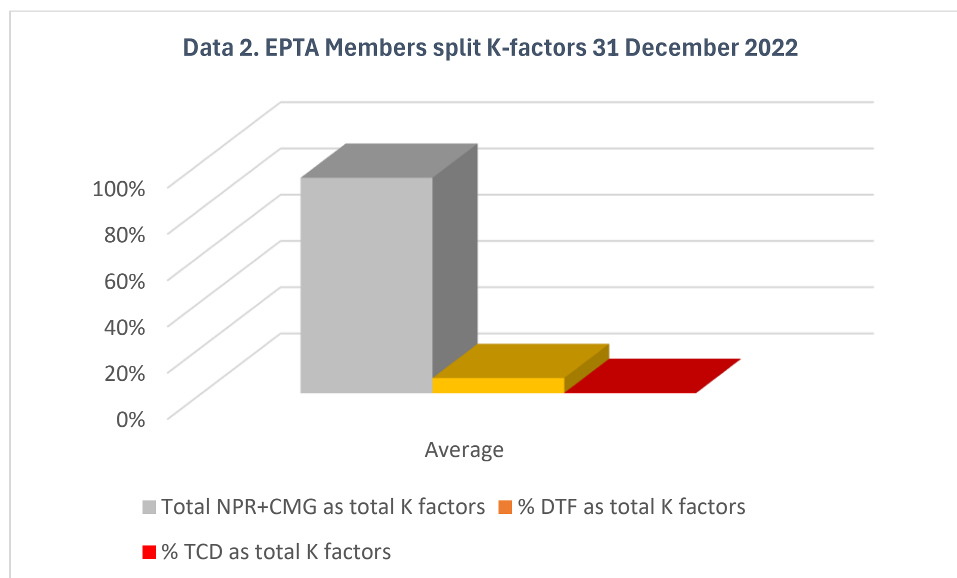
For the same reasons as outlined above, the CVA should remain optional (option B introduction on a voluntary basis), as this would ensure some consistency with the market risk approach.

In respect of the Simplified Standardized Approach ("SSA"), most investment firms are using the current K-NPR approach as the default option. K-NPR was only recently introduced for investment firms in 2021 and no concern was raised at the time on the conservativeness of the approach. Competent Authorities have assessed the robustness of the methodologies through the SREP process and the adequacy of the capital in setting the Pillar 2 or individual capital guidance. For listed equities, fixed income and derivatives, K-NPR appears more than adequate: the outcome of most of our members' internal Pillar 2 capital assessment is that the Pillar 1 capital requirement determined from the K-NPR methodology is predominantly higher than the internally assessed amount, which is unlikely to lead to additional Pillar 2 capital requirements being required.

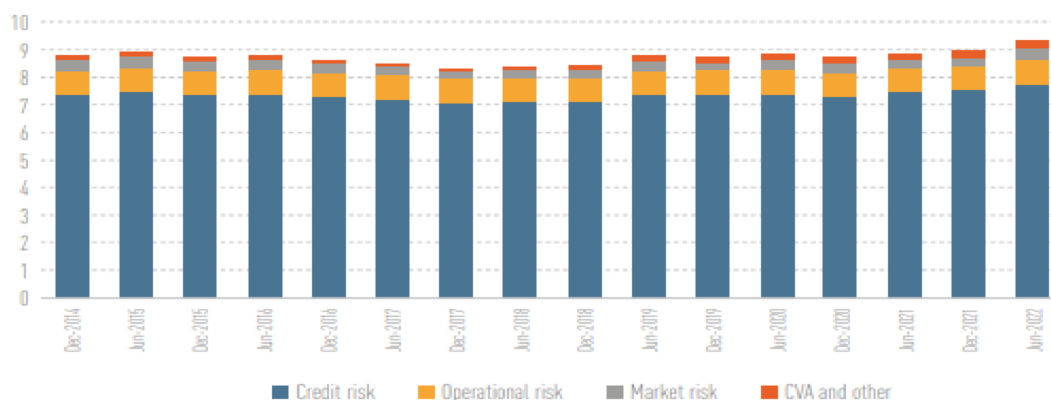
Please note that should the amended SSA (with the multipliers) be introduced, this will increase market risk requirements between 130% to 350% with a quasi-linear increase in total capital requirements as market makers' capital requirements are mainly driven by K-NPR or K-CMG (representing more than 90% of the total capital requirement, see Data 2 below). This would not be proportionate to the risks posed by those firms. Furthermore, it would likely result in a significant impact on market liquidity and would almost certainly lead some firms to discontinue certain operations. This would also have a counterintuitive effect, reducing the diversity of market participants on EU markets and creating a huge barrier to entry for new investment firms, thereby decreasing market resiliency.

