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Frankfurt am Main,
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BVI[1] position paper on a new prudential framework for MiFID investment firms

The Commission launched a review of the prudential requirements of investment firms in the EU with the following objective[2]:

> *"The objective of the review is to comprehensively evaluate and, where necessary, revise the way in which capital, liquidity and other key prudential requirements apply to investment firms in the EU. It is included in the Commission's Work Programme as a REFIT-exercise mandated by Articles 493(2), 498(2), 508(2), and 508(3) of Regulation (EU) No 575/2013 (Capital Requirements Regulation, CRR) in recognition of the fact that the current framework, which is largely focused on credit institutions, is not fully suited to all investment firms. It covers all investment firms including those identified as global or other systemically important institutions in accordance with Article 131 of Directive 2013/36/EU (Capital Requirements Directive, CRD). The review is carried out in consultation with the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA). More broadly, it forms part of the initiatives of the Commission to ensure a strong and fair Single Market with a well-functioning financial system to boost growth and jobs."*

We welcome the initiative to evaluate the appropriateness of existing prudential requirements applicable to investment firms under the CRR and CRD IV. The extraordinary number of regulatory reforms in the banking sector in the aftermath of the 2008 financial crisis has resulted in a complex legal system that is largely focused on credit institutions and that therefore requires a range of specific exemptions for non-bank entities like investment firms. **We therefore support the Commission's proposal to introduce a separate new framework in the form of a directly applicable Regulation for investment firms outside the banking requirements.** This could lead to better regulation which simplifies the application and implementation of the prudential requirements for investment firms. Separate prudential requirements, moreover, would allow a targeted supervisory process focused on the risks arising from the activities of investment firms.

The EBA informed investment firms and stakeholders on the state of play of its Advice on the design of a new prudential framework for MiFID investment firms in London on the 3 July 2017. We are aware that the findings and conclusions that are presented[3] by EBA are only preliminary policy recommendations. However, we would like to take the opportunity to highlight the need for the following clarifications and amendments.

I. Scope of a new prudential regime of MiFID investment firms

A new Regulation should apply to all investment firms in the meaning of the CRR and firms defined in Article 4(1) No (2) (b) and (c) CRR (all together, hereinafter "MiFID investment firms"). This approach would create a clearer distinction between the prudential requirements of credit institutions and MiFID investment firms.

[1] BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Fund companies act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI's over 100 members manage assets of nearly 3 trillion euros for private investors, insurance companies, pension and retirement schemes, banks, churches and foundations. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.

[2] Cf. Inception Impact Assessment of the Commission, Ref. Ares(2017)1546878 - 22/03/2017.

[3] Available under the following link: http://www.eba.europa.eu/documents/10180/1893297/Presentation+Investment+Firms+-+Public+hearing+3+July+2017.pdf/4b85c6fa-99fc-4463-8763-c9d748a940ef.

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Given that the Commission is referring to EBA's previous work[4], we would like to stress the following point: We strongly disagree with the EBA's view that the new framework will also be relevant for UCITS management companies or AIF managers authorised to conduct certain MiFID services or activities. The prudential requirements of UCITS or AIF management companies are conclusively regulated by Directive 2009/65/EC ("UCITS Directive") and Directive 2011/61/EC ("AIFMD"). These requirements reflect the specific risks of their special business models irrespective of whether or not they also provide MiFID services.

Moreover, we have noted that any persons for whom the MiFID does not apply (irrespective of whether there are of reasons of legal exemptions in the meaning of Article 2 of the MiFID or optional exemptions in the meaning of Article 3 of the MiFID) are also out of scope of new prudential requirements for MiFID investment firms.

II. Categorisation of MiFID investment firms

In general, one of the more specific challenges would be the question to what extent a new Regulation should apply to MiFID investment firms. MiFID investment firms have different business models and risk profiles based on differing client bases, risk appetites and risk horizons. The current prudential requirements of the CRR distinguish between eleven categories of MiFID investment firms, classified by the provided investment services and authorisation. The new proposal of the EBA with only three categories of MiFID investment firms could lead indeed to a simpler prudential regime. On the other hand, such an across-the-board approach could not be appropriate to consider the special business models and risks arising from the activities provided by the MiFID investment firms.

