# IFD/IFR: BVI Position on the drafted compromise amendments of the ECON rapporteur

## Draft Compromise amendments – IFD

| IFD Article | Compromise amendments (ECON) | BVI proposal | Explanation |
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| **Definitions** | | | |
| 3(1)(17) | ./. | (17) 'investment firm' means investment firm as defined in Article 4(1)(1) of Directive 2014/65/EU ***which is authorised under that Directive, excluding a credit institution***; | **Urgent!** The new definition of investment firms within the new framework should be in line with the new definition of investment firms within the CRR (based on the amendment under Titel III, Article 60 paragraph 2(b) of the proposed IFR). Otherwise, credit institutions would also qualify as investment firms. |
| **Designation and powers of competent authorities** | | | |
| 4 | Draft Compromise A<br>(covering AMs 33-34) | Ok. | |
| **Initial Capital, References to initial capital in Directive 2013/36/EU, Indemnity insurance** | | | |
| 8<br>8a – new<br>8b - new | Draft Compromise B<br>(covering AMs 5, 37-38) | Ok. | |
| **Cooperation between competent authorities of different Member States** | | | |
| 11 | Draft Compromise C<br>(covering AMs 39-40) | Ok | |
| **Penalties, Investigatory powers and right of appeal** | | | |
| 16-21 | Draft Compromise D<br>(covering AMs 41-52) | Ok. | |
| **Assessment for the purposes of the application of this Section** | | | |
| 23 | Draft Comrpomise E (unchanged COM text)<br>(covering AMs 55-60) | Article 23(4) of the drafted IFD should be amended as follows:<br><br>4. Member States shall ensure that this Section is applied to investment firms on an individual basis ***or to investment firm groups*** at group level.<br><br>Member States shall ensure that ***investment firm groups*** subject to this Section implement the requirements of this Section in their subsidiaries that are financial institutions as defined in Article 4(13) of [Regulation (EU) ---/----[IFR], including those estab- | The intended scope of group regulation is not clear. It must be clarified that the group approach of the new framework is only focussed on investment firm groups because investment firms being part of a banking or insurance/reinsurance group are already in scope of the special group rules of the CRD or Solvency II Directive and in scope of the exemptions stated under Article 6 of the drafted IFR. An additional group regulation of investment firms within banking or insurance groups would cause disproportionate administrative burdens and could even lead to conflicting requirements and supervision.<br><br>According to the new group approach under the IFD, the internal governance, transparency, treatment of risks and remuneration requirements shall also apply to subsidiaries that are financial institutions as defined in Article 4(13) of the drafted IFR. This includes |

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| | | lished in third countries, unless the parent undertaking in the Union can demonstrate to the competent can demonstrate to the competent authorities that the application of this Section is unlawful under the authorities that the application of this Section is unlawful under the laws of the third country where those subsidiaries are established***, but excluding entities for which sector specific prudential requirements apply.*** | asset management companies (such as investment management companies authorised under the UCITS Directive or AIFMD). It must be clarified that the group context of the IFD does not apply to subsidiaries that are already subject to special prudential requirements (such as described under the AIFMD or UCITS Directive). |
| **Internal Governance** | | | |
| 24 | Draft Compromise F<br>(covering AMs 61-63)<br><br>4. EBA, in consultation with ESMA, shall ~~issue guidelines on~~ ***develop draft regulatory technical standards to specify the content of*** the application of the governance arrangements referred to in paragraph 1. ***EBA shall submit those draft regulatory technical standards to the Commission by [twelve months from the date of entry into force of this Directive].***<br>***Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.*** *(AM 61 Giegold)* | <br><br><br>4. **~~EBA~~ESMA**, in consultation with **EBA~~ESMA~~**, shall ~~issue guidelines on~~ ***develop draft regulatory technical standards to specify the content of*** the application of the governance arrangements referred to in paragraph 1. ***~~EBA~~ ESMA shall submit those draft regulatory technical standards to the Commission by [twelve months from the date of entry into force of this Directive].***<br>***Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.*** | In general, completely new regime for investment firms outside the banking requirements should be clearly required under guidance of securities regulators and authorities, especially ESMA. This applies all the more as long as ESMA already is the competent authority for supervisory internal governance rules in the meaning of the MiFID. |
| **Country-by-country reporting** | | | |
| 25 | Draft Compromise G<br>(covering AMs 6, 64-79) | Ok.<br>We support deleting the proposed country-by-country reporting. The intention of this kind of reporting was an outcome of the financial crises for banks to inform the public about their activities and earnings including tax savings of their branches within other countries. This situation is completely different and in no way comparable with the business of non-systemic investment firms and their branches. There is no obvious reason for such requirement for non-systemic investment firms. Moreover, this kind of disclosure would be a too burdensome and time-consuming exercise for investment firms. These efforts should be better be devoted to focus on the quality of services. | |