This impact would be very different for banks as they have low exposure to market risk (less than 5% per data below Figure 65: RWA by type of risk) and their default methodology is not the SSA but the

ASA. SSA was designed for banks without a significant trading book i.e. less than 10% of total assets and yields a small increase (4.7%) in total capital required and sometimes even a decrease (per data published in BCBS report, 2015).



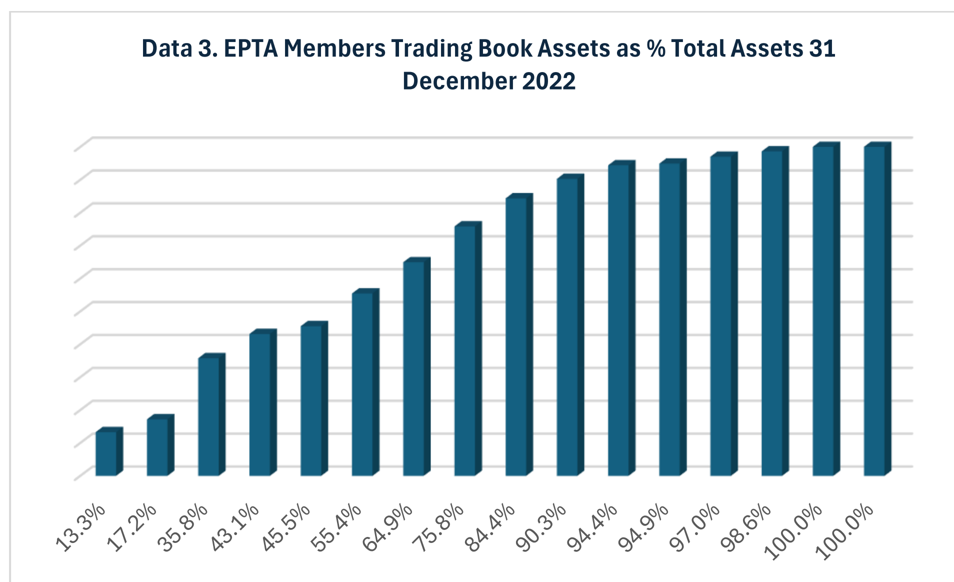

**Banks Risk Weight Assets**




Finally, we welcome the EBA comment that "t*he relative threshold is not meaningful for investment firms since their non-trading book activities are ancillary to the trading book business".* This is indeed supported by the data that we collected from our members (see Data 3 and Data 4 below) and evidences that our business model is very different from banks (on average, members' trading books represent 69.4% of total assets). We note that existing rules do not have any threshold and we believe that this should stay the same.

Based on the above, FIA EPTA believes that the existing rules should not be changed and IFR should not introduce the SSA for investment firms. To provide clarity for firms, the direct reference to CRR

should also be removed and the current K-NPR methodology translated directly into IFR in order to prevent spillover effects of adjustments to CRR that would inappropriately affect non-banks. This would prevent future changes in regulations or guidelines designed for banks from having unintended and disproportionate impacts on investment firms. It would also provide clarity to investment firms to enable them to calculate and report K-NPR correctly, as cross-referencing makes the regulations more confusing and difficult to follow.




| Data 4. EPTA Members Trading Book as % Total Assets 31 December 2022 | Data |
|---|---|
| Sample | 15 |
| Minimum | 13.3% |
| Maximum | 100.0% |
| Average | 69.4% |
| Median | 80.1% |
| 25% quartile | 43.7% |
| 50% quartile | 80.1% |
| 75% quartile | 96.5% |