Germany, in particular, represents about 700 MiFID investment firms, accounting for nearly one quarter of all firms affected by the new initiative. The vast majority of these firms (about 600) is excluded from the CRR definition of "investment firm" and not required to comply with the CRD IV framework completely because they are not authorised to hold client money or securities belonging to clients or to deal on own account. According to the EBA's analyses of the population of MiFID investment firms by category there are a total of about 870 MiFID investment firms in the EU with such a limited license. Germany, therefore, is the biggest market in this field. It is of the utmost importance to carefully analyse whether the current regime applicable to MiFID investment firms with such a limited license under the CRR and CRD is workable and effective.

In our view, there is no need for introducing stricter prudential requirements under a new Regulation in order to reflect the business models of such firms and to capture the risks faced and posed by them. Bearing in mind that the vast majority of these limited-licensed firms are relatively small sized firms and effective supervisory practices are already in place, it is questionable whether a modified regime should be enforced without practical need at this stage. **Therefore, we would like to request the EBA and the Commission to clarify that limited-licensed firms are generally qualify as Class 3 investment firms for which only initial capital requirements and minimum levels of fixed overheads requirements (FOR) apply.** Because they are already subject to specific obligations relating to conduct, organisation and reporting under the MiFID and EMIR, there is no need to overrule additional governance requirements established under the CRD for these firms. As an alternative, this could also call for an approach that the national regulators or national authorities should have the power to decide if some

[4] Cf. Inception Impact Assessment, Section D, "Consultation Strategy".

rules of the new system should apply to limited-licensed MiFID investment firms or not, taking into account the specific business models in each Member State.

However, with regard to the proposals presented by the EBA at the 3 July 2017, we would like to make the following remarks:

- **Class 1 MiFID investment firms:** EBA proposes that large or systemic investment firms should be categorised as Class 1 investment firms for which the full CRD/CRR requirements should be applied. EBA intends to recommend that dedicated Level 2 regulation should be developed for the identification of systemic investment firms (Class 1) taking their specificities into account.

  In this context, we do not share the EBA's concerns[5] that large investment firms that grow into systemically important firms would have to switch regimes. We also strongly disagree with the blanket assertion insinuated in the impact assessment of the European Commission that the current framework is not fully sensitive to risks as MiFID investment firms grow, e.g. if firms' liabilities to clients increase in terms of the amount of their assets which they hold.

  The size of a MiFID investment firm or the amount of the assets it manages is no suitable criterion to evaluate systemic risks and, as a consequence, it is not appropriate to stipulate which prudential requirements should apply. This applies all the more for asset managers. They manage the assets of their clients as trustees and as such do not enter into financial market transactions on their own books. The amount of assets managed by an asset manager, therefore, does not give an indication on whether potential systemic risks could materialise. We would like to highlight that the FSB strongly supports this view in its policy recommendations to address structural vulnerabilities from asset management activities published in January 2017.[6] While the proposed FSB recommendations for operational risk (published in 2016) focused on asset managers that are large, complex and/or provide critical services, the FSB changed its view fundamentally: The final recommendation on operational risks only calls for comprehensive and robust risk management frameworks and practices to all asset managers commensurate with the level of risks their activities may pose to the financial system. The size and the services provided by asset managers are no longer an issue.

  The criteria used for the purpose of identifying Global Systemically Important Institutions (G-SIIs) and Other Systemically Important Institutions (O-SIIs)[7], in this context, seem to be not designed to address the special business models and risks of asset managers' activities. We therefore propose to clarify that MiFID investment firms which provide investment services such as portfolio management, investment advice, the reception or transmission of orders in relation to one or more financial instruments or ancillary services such as safekeeping and administration of financial instruments for the account of clients (including custodianship and related services such as cash/ collateral management) are generally not classify as Class 1 investment firms.