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| **Treatment of risks** | | | |
| 26 | Draft Compromise H<br>(covering AMs 7, 80-82) | Ok.<br>We expressly support deleting the proposed paragraph 4 of Article 26 IFD. The new IFD and IFR shall only apply to non-systemic investment firms. Hence, there is no need for implementation of rules which under the CRD/CRR are required for systemic credit institutions only (such as the obligation to establishing a remuneration committee or a risk management committee). This applies for the proposed rule that Member States shall determine which investment firms are considered “significant” in terms of their size, internal organisation and the nature, scope and complexity of their activities. This could lead to a new classification of investment firms outside European legislation with different approaches within Europe and would undermine the general assessment that the IFD and IFR should only apply to non-systemic investment firms. Moreover, it would also result in an unlevel playing field for non-systemic investment firms compared to non-systemic credit institutions, for which a similar categorisation of “significant” credit institutions does not exist under the CRD. It is of utmost importance that any new requirements for investment firms are not significantly stricter than those that currently apply under the CRD/CRR. | |
| **Remuneration policies – Draft Compromise I (covering AMs 8-11, 84-141)** | | | |
| 28(1) - introductory part | ./. | 1. Competent authorities shall ensure that investment firms, when establishing and applying their remuneration policies for ***those categories of staff, including*** senior management, risk takers, staff engaged in control functions and for any employee receiving overall remuneration equal to at least the lowest remuneration received by senior management or risk takers, and whose professional activities have a material impact on the risk profile of the investment firm ***or of the portfolios that it manages***, comply with the following principles: | As clarified in the Commission’s Staff Working Document and proposed by the EBA, the general remuneration requirements should be in line with the CRD requirements. Therefore, it is important to clarify that the remuneration principles must be established and applied for categories of staff only. The pro-posed wording of the Commission could be read in such a way that principles should be established for individual staff members. This would lead to a high administrative burden, and that would be – with regard to the non-systemic activities provided by investment firms – also not appropriate.<br><br>The proposed new wording “*or of the portfolios that it manages*” is in line with AM 85 (Giegold) and with the remuneration rules with those that apply under the UCITS Directive and AIFMD. It covers the special business models of portfolio managers which do not deal on own account. |
| 28(4) | 4. EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify appropriate criteria to identify the categories of individuals whose professional activities have a material impact on the investment firm's risk profile as referred to in paragraph 1. ***EBA and ESMA shall duly take into account Commission Recommendation 2009/384/EC of 30 April 2009 on remuneration policies in the financial services sector as well as existing remuneration guidelines under UCITS, AIFMD and*** | 4. **~~EBA~~ESMA**, in consultation with **EBA~~ESMA~~**, shall develop **~~draft regulatory technical standards~~ guidelines** to specify appropriate criteria to identify the categories of individuals whose professional activities have a material impact on the investment firm's risk profile ***or of the portfolios that it manages*** as referred to in paragraph 1. **ESMA and *EBA ~~and ESMA~~* *shall duly take into account the principles set out in Commission Recommendation 2009/384/EC of 30 April 2009 on remuneration policies in*** | The creation of additional legal rules (regulatory technical standards) with regard to identify the categories of staff is not justified for non-systemic investment firms. In particular, other than credit institutions, investment firms commonly have different risk profiles, based on differing client bases, risk appetites and risk horizons. Similarly, business models and categories of identified staff typically vary from those in credit institutions, and correspondingly investment firms can have different pay structures. A regulatory technical standard bears the risk of a “one-size-fits-all” approach which does not reflect the variety of business models and structures of investment firms. Therefore, it is sufficient to establish guidelines. This would be in line with the current approach under Article 75(2) CRD for categories of staff members providing MiFID services. This applies all the more as |

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| | ***MiFID II and aim to minimise divergence from existing provisions.*** *(AM 98 Ferber)* EBA shall submit those draft regulatory technical standards to the Commission by [*nine months from the date of entry into force of this Directive*]. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Article 10 to 14 of Regulation (EU) No 1093/2010. | ***the financial services sector, the size of the investment firms, their internal organisation and the nature, the scope and the complexity of their activities as well as existing remuneration guidelines under UCITS, AIFMD and MiFID II and aim to minimise divergence from existing provisions.*** ~~**EBA shall submit those draft regulatory technical standards to the Commission by [*nine months from the date of entry into force of this Directive*].**~~ ~~**Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Article 10 to 14 of Regulation (EU) No 1093/2010.**~~ | ESMA already established remuneration guidelines for MiFID investment services which could be amended, if necessary (https://www.esma.europa.eu/sites/default/files/library/2015/11/2013-606_en.pdf). Therefore, ESMA should be also responsible for establishing remuneration guidelines under the IFD. Moreover, it must be clarified that the guidelines shall take into account the principles set out in Recommendation 2009/384/EC because this is also in line with the general remuneration requirements of CRD, UCITS Directive and AIFMD. |
| 29 | Draft Compromise I | Ok.<br>Not relevant for BVI members. | |
| 30(1)(j) | (a) at least ~~50%~~ ***30%*** *(compromise between AM 10 by Rapporteur and AM 118 Torvalds)* of the variable remuneration shall consist of any of the following instruments:<br>(1) shares, or subject to the legal structure of the investment firm concerned, equivalent ownership interests;<br>(2) share-linked instruments, or subject to the legal structure of the investment firm concerned, equivalent non-cash instruments;<br>(3) additional Tier 1 instruments or Tier 2 instruments or other instruments which can be fully converted to Common Equity Tier 1 instruments or written down and that adequately reflect the credit quality of the investment firm as a going concern; | (j) **subject to the legal structure of the in-vestment firm or services provided,** at least [***30%***] of the variable remuneration shall consist of any of the following instruments:<br>(1) shares, or ~~**subject to the legal structure of the investment firm concerned,**~~ equivalent owner-ship interests;<br>(2) share-linked instruments, or ~~***subject to the legal structure of the investment firm concerned,***~~ equivalent non-cash instruments;<br>(3) additional Tier 1 instruments or Tier 2 instruments or other instruments which can be fully converted to Common Equity Tier 1 instruments or written down and that adequately reflect the credit quality of the investment firm as a going concern;<br>***(4) non-cash instruments which reflect the instruments of the portfolios managed; unless the management of the portfolios accounts for less*** | As a result of the cut and paste of CRD remuneration requirements which currently do not apply for portfolio managers with no authorisation to hold client money or securities belonging to clients or to deal on own account, the proposed requirements for the pay-out in instruments do not fit for the earnings and structures of such portfolio managers. In particular, other than credit institutions, portfolio managers have different risk profiles, based on differing client bases, risk appetites and risk horizons. Similarly, business models typically vary from those in credit institutions. Correspondingly portfolio managers have different pay structures for variable remuneration which is, to an extent, related to the performance of the portfolios managed and not related to the balance sheet of the investment firm. Moreover, in many cases, the variable remuneration of portfolio managers depends to a larger extent on fees paid in relation to the volume of the portfolio managed. Therefore, there is a need to complement the list of instruments with non-cash instruments which reflect the instruments of the portfolio managed, in particular for portfolio managers. The proposed amendment also takes the proportionality into account and is borrowed from the remuneration requirements of the UCITS Directive and AIFMD. |