We also believe that there should not be any absolute value set for the threshold as balance sheet amount does not reflect actual risk, and if anything, overstates the risk:

- *Balance sheet does not necessarily reflect risks*: a pure balance sheet metric overlooks the question of whether a market making position is liquid or illiquid, whether the financial instruments are traded on exchange or OTC. The same balance sheet size could have a very different market risk and different impact for market financial stability.
- *Total (gross) assets without netting overestimate the risk:* A market maker may have a large trading book but will usually hedge its positions resulting in low net market risks. This netting benefit is

not recognized in EU accounting standards under IAS 39 (but is under US GAAP for liquidity providers).

In addition, we note that the original proposal from the Basel committee did not have any thresholds leaving the use of the SSA completely optional.

In summary, no change to IFR should be done so that investment firms are able to use the current version of K-NPR or ASA (without threshold) as an alternative.

We note also that EU institutions have been very aware of international divergence on FRTB and the impact on a level playing field between EU and third-countries. The Commission recognised that "*Institutions' trading activities in wholesale markets can easily be carried out across borders, including between Member States and third countries. The implementation of the final FRTB standards should therefore converge as much as possible across jurisdictions. The Commission should therefore monitor the implementation of those standards in other BCBS member jurisdictions*." Equal considerations should be taken into account for investment firms and recognition that there is no jurisdiction outside the EU (and the UK due to legacy) applying Basel type of rules to non-banks. This needs to be recognised and addressed appropriately. FIA EPTA intend to commission a report that would provide an overview of investment firms prudential regime outside the EU evidencing that the EU prudential regime is non-competitive. Based on the above, we urge the EBA to NOT amend IFR in order to introduce the Simplified Standardised Approach for investment firms. One solution would be to remove the direct reference in K-NPR to CRR and move the existing K-NPR methodology (without multipliers) in the IFR regulation itself.

As a final comment, we would like to reiterate that prudential regulations have a key impact on the functioning of capital markets and policies should be proportionate and should achieve the right balance between mitigating prudential risk while promoting low barriers to entry to allow for better competition between investment firms and prevent an unlevel playing field between EU and non-EU headquartered investment firms.

These considerations would be aligned with the EBA's mandate, under Recital 13 of the EBA Regulation, to take due account of the impact of its activities on competition and innovation within the international market, on the Union's competitiveness and on the Union strategy for growth, while at the same time ensuring the well-functioning and prudential safety of the financial system.

## 7. LIQUIDITY REQUIREMENTS

**Q18 Investment firms performing MiFID activities 3 and 6 (trading on own account and underwriting on a firm commitment basis) are more exposed to unexpected liquidity needs because of market volatility. What would be the best way to measure and include liquidity needs arising from these activities as a liquidity requirement?**

FIA EPTA believe that existing provisions under IFR, IFD and related provisions are adequate to cover liquidity risks taking into account the specificity of business activities of investment firms and that the scope of application of the liquidity framework should not be changed.

The EBA indicates that the current Pillar 1 liquidity requirement is limited to one month based on Article 43 IFR. However, the EBA failed to take into consideration that the Pillar 1 is only a "baseline scenario" and that investments firms are required to do their own assessment of liquidity requirements based on business model and are required to add any liquidity risk not sufficiently

covered by Pillar 1 into their Pillar 2. This firm assessment is underpinned by Article 29 IFD under which investment firms are required to have robust strategies, policies and processes in place, that shall include monitoring liquidity risk (including intra-day) and assessing liquidity shortages. Investment firms must also undertake an Internal Capital Adequacy and Risk Assessment process (ICARAP) which includes a detailed assessment of liquidity need, including liquidity assessment in time of stress.

Further, liquidity requirements vary greatly depending on activities (e.g. agency activity such as asset management vs non-agency activity) and within the same activity (e.g. for firms trading on own account) with the specific features of the trading profile (e.g. type of instruments traded e.g. listed vs non listed, equities or fixed income, end of day positions, long position vs hedged position etc). Liquidity requirements also depend on those events expected to be most relevant for each investment firm which would depend on the specific portfolio. It would therefore not be possible to calibrate a Pillar 1 requirement that would appropriately fit each investment firm, even within the same activity, leaving the existing firm specific assessment (Pillar 2) the most appropriate tool to capture idiosyncratic liquidity risk of investment firms.