[5] Cf. paragraph 179 of the EBA's Discussion Paper, Designing a new prudential regime for investment firms (https://www.eba.europa.eu/documents/10180/1647446/Discussion+Paper+on+a+new+prudential+regime+for+Investment+Firms+(EBA-DP-2016-02).pdf).

[6] http://www.fsb.org/wp-content/uploads/FSB-Policy-Recommendations-on-Asset-Management-Structural-Vulnerabilities.pdf.

[7] http://www.eba.europa.eu/documents/10180/930752/EBA-GL-2014-10+%28Guidelines+on+O-SIIs+Assessment%29.pdf/964fa8c7-6f7c-431a-8c34-82d42d112d91.

- **Class 2 and 3 MiFID investment firms**: EBA proposes that other non-systemic investment firms should be classified as Class 2 or Class 3 investment firms. Depending on the classification as Class 2 or 3 investment firm, a more tailored or a very simple prudential regime should apply. EBA intends to recommend that the categorisation should be based on specific thresholds for the various activities and services.

  According to the new proposal of the EBA presented in July in London, assets under management (AUM) and the assets under advice (AUA) should be relevant thresholds. If the sum of AUM and AUA and is higher than EUR 1.2 bn., the MiFID investment firms should be categorised as Class 2 investment firm (please see Recommendation 5a) of the EBA presentation). We request the EBA to clarify **Recommendation 5a)** that there is a need to clearly distinguish between MiFID services outside investment funds (discretionary services) and such services provided to collective investment undertakings such as UCITS or AIF or other discretionary portfolios by means of delegation agreements. This applies even more as investment management companies often delegate the portfolio management of investment funds to third parties (such as MiFID investment firms). We therefore appreciate that under the EBA's template[8], financial information about AUM exclude the value of those parts of the managed portfolios in respect of which the responsibility for the discretionary management has been formally delegated from another regulated firm (and which firm will include the value of the assets in question in its own asset under management total). This approach should be also taken into account for the purpose of the categorisation of MiFID investment firms.

  In this context, we request the EBA to use the correct wording for MiFID activities. In particular, the wording "asset management" used in **Recommendation 2b)** should be deleted and replaced by "discretionary portfolio management". Asset management is a more colloquial term used for both, discretionary portfolio management in the meaning of the MiFID and collective portfolio management in the meaning of the AIFMD and UCITS Directive.

III. Group context

The CRD/CRR and the Solvency II Directive already state comprehensive prudential requirements on group level including a respective consolidated supervision by the lead group regulator. Such prudential consolidation sufficiently addresses the potential group risks stemming from the operations and/or wind-down of individual MiFID investment firm subsidiaries. Therefore, we request the EBA and the Commission to clarify the following issues:

- **Recommendation 9** should be clarified respectively by including also specific references to insurance groups required under the Solvency II Directive. An additional regulation of investment firm-"only" (sub-) groups within banking or insurance groups would cause disproportionate administrative burden and could even lead to conflicting requirements and supervision. This is explicitly acknowledged for banking groups but not for insurance groups under Recommendation 9 of the EBA's presentation.

- **Recommendation 10** seems to be misleading, at least as regards its application to investment firm-only groups, and should be amended as follows:

[8] Cf. EBA's Instructions for data collection prudential framework investment firms, template for MiFID investment firms: https://www.eba.europa.eu/documents/10180/1901159/EBA+Data+Instructions+MiFID+IFs+-+supplementary.pdf.

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"Recommendation 10. An investment firm group subject to consolidated supervision **(that is not an investment firm-only group as referred to in Recommendation 8)** should apply the capital requirements at consolidated level. However, liquidity requirements ~~**should**~~ **may** be applicable at consolidated or sub-consolidated level **instead of their application at solo-level, but only** subject to **a respective** supervisory approval and the existence of centralised liquidity management functions. ~~**Concentration limits should apply at solo level.**~~ **If not specified otherwise in Recommendations 8, 9 or 10, the new prudential regime for investment firms should only apply on solo level of each EU investment firm in the group.**"