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| | | ***than 50% of the total portfolio managed by the investment firm, in which case the minimum of [30%] does not apply***. | |
| 30(6)-(7) | 6. EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify the classes of instruments that satisfy the conditions set out in paragraph 1(j)(3).<br>EBA shall submit those draft regulatory technical standards to the Commission by [*nine months from the date of entry into force of this Directive*].<br>Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Article 10 to 14 of Regulation (EU) No 1093/2010.<br>7. ~~EBA, in consultation with ESMA, shall adopt guidelines facilitating the implementation of paragraph 4 and ensuring its consistent application.~~ *(AM 129 by the Rapporteur)* | **~~6. EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify the classes of instruments that satisfy the conditions set out in paragraph 1(j)(3).~~**<br>**~~EBA shall submit those draft regulatory technical standards to the Commission by [nine months from the date of entry into force of this Directive].~~**<br>**~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Article 10 to 14 of Regulation (EU) No 1093/2010.~~**<br>7. **ESMA** **~~EBA~~**, in consultation with **EBA** **~~ESMA~~**, shall adopt guidelines facilitating the implementation of paragraph ***1 and*** 4 and ensuring its consistent application. | The creation of additional legal rules (regulatory technical standards) with regard to the classes of instruments is not justified for non-systemic investment firms. In particular, other than credit institutions, investment firms commonly have different risk profiles, based on differing client bases, risk appetites and risk horizons. Similarly, business models and categories of identified staff typically vary from those in credit institutions, and correspondingly investment firms can have different pay structures. A regulatory technical standard bears the risk of a "one-size-fits-all" approach which does not reflect the variety of business models and structures of investment firms. Therefore, it is sufficient to establish guidelines and to amend the content of the guidelines under paragraph 7 of the proposed Article 30. This applies all the more as double requirements could be avoided because ESMA already established remuneration guidelines for MiFID investment services which could be amended, if necessary (https://www.esma.europa.eu/sites/default/files/library/2015/11/2013-606_en.pdf). |
| 31 | Draft Compromise I | Ok. | |
| 32 | Draft Compromise I (unchanged COM text) | ***Should be deleted altogether.*** | This text is not in line with the new compromise text of Article 51 IFR. As long as the investment firm shall not be required to disclose these kind of data, there is no need to collect data in order to benchmark remuneration trends for reasons of avoiding systemic risk. |
| **Supervisory review and evaluation process (SREP)** | | | |
| 33, 34 | Draft Compromise J<br>(covering AMs 142-153) | Ok. | |
| **Supervisory measures, supervisory powers** | | | |
| 35, 36 | Draft Compromise K<br>(covering AMs 154-163) | Ok. | |
| **Additional capital requirements and Guidance on capital adequacy** | | | |
| 37, 38 | Draft Compromise L<br>(covering AMs 164-178) | Ok. | |