Finally, we note that NCAs have clear supervisory tools to assess and enforce investment firms' liquidity risk, as rightly referred to by the EBA, through the SREP guidelines as well as the technical standards 2023/1651.

- The SREP guidelines mandates competent authorities to assess investment firms' liquidity needs including in stressed conditions.
- The technical standards detail the criteria that NCAs should consider when measuring whether liquidity risks of an investment firm are sufficiently covered by the liquidity requirement.

This framework applicable to investment firms subject to IFR/IFD allows NCAs to have a detailed view on investment firms' liquidity risks and gives NCAs the power to require firms to hold additional liquidity requirements should the base line scenario (Pillar 1) not be sufficient to cover the liquidity risk.

In summary, the existing requirements already require investment firms to add any liquidity risk not sufficiently covered by Pillar 1 into their Pillar 2, and grant the NCAs the mandate to evaluate the effectiveness of the liquidity risk management and risk controls of investment firms, and the supervisory powers to enforce such requirements.

In respect of section 173 in the DP, we note the intention of the EBA to clarify that short-term deposits would be one month. We can support this clarification provided that that the length of the short-term deposit remains aligned (consistent) with the liquidity requirements' horizon in Article 43 IFR.

**Q19.Investment firms performing the activities of providing loans and credit to clients as an ancillary service in a non-negligeable scale would be more exposed to liquidity risks. What would be the best way to measure such risk in order to take them into account for the purposes of the liquidity requirements?**

FIA EPTA does not have any comments.

**Q20 Investment firms, providing any of the MiFID services, but exposed to substantial exchange foreign exchange risk may be exposed to liquidity risks. What would be the best way to measure such risk in order to take them into account for the purposes of the liquidity requirements?**

We refer to the answer in Question 18. Liquidity requirements arising from FX risk would be taken into account in the investment firms Pillar 2 assessment.

### 7.4 Third country service and liquidity providers

**Q21. Are there scenarios where the dependency on service providers, especially in third countries, if disrupted, may lead to unexpected liquidity needs? What type of services such providers perform?**

FIA EPTA would welcome clarification on the context of the question and the issue that the EBA is trying to address. EU investment firms are already required to take into account, following scenarios and stress testing, any risk (including liquidity risk whether arising from EU or non-EU operations if relevant) not sufficiently covered under Pillar 2.

**Q22. Are there scenarios where the dependency on liquidity providers, especially in third countries, would lead to unexpected liquidity needs? Could you provide some examples?**

See our answer to Question 21.

### 7.5 Exemption under Article 43 of the IFR for small and non-interconnected investment firms

**Q23. What other elements should be considered in removing the possibility of the exemption in Article 43 of the IFR?**

FIA EPTA does not have any comments.

## 9. Interactions of IFD and IFR with other regulations

**Q24. Do you have any views on the possible ways forward discussed above concerning the provision of MiFID ancillary services by UCITS management companies and AIFMs?**

FIA EPTA does not have any comments.

### 9.1 Interaction of MiCAR and IFD/ IFR

**Q25. Are differences in the regulatory regimes between MICAR and IFR/IFD a concern to market participants regarding a level playing field between CASPs and Investment firms providing crypto-asset related services? In particular, are there concerns on the capital and liquidity requirement regimes?**

Our preference in this area is for prudential rules that are tailored to business type. The range of activities of a CASP is much more limited than those of a MiFID firm and the risk profiles also differ fundamentally. Converging their prudential rule-sets based on, as yet, unsubstantiated concerns about the 'level'-ness of the trading conditions risks losing valuable nuances in the rules. The presence of proprietary trading firms in this market will be key to its development and maturity in the EU, and it is because our member firms' function in the markets is different to the broader population of MiFID firms that we would therefore advocate for a narrow exemption permitting own account trading firms, namely those performing activity 3 in Annex 1, Section A of MiFID II, to apply the capital treatment set out in our response to Question 14 above.