Sentence 1 requires that an investment firm group subject to consolidated supervision should apply the capital requirements at consolidated level. We understand paragraph 150 of the Discussion Paper, slide 9 of the July Presentation as well as Recommendation 8 that investment firm-only groups should only be subject to a group capital test as referred to in Recommendation 8 c), but not to capital requirements at consolidated level. As regards *sentence 2*, we understand that the application of liquidity requirements at consolidated or sub-consolidated level is an option that is subject to further requirements laid down in Sentence 2, but is not mandatory. Accordingly investment firms which are part of an investment firm group should be able to fulfill the liquidity requirements on solo level. *Sentence 3* seems to be too narrow since it only refers to concentration limits. At least for investment-firm only groups it should be made clear that such groups are only defined in order to apply the group capital test referred to in Recommendation 8 c), but not in order to apply prudential requirements on group level, e.g. reporting.

- **Recommendation 8 d)** and the **first sentence of Recommendation 9** should not only generically refer to investment firms, but to EU investment firms (see the last sentence of Art. 15 para. 1 CRR).

IV. Capital requirements

1. General remarks

MiFID investment firms with a limited license are only required to fulfill the capital requirements of Article 95(2) of the CRR. All of our members affected (and as far as we know also all other German firms with such a limited authorisation), in fact, currently apply the capital calculation method based on the fixed overheads required in Article 95(2)(b) CRR. An initiative for expanding the capital requirements of these firms can only be based on compelling reasons. We are not aware of such reasons.

The EBA's discussion paper[9] addresses in principle operational risks which should be covered by new capital requirements. We request the EBA and the Commission to assess which and in which amount operational risks could occur in the specific business models of MiFID investment firms with a limited license. The following analysis could be helpful:

- First of all, it should be acknowledged that clients' portfolios managed by limited-licensed MiFID firms are fully shielded against the insolvency of portfolio managers. Under the EU frameworks for UCITS and AIFs, all fund assets are ring-fenced and booked on accounts held by the appointed third-party depositary. The depositary function involves strict separation of assets throughout the custody chain and oversight of the property rights as regards assets which cannot be held in custody. These standards ensure that in the event of a fund manager's insolvency, the assets of all managed funds remain unaffected and are still available to investors. The same pertains to ac-

[9] https://www.eba.europa.eu/documents/10180/1647446/Discussion+Paper+on+a+new+prudential+regime+for+Investment+Firms+(EBA-DP-2016-02).pdf.

counts managed for individual investors. Also in this case, investors' assets are separated from the manager's own funds and administered by a third party being usually a credit institution. The portfolio manager issues instructions for dealing in client assets, but has otherwise no access to the relevant accounts. In the event of the manager's insolvency, the managed accounts remain unaffected and can be either transferred to another entity or further maintained with the administrator. Moreover, the management contract with the asset manager can be terminated by extraordinary notice due to the opening of the insolvency proceedings.

- As regards derivative contracts concluded on behalf of funds or individual clients, it is important to note that positions resulting from derivative contracts are adequately collateralised and therefore shielded from the risk of the manager's replacement. The strict collateralisation standards are in large parts resulting from the work of the FSB and other international organisations such as the BCBS and IOSCO. The impact of work undertaken at the international level is already tangible in practice, especially in relation to centrally cleared OTC derivatives. Under the EMIR framework in Europe, counterparties to OTC derivatives subject to central clearing must provide for initial margin and variation margin covering the relevant risk exposure from derivative contracts. The clearing requirements under EMIR are being incrementally extended to cover a broad range of OTC derivative contracts. Non-centrally cleared OTC derivatives are or will shortly be affected by comparable margining requirements following the BCBS/IOSCO principles. The phase-in period for collecting and posting initial margin and exchanging variation margin on those trades started on 1 September 2016.[10] Due to these requirements, positions from OTC derivatives held by funds/in individual accounts are or will in the near future be adequately collateralised and therefore can await orderly transition in case of changes in management. Hence, there should be no need to act under time pressure in closing-out and re-establishing derivative contracts even in stressed market conditions