| Assessment of third countries' supervision and other supervisory techniques | | | |
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| 51 | Draft Compromise M – unchanged COM text<br>(covering AM 185-190) | 1. Member States shall ensure that where an investment firm, the parent undertaking of which has its head office in a third country, is not subject to effective supervision at group level, the competent authorities assesses whether the investment firm is subject to supervision by the third-country supervisory authority which is equivalent to the supervision set out in this Directive and in Part One of [Regulation (EU) ---/----[IFR].<br>2. Where the assessment referred to in paragraph 1 concludes that no such equivalent supervision applies, Member States shall apply the provisions set out in this Directive and [Regulation (EU) ---/----[IFR] to the investment firm or shall allow for appropriate supervisory techniques which achieve the objectives of supervision regarding compliance with the group capital test set out in [Regulation (EU) ---/----[IFR]. ~~**Those supervisory techniques shall be decided by the competent authority which would be the group supervisor had the parent undertaking been established in the Union, after consultation with the other competent authorities involved.**~~ Any measures taken pursuant to this paragraph shall be notified to the other competent authorities involved, to EBA and to the Commission.<br>~~**3. The competent authority which would be the group supervisor had the parent undertaking been established in the Union may, in particular, require the establishment of an investment holding company or mixed financial holding company in the Union and apply Article 7 of**~~ | Article 6 of the IFD foresees an assessment process of the third countries' supervision and supervision techniques in the case of investment firms belonging to a group and the parent undertaking of which has its head office in a third country. Paragraph 2 referring to the national authority that shall assess the supervision by the third-country supervisory authority and apply when necessary appropriate supervisory techniques, after consultation with the other competent authorities involved, identifies as the competent national authority the one which would be the group supervisor had the parent under-taking been established in the Union. However, given that the parent undertaking in the case of this article is not established in the Union, we fail to understand how this provision should work. We therefore propose to delete it.<br>Moreover, we question the possibility for a national competent au-thority to require the establishment of an investment holding compa-ny or mixed financial holding parent company in the Union, both from a legal and a practical point of view. We fully supports the need for sufficient transparency on the supervision, however we consider that as drafted this provision could hinder the provision of invest-ment management and advisory services offered to EU-based cli-ents from third country jurisdictions. We, therefore, propose to delete this provision. |

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| | | ~~**[Regulation (EU) ---/----[IFR] to that investment holding company or that mixed financial holding company.**~~ | |
| **Delegated and implementing acts** | | | |
| 56(1) | ./. | Article 56(1) should be amended as follows:<br><br>1. The Commission shall be assisted by the European **Securities** ~~**Banking**~~ Committee established by Commission Decision **2001/528/EC** ~~**2004/10/EC44**~~. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011. | As long as the new prudential requirements shall apply for investment firms outside the banking requirements, the Commission shall be assisted by the European Securities Committee. |
| **Changes to CRD** | | | |
| 57 | Draft Compromise N<br>(covering AM 12-13, 191-195) | Ok. | |
| **Changes to MiFID** | | | |
| 58, 58a - new | Draft Compromise O<br>(covering AM 196-200) | Ok. | |
| **Review clause** | | | |
| 60 | Draft Compromise P<br>(covering AMs 201-205)<br><br>By [*three years after the date of application of this Directive and Regulation (EU) ---/---- [IFR]*] the Commission, in close cooperation with EBA and ESMA, shall submit a report, together with a legislative proposal if appropriate, to the European Parliament and to the Council, on the following:<br>(b) the provisions on remuneration in this Directive and in Regulation (EU) ---/---- [IFR] ***as well as in UCITS and AIFMD with the aim to achieve a level playing field for all investment firms active in the Union***; *(AM 202 Giegold)*;<br>***(aa) if the taxonomy on sustainable finance [add reference to legal text once available] has been finalised an assessment on whether any environmental, social, or governance risks shall be included into the su-*** | By [*three years after the date of application of this Directive and Regulation (EU) ---/---- [IFR]*] the Commission, in close cooperation with EBA and ESMA, shall submit a report, together with a legislative proposal if appropriate, to the European Parliament and to the Council, on the following:<br>(a) the provisions on remuneration in this Directive and in Regulation (EU) ---/---- [IFR] ~~***as well as in UCITS and AIFMD with the aim to achieve a level playing field for all investment firms active in the Union;***~~<br>***(aa) if the taxonomy on sustainable finance [add reference to legal text once available] has been finalised an assessment on whether any environmental, social, or governance risks shall be included into the supervisory review and evaluation process;***<br>***(ab) the appropriateness of reporting an disclosure requirements in this Di-*** | A review of remuneration requirements under the UCITS Directive and AIFMD should be covered by these sector specific Directives only. The scope of the IFD does not cover entities with a special licence under the AIFMD or UCITS Directive. However, the objective of a level playing field between portfolio managers with a MiFID licence only and managers of UCITS or AIF should be achieved by amending the remuneration requirements under the IFD in this framework and not at a later point in time.<br><br>Letter ab): Other than credit institutions, investment firms commonly have different risk profiles, based on differing client bases, risk appetites and risk horizons. Therefore, the review of the new prudential requirements based on rules established originally for banks should also involve the appropriateness of reporting and disclosure requirements. |

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| | ***pervisory review and evaluation process*** *(proposal by the Rapporteur)*<br>(c) the effectiveness of information-sharing arrangements under this Directive;<br>(d) the cooperation of the Union and Member States with third countries in the application of this Directive and of Regulation (EU) ---/---- [IFR];<br>(e) the implementation of this Directive and Regulation (EU) ---/----[IFR] to investment firms on the basis of their legal structure or ownership model. | ***rective and in Regulation (EU) ---/---- [IFR];***<br>(b) the effectiveness of information-sharing arrangements under this Directive;<br>(c) the cooperation of the Union and Member States with third countries in the application of this Directive and of Regulation (EU) ---/---- [IFR];<br>(d) the implementation of this Directive and Regulation (EU) ---/----[IFR] to investment firms on the basis of their legal structure or ownership model. | |