The relevant texts should therefore clarify the overlap between the MiCAR and the IFD and whether the requirements under the IFD (including ICAAP and SREP) should also relate to crypto-asset services provided by an investment firm.

**Q26. Sections 5.2, 5.4 as well as this Section 9.1 all touch upon how crypto-assets (exposures and services) may influence the IFD and the IFR. Is there any other related element that should be considered in the review of the investment firms' prudential framework?**

FIA EPTA does not have any comments.

## 10. Remuneration and its governance

**Q27. Is the different scope of application of remuneration requirements a concern for firms regarding the level playing field between different investment firms (class 1 minus and class 2), UCITS management companies and AIFMs, e.g., in terms of the application of the remuneration provisions, the ability to recruit and retain talent or with regard to the costs for the application of the requirements?**

FIA EPTA believes that it is important to recognise the importance of supporting a level playing field while also acknowledging the diversity of investment firms captured under the new prudential regime. Although all investment firms share common features in that they are not credit institutions and do not lend or accept deposits, different types of investment firm business model lead to very different balance sheet sizes. These differences should be recognised when determining appropriate thresholds. Specifically, market makers will typically maintain low risk hedged portfolios but these can lead to relatively large gross balance sheets.

In respect of IFR, the balance sheet threshold (€100mn) that triggers the "enhanced" remuneration and governance rules has been calibrated for all investment firms, regardless of the business model, with no difference between agency business models that do not have a balance sheet and non-agency business models that have, by definition, a balance sheet. Although we appreciate the need to strike the right balance between simplicity and proportionality, the data collection done by EPTA shows that although the EBA intended that 10% of investment firms only be included in the enhanced governance and remuneration regime, more than 67% of proprietary firms (market makers) are in practice included (see Data 4 below). Our data collection also shows that the threshold should be increased to €1.75bn (see Data 5 below) in order to meet the original EBA intention to capture less than 10% of investment firms (Fig 3 below[2]).

The current calibration of the threshold has therefore unfairly and disproportionately impacted EU market makers, impacting the capacity to attract talent and to compete with other industries (e.g tech) or other jurisdictions that do not impose similar requirements.

The IFR review is therefore the opportunity for the EBA to reassess the calibration exercises done in 2017 in light of current market environment and additional information collected from NCAs and market participants from the review.

[2] Section 365 ANNEX TO THE EBA OPINION EBA-OP-2017-11

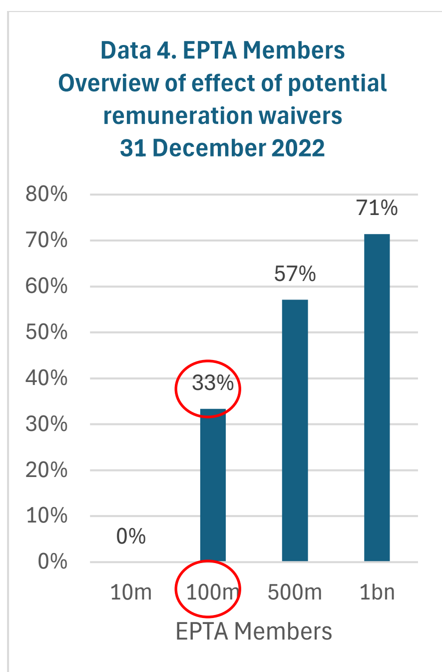
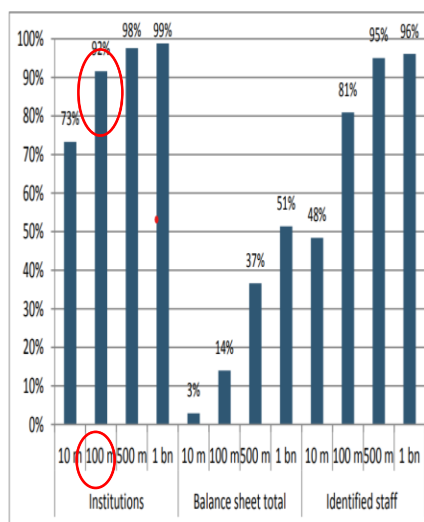