## Draft Compromise amendments – IFR

| IFR Article | Compromise amendments (ECON) | BVI proposal | Explanation |
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| **Definitions** | | | |
| 4 | Draft Compromise M<br>(Covering AMs 6-8, 59-65) | Ok. | |
| 4(1)20 | ./. | (20) 'investment firm' means investment firm as defined in Article 4(1)(1) of Directive 2014/65/EU ***which is authorised under that Directive, excluding a credit institution***; | **Urgent!** The new definition of investment firms within the new framework should be in line with the new definition of investment firms within the CRR (based on the amendment under Titel III, Article 60 paragraph 2(b) of the proposed IFR). Otherwise, credit institutions would also qualify as investment firms. |
| 4(1)(12)b) | ./. | 12) 'exposure' means the following:<br>(a) for the purposes of concentration risk limits, any asset or off-balance sheet item held in the trading book and not explicitly exempt under Article 40;<br>(b) for the purposes of reporting concentration risk, any asset or off-balance sheet item***, but excluding assets under management in the meaning of Article 17 paragraph 2 subparagraph 2;*** | **Urgent!** In avoiding any kind of double reporting of concentration risks, there is a need to exclude assets under management which are formally delegated to the investment firm. In particular, this applies for the reporting requirements in the meaning of Article 34(c) of the drafted IFR. |

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| **Exemptions** | | | |
| 6 | Draft Compromise N<br>(covering AMs 66-74) | Ok.<br>In particular, we support the extension of the exemptions regarding subsidiaries being part of an insurance group. | |
| **Group Capital Test and K-factor Consolidation** | | | |
| 7-8 | Draft Compromise O<br>(covering AMs 75-83 – no changes to COM proposal) | Ok. | |
| **Capital requirement** | | | |
| 11 | Draft Compromise P<br>(covering AMs 84-85) | Ok. | |
| **Small and non-interconnected investment firms** | | | |
| 12 | Draft Compromise A<br>(covering AMs 10 to 16 and 86 to 112) | Ok. | |
| 12(1) subpara. 2 (new) | ./. | **Regardless of the conditions set out in subparagraph 1, investment firms which are not authorised to provide the ancillary service referred to in point (1) of Section B of Annex I to Directive 2014/65/EU, which provide only one or more of the investment services and activities listed in points 1, 2, 4 and 5 of Section A of Annex I to that Directive, and which are not permitted to hold money or securities belonging to their clients and which for that reason may not at any time place themselves in debt with those clients, shall be deemed in any case as small and non-interconnected investment firm for the purposes of this Regulation.**<br><br>*(As an alternative, it should be at the national discretion of regulators or national authorities to decide if some rules of the new system should apply to limited licensed investment firms or not, taking into account the specific business models in each Member State.)* | There is a need for a simpler and more risk-based prudential regime for firms which are currently excluded from the CRR definition of "investment firm" (cf. Article 4(1)(2)(b) Regulation (EU) No 575/2013). These firms are not required to comply with the CRD/CRR framework completely because they are not authorised for holding client money or securities belonging to clients or to deal on own account (hereafter: limited licensed investment firms). The high number of new articles in the area of internal governance, transparency and reporting (more than 100 new articles) in contrast with the current CRD/CRR regime of only four articles to be applied to limited licensed investment firms, in addition to the revised MiFID and EMIR framework, creates a major regulatory and administrative burden for limited licensed investment firms. There is no need for introducing stricter prudential requirements as proposed for Class 3 firms under a new framework in order to reflect the business models of such firms and to capture the risks faced and posed by them. |
| **Fixed Overheads** | | | |
| 13 | Draft compromise B<br>(covering AMs 113 to 116) | Ok. | |
| **K-Factor and Capital Requirements** | | | |
| 15 | Draft compromise C<br>(covering AMs 17-18, AM 117-127) | Ok. | |

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| 16 to 20 | Draft compromise D<br>(covering AM 18-21 and 128-144) | Ok.<br>In particular, we support the drafted compromise under Article 20(2) IFR. | |
| 21 to 23 | Draft compromise E<br>(covering AMs 145 to 168) | Ok.<br>Not relevant for BVI members. | |
| 24 to 32 | Draft Compromise F<br>(covering AM 22 and 169 to 210 | Ok.<br>Not relevant for BVI members. | |
| **Concentration Risk** | | | |
| 33 to 41 | Draft compromise G<br>(covering AMs 211 to 218) | Ok.<br>Not relevant for BVI members. | |
| **Liquidity** | | | |
| 42(1) | An investment firm shall hold an amount of liquid assets equivalent to at least one third of the fixed overhead requirements calculated in accordance with Article 13(1). For the purposes of the first subparagraph, liquid assets shall be any of the following:<br>(a) the assets referred to in Articles 10 to 13 ***and 15*** of Commission Delegated Regulation (EU) 2015/61; *(AM 23 Rapporteur)*<br>(b) unencumbered cash;<br>***(ba) short term deposits at a credit institution giving the firm ready access to liquidity;*** *(AM 219 Ferber)*<br>***(bb) shares, depositary receipts, ETFs, certificates and other similar financial instruments, for which there is a liquid market in the sense of Article 14 of Regulation (EU) No 600/2014 on markets in financial instruments, subject to a haircut of 50%.*** *(AM 221 Ferber)*<br>***(bv) other financial instruments, for with there is a liquid market in the sense of Article 14 of Regulation (EU) No 600/2014 on markets in financial instruments, subject to a haircut of 50%.****(AM 222 Ferber)* | An investment firm shall hold an amount of liquid assets equivalent to at least one third of the fixed overhead requirements calculated in accordance with Article 13(1). For the purposes of the first subparagraph, liquid assets shall be any of the following:<br>(a) the assets referred to in Articles 10 to 13 ***and 15*** of Commission Delegated Regulation (EU) 2015/61;<br>(b) unencumbered cash;<br>(ba)***short term deposits at a credit institution or a bank authorised in a third country giving the firm ready access to liquidity or units or shares of money market funds in the meaning of Regulation (EU) 2017/1131***<br>***(bb )*** **shares, depositary receipts, ETFs, certificates and other similar financial instruments, for which there is a liquid market in the sense of Article 14 of Regulation (EU) No 600/2014 on markets in financial instruments, subject to a haircut of xx%;**<br>**(d) other financial instruments, for with there is a liquid market in the sense of Article 14 of Regulation (EU) No 600/2014 on markets in financial instruments, subject to a haircut of xx%;**<br>***(e) other units or shares of collective investment funds readily convertible to cash on short notice and which do not include speculative positions.*** | Letter ba) should be in line with Article 4(4) of the Delegated Directive (EU) 2017/593 (including money market funds and deposits at a bank authorised in a third country).<br><br>In ensuring an level playing field with the requirements of AIF asset managers (Article 9(8) of the Directive 2011/61/EU), investments of own funds in CIUs readily convertible to cash on short notice and which do not include speculative positions should be possible. |

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| 43 | 1. An investment firm may, in exceptional circumstances, reduce the amount of liquid assets held. Where such reduction occurs, the investment firm shall notify the competent authority without delay.<br>2. Compliance with the liquidity requirement set out in Article 42(1) shall be restored within 30 days of the original reduction.<br>***2a. EBA, in consultation with ESMA, shall issue guidelines to specify what constitutes as exceptional circumstances under paragraph 1.***<br>*(AM 223 Viegas)* | 1. An investment firm may, in exceptional circumstances, reduce the amount of liquid assets held. Where such reduction occurs, the investment firm shall notify the competent authority without delay.<br>2. Compliance with the liquidity requirement set out in Article 42(1) shall be restored within 30 days of the original reduction.<br>***2a. ESMA~~, in consultation with ES-MA,~~ shall issue guidelines to specify what constitutes as exceptional circumstances under paragraph 1.*** | In general, completely new regime for investment firms outside the banking requirements should be clearly required under guidance of securities regulators and authorities, especially ESMA. |
| **Disclosure and reporting** | | | |
| 51 | Draft compromise H<br>(limited to Article 51 – Remuneration policy and practices) | Ok.<br>In particular, we support the drafted compromise to limit the disclosure requirements for remuneration. The Commission's proposal does not take into account that the remuneration requirements currently applicable to institutions under the CRD are amended for investment firms in an appropriate and proportional manner under the drafted IFD. Therefore a need for the same level of disclosure as required for credit institutions is inconsistent. | |
| 51a (new) | Draft compromise H<br><br>***Article 51a - Investment policy***<br>***Investment firms shall disclose the following information regarding their investment policy, in accordance with Article 45:***<br><br>***(a) the participation rate for all direct and indirect holdings where beneficial ownership exceeds 5% of any class of voting equity securities, broken down by Member State and sector;***<br>***(b) the voting behaviour at shareholders' meetings, in particular the percentage of approval of proposals put forward by the management of the entities held according to (a), and the recurrence to proxy advisor firms.*** | **Should be deleted.**<br>We are concerned that the proposal tries to address an issue which has not yet properly discussed (1), imposes burdens on small asset managers which should not be captured (2), is ambiguous and overlaps with existing regulation (3).<br>**(1) Objective:** The disclosure requirements shall according to the proposal provide a level playing field with the US (SEC filing 13F). It seems motivated by a general discussion of an alleged detrimental influence of institutional investors who hold minority stakes in multiple companies active within the same industry (so called Common Ownership). In recent months, Common Ownership has come under increased scrutiny in the context of merger control. In February of 2018, Margrethe Vestager said that the European Commission is 'carefully' looking into the matter and has begun investigating the extent to which common ownership actually exists. In June 2018 Vestager announced to publish a report with the first findings at the end of the year. With other words: Discussions around this topic are at a very first stage and any research on Common Ownership falls short of providing robust evidence of detrimental effects, or a plausible causal mechanism. Furthermore, shareholder engagement is perceived (also politically) as cornerstone of Corporate Governance, thereby addressing the "G" of ESG considerations. **Disclosure rules in this respect are hence premature.** Rather, a genuine political discussion is required in order to have a clear political view on the conflict of objectives between shareholder engagement and institutional investor's influence on Corporates using existing disclosure in order to assess alleged problems.<br>**(2) Scope:** Smaller MiFID firms would be addressed by all disclosure requirements regarding voting behavior, investor meetings and potentially specific voting guidelines. If the intention is a level playing field with the US, all disclosure rules need to have a certain minimum holding as pre-requisite. This would also be more consistent with the intention of the rule: provide for transparency of significant influence. | |