Figure 3: Overview of effect of potential remuneration waivers on the number of investment fi




**Q28.Are the different provisions on remuneration policies, related to governance requirements and the different approach to identify the staff to whom they apply a concern for firms regarding the level playing field between different investment firms (class 1 minus under CRD or class 2 under IFD), UCITS management companies and AIFMs, e.g. in terms of the application of the remuneration provisions, the ability to recruit and retain talent or with regard to the costs for the application of the requirements?**

FIA EPTA agrees that it is important to ensure a level playing fields between IFR/IFD firms, UCITS and AIFM firms where appropriate. The IFR/IFD review should include a re-review of the rationale underpinning IFR/IFD's remuneration provisions in order to ensure that any changes achieve the objective of promoting a sound and effective risk management culture while also ensuring that such measures are necessary, relevant given investment firms' business models, proportionate to their implementation cost and do not unnecessarily impact the ability of firms to recruit and retain talent.

In particular, the identification of Material Risk Takers ("MRT") under IFR/IFD should focus only on the function performed by the staff member and whether it has a material impact on the risk profile of a firm. In the context of investment firms, quantitative thresholds are not particularly relevant indicators, and a determination based on the actual function and actual risk would provide a more consistent and accurate outcome.

In addition, with regard to quantitative thresholds, the thresholds to classify someone as identified staff (currently under IFD the threshold is set at EUR 500,000 or anyone paid more than the lowest paid MRT) should therefore be aligned with AIFMD and UCITS, which do not specify a quantitative threshold. As an alternative, the threshold should at least be increased in line with CRD (which is now set at EUR 750,000 only in the revised CRD 6) given number of staff with no impact on the risk of the firm who may be well remunerated. In any event, the qualitative categories for investment firms, given their lesser systematic risk, should always be set at least at levels as high as those in CRD.

The current threshold is both not particularly well calibrated to investment firms' risks and business models, and places investment firms with strong technology capabilities at a competitive disadvantage to AIFMD/UCITS firms and to tech firms.

In addition, we believe that some of the remuneration provisions under AIFMD and UCITS are also more proportionate to the business model of investment firms and more appropriately aligned to the risks they pose than the requirements applicable to credit institutions. To that end we would suggest the following changes:

- The current requirement that firms obtain regulatory approval to exclude staff earning above EUR 750,000 from scope of identified staff should be removed to be consistent with AIFMD/UCITS.
- The minimum retention period for vested deferred remuneration should be removed in line with AIFMD/UCITS as the retention provisions in CRD are more appropriate, aligned to the time horizons of credit institutions' business models and position as entities that can expect state support.
- The prohibition on dividend payment should also be removed and aligned with AIFMD/UCITs which allows dividends to accrue but not be paid out.

In respect of class 1 minus firms, the automatic reclassification of investment firms above €15bn into CRR and CRD rules creates a significant unlevel playing for those investment firms that have been reclassified. Indeed, those reclassified firms would still be competing with other investment firms (i.e. notwithstanding the "prudential" reclassification, the business model would still be the same) and would not be able to attract and retain talent, mainly due to the presence of the bonus cap under CRD. The €15bn threshold is discussed in the consolidation section where we have recommended that the reclassification only results in the application of prudential requirements under CRR and not the governance and remunerations requirements that apply under CRD i.e. that these "reclassified" CRR firms stay under IFD for governance and remuneration requirements. These "CRR reclassified" firms would still be subject to a strong governance and remuneration framework (quasi-identical to the CRD framework) which is applicable under IFD to firms with a low balance threshold (€100mn which is materially lower than the balance sheet threshold applicable under CRD).

Finally, we would like to reiterate that requirements related to remuneration should be carefully assessed and implemented only to the extent that they are strictly necessary and proportionate as they materially impact the capacity to attract and retain talent in the EU. In this respect, the IFR/IFD requirements are not aligned with remunerations requirements imposed on investment firms outside the EU and put EU firms at a competitive disadvantage creating an unlevel playing firms with non-EU firms. Unnecessary or disproportionate remuneration requirements have unintended impact on the resiliency of firms as they inherently weaken firms' business model (as they become uncompetitive) and on the resiliency of the market where the regulatory framework does not support a diverse ecosystem (by disincentivising new entrants or incentivising existing firms to leave the EU market). This point is further developed in the Group Capital Test section.

**Q29. Are the different provisions, criteria and thresholds regarding the application of derogations to the provisions on variable remuneration, and that they apply to all investment firms equally without consideration of their specific business model, a concern to firms regarding the level playing field between different investment firms (class 1 minus under CRD and class 2 under IFD), UCITS**

**management companies and AIFMs, e.g., in terms of the application of the remuneration provisions, the ability to recruit and retain talent or with regard to the costs for applying the deferral and pay out in instruments requirements? Please provide a reasoning for your position and if possible, quantify the impact on costs and numbers of identified staff to whom remuneration provisions regarding deferral and pay out in instruments need to be applied.**

FIA EPTA does not have any comments.

**10.5 Oversight, Disclosure and Transparency on remuneration and remuneration policies**

**Q30. Are the different provisions regarding the oversight on remuneration policies, disclosure and transparency a concern for firms regarding the level playing field between different investment firm, UCITS management companies and AIFMs, e.g., with regard to the costs for the application of the requirements or the need to align these underlying provisions? Please provide a reasoning for your position.**

FIA EPTA supports the importance of a level playing field across investment firms, UCITS management companies and AIFMs on the assumption that these firms have comparable business models.

We believe that the IFR/IFD review is also the opportunity to review the benefit and usefulness of the remuneration disclosures exiting in different regimes.

It is FIA EPTA's views that stakeholders' use of Pillar 3 disclosures for firms that are not publicly listed is limited and that the use of the remuneration disclosures is even more limited (such that it is not particularly relevant for any risk based assessment of a firm). In addition, stakeholders in non-listed firms have limited or no direct means to exert influence over its risk profile (e.g. voting, resource allocation actions, or the provision of advice to influence the action of others). We would therefore encourage the EBA to review the suitability and proportionality of the existing remuneration disclosures rules when assessing the level playing fields between Investment firms, UCITS and AIFMs, bearing in mind the objectives of the disclosure rules generally. We further note that the time and effort for the preparation of these disclosures is not insignificant, particularly for smaller firms.

## 11. Other elements

**Q31. What would be costs or benefits of extending existing reporting requirement to financial information? Which other elements should be considered before introducing such requirement?**

All NCAs already require investment firms to submit financial information on a regular basis, however the nature of such reporting can differ significantly. For example, in Ireland investment firms regulated by the CBI are required to submit FINREP (which was a detailed reporting designed for banks), however in France, the ACPR require members to submit RUBA, a bespoke regime. The variation of reporting makes it more onerous and costly for investment firm groups to operate across the EU. There would be benefit in having a simple proportionate financial reporting regime to apply across the EU under IFR, providing this is not just simply FINREP (much of the reporting classifications are not relevant for investment firms). This would aid the EBA in making comparisons of financial data across member states on a like for like basis.

However, such a reporting regime should replace existing financial reporting obligations to NCAs and not be simply additive, as it is disproportionate to require investment firms to have multiple reports in different cuts of effectively the same financial information.

**Q32. Should there be the need to introduce prudential requirement for firms active in commodity markets and that are not currently subject to prudential requirements? how could the existing framework for investment firms be adapted for those cases? If a different prudential framework**

FIA EPTA does not have any comments on question 32. However, we would like to provide comments on section 11.3 (role of ESG factors in Pillar 1).

We note the EBA report on the role of environmental and social risks in the prudential framework with section 9 dealing specifically with investment firms. We agree with the preliminary views not to make any immediate recommendations regarding investment firms and the suggestion that the treatment of ESG risks remain under the Pillar 2 framework for all K-factors for now. We believe that any proposal for changes will be subject to a formal consultation and supported by data or other evidence to justify any changes.

We also note in the report the comment on K-CMG and believe as discussed in our current response that it is important that K-CMG is a credible alternative for investment firms and that any proposal that would further restrict the use of K-CMG should be carefully considered.