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| | *(AM 248, 249, 252 Giegold)* | **(3)** At least the following **wording** is unclear or overlaps with existing regulation:<br>• “holdings”: SEC filing 13F focusses on listed securities. Likewise the discussion about the alleged influence of larger asset managers focusses on listed securities. Holdings generally include both equity and non-equity as well as listed and non-listed. Since the disclosure focusses on voting rights and deals with alleged influence on listed companies, listed equity investments are meant.<br>• “beneficial ownership”: Is likely to be different from the AML-Directive where beneficial ownership refers to person(s) who ultimately owns or controls. Is possibly different from the holder of voting rights (or of financial instruments granting access to voting rights) who is obliged to disclose holdings of e.g. 5% according to the Transparency Directive. Also, the Transparency Directive provides for attribution of voting rights including in case they are deposited with a person or entity which can exercise them at its discretion in the absence of specific instructions – something which is very similar to the situation form 13F is used for.<br>• “sector”: there is no clear understanding how the sectors are determined.<br>• “voting behaviour at shareholders’ meetings: The revised Shareholders Rights Directive (SRD II) provides for a disclosure requirement also for MiFID firms regarding an engagement policy and how this has been implemented including an explanation of the most significant votes and the use of proxy advisors (Art. 3g (1)). SRD II has not yet been implemented, hence its effects cannot yet be evaluated.<br>• Investor meetings: SRD II requires a policy on conducting dialogues with investee companies as well as disclosure on how this engagement policy has been implemented. SEC filing 13F does not include such detailed information.<br>• Disclosure of voting guidelines: SRD II requires disclosure of voting policy also for MiFID firms. Asset managers generally do not have specific voting guidelines for each equity holding but rather general voting guidelines which are assessed against the proposals put forward by the management as a basis for the voting decision. Asset manager should not be required to disclose such analysis and decision prior to the shareholder meeting. Otherwise, issuers could easily orchestrate the outcome of a shareholder meeting which might not always be in all shareholders’ interest. | |
| **Transitional provisions and Review Clause** | | | |
| 57 to 59 | Draft Compromise I<br>(covering AMs 260 to 272) | Ok. | |
| 56 | ./. | 1. The Commission shall be assisted by the European ~~**Banking**~~ ***Securities*** Committee established by Commission Decision ~~**2004/10/EC44**~~ ***2001/528/EC***. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council. | As long as the new prudential requirements shall apply for investment firms outside the banking requirements, the Commission shall be assisted by the European Securities Committee. |
| **Change to CRD/CRR** | | | |
| 60 | Draft Compromise J<br>(covering AMs 273 to 290) | Ok. | |

| **Changes to MIFIR** | | | |
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| 61(1)(1) new<br>63(2a) new<br>Recital 42a new | Draft Compromise K – tick size regime (covering AMs 27, 57, 58, 291 to 293 and 335 to 337)<br><br>***The title of Title III is replaced by the following:***<br>***"***TRANSPARENCY FOR SYSTEMATIC INTERNALISERS AND INVESTMENT FIRMS TRADING OTC ***AND TICK SIZE REGIME FOR SYSTEMATIC INTERNALISERS"***<br><br>**Article 61 - paragraph 1 - point - 1a (new)**<br><br>***The following Article 17a is inserted:***<br><br>***Article 17a***<br>***Tick sizes***<br><br>***Systematic internalisers' quotes, price improvements on those quotes and execution prices shall comply with tick sizes set in accordance with Article 49 of Directive 2014/65/EU.***<br>*(AM 27 Rapporteur, AM 291, 292 Giegold, AM 293 Delvaux/Berès)*<br><br>**Article 63 - paragraph 2a (new)**<br><br>***Notwithstanding paragraph 2, Article 61(1), point -1 (new) shall apply 20 days after publication of this Regulation in the Official Journal of the European Union.***<br>*(AM 336 Ferber, AM 337 Delvaux)*<br><br>**Recital 42a (new):**<br>***(42a) With the aim of guaranteeing a level playing field and promote the transparency of the European market,*** | Draft Compromise K – tick size regime (covering AMs 27, 57, 58, 291 to 293 and 335 to 337)<br><br>***The title of Title III is replaced by the following:***<br>***"***TRANSPARENCY FOR SYSTEMATIC INTERNALISERS AND INVESTMENT FIRMS TRADING OTC ***AND TICK SIZE REGIME FOR SYSTEMATIC INTERNALISERS"***<br><br>**Article 61 - paragraph 1 - point - 1a (new)**<br><br>***The following Article 17a is inserted:***<br><br>***Article 17a***<br>***Tick sizes***<br><br>***1. Systematic internalisers' quotes, price improvements on those quotes and execution prices shall comply with tick sizes set in accordance with Article 49 of Directive 2014/65/EU unless the conditions set out in Article 15(3) apply. Waivers for equity instruments pursuant to Article 4 shall apply mutatis mutandis.***<br>***2. Paragraph 1 only applies to quotes pursuant to Article 14.***<br><br>*Article 14 paragraph 2 is replaced by the following:*<br><br>***2. This Article and Articles 15, 16, 17 and 17a shall apply to systematic internalisers when they deal in sizes up to standard market size. Systematic internalisers shall not be subject to this Article and Articles 15, 16, 17 and 17a when they deal in sizes above standard market size.***<br><br>**Article 63 - paragraph 2a (new)** | We recognize the intention to create a level playing field between SIs and trading venues. However, over-applying the tick size regime would not serve its purpose, artificially constrain actual price formation and market transparency and risk arbitrarily and unnecessarily penalising investors in certain transactions. From a buy-side perspective trades executed on SIs which are above Standard Market Size (SMS) or that are non-price forming should not be subject to the tick size regime.<br><br>While trading venues must ensure that all orders entered onto their systems comply with the tick size regime, they may still conclude transactions at the midpoint, e.g. for large negotiated trades. If SIs were subject to the tick size regime when dealing in sizes above SMS, SIs not only would have a disadvantage, but it would also deprive investors from access to meaningful and differentiated risk liquidity that may not be available on a trading venue. It is also essential that institutional investors seeking execution of large orders can do so at the midpoint of the Bid-Ask spread. The midpoint is understood and accepted globally as a fair execution price, and European markets would be materially harmed (and out of step with global markets) should the ability to execute at the midpoint be constrained.<br><br>Applying the tick size regime for trades above SMS may inhibit appropriate price formation between SIs and clients agreeing trades in large sizes. The ability to execute large trades on a sub-tick basis provides meaningful price improvement for clients trading in large sizes which bring benefits to end investors. Removing this capacity would amount to the regulation enforcing a bias against end investors (e.g. pensioners' funds) who wish to trade in larger sizes. Indeed, some investors would lose whilst others would gain, depending on how rounding rules were applied.<br><br>Institutional investors may wish average price executions, for example if they are targeting a stock in considerable size (e.g. when it is included in an index that the fund has to track) without causing a movement on the market. In those instances, they will request that their broker, typically in its capacity as an SI, enters the market and starts buying up the stock incrementally, tracking available liquidity at the average price of that liquidity at any given point in time over a certain period. Since this reflects an average price of available liquidity, it will in most cases not be at a round |

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| | ***Regulation (EU) No 600/2014 should be amended to subject systemic internalisers' quotes, price improvements and executions ~~s~~ prices to the tick size regime when dealing in all sizes***<br>*(AM 57 Ferber, Am 58 Delvaux/Bérès)* | ***Notwithstanding paragraph 2, Article 61(1), point -1 (new) shall apply 20 days after publication of this Regulation in the Official Journal of the European Union.***<br><br>**Recital 42a (new):**<br>***(42a) With the aim of guaranteeing a level playing field and promote the transparency of the European market, Regulation (EU) No 600/2014 should be amended to subject systemic internalisers' quotes, price improvements and executions ~~s~~ prices in sizes up to standard market size to the tick size regime ~~when dealing in all sizes.~~*** | tick. Thus, guaranteed benchmark executions and other non-price forming transactions reflecting an average price achieved in the market naturally result in executions that do not conform to a tick table. A restriction to round ticks on these executions forces favouring of one set of investors and disadvantaging another and imposes on these investors needless cost, while providing no benefit to market transparency. |
| 61 | Draft compromise L<br>Regulation (EU) No 600/2014 is amended as follows:<br><br>(59) Article 46 is amended as follows:<br>(-a) paragraph 1 is replaced by the following:<br>"1. A third-country firm may provide investment services or perform investment activities ***listed in points (1), (2), (4), (5), (7), (8) or (9) of Section A of Annex I to Directive 2014/65/EU*** *(AM 28 Rapporteur)* with or without any ancillary services to eligible counterparties and to professional clients within the meaning of Section I of Annex II to Directive 2014/65/EU established throughout the Union without the establishment of a branch where it is registered in the register of third-country firms kept by ESMA in accordance with Article 47." | Draft compromise L<br>Regulation (EU) No 600/2014 is amended as follows:<br><br>(59) Article 46 is amended as follows:<br>(-a) paragraph 1 is replaced by the following:<br>"1. A third-country firm may provide investment services or perform investment activities ***listed in points (1), (2), (3), (4), (5), (7), (8) or (9) of Section A of Annex I to Directive 2014/65/EU*** *(AM 28 Rapporteur)* with or without any ancillary services to eligible counterparties and to professional clients within the meaning of Section I of Annex II to Directive 2014/65/EU established throughout the Union without the establishment of a branch where it is registered in the register of third-country firms kept by ESMA in accordance with Article 47." | EU fund and asset managers often use third country SI services when trading with non-EU assets or currencies. It can also be commercially attractive to enter into OTC derivative transactions with counterparties from third countries if those are better able to hedge the corresponding risk and thus are able to offer the best conditions. Trading on own account with eligible counterparties and professional clients from the EU should thus not be further restricted in order to maintain the competitiveness of the EU fund and asset management industry and to avoid higher costs for EU end investors. The extension of the equivalence assessment as proposed in the amendments to Art. 47 (1) MiFIR provides sufficient safeguards in this regard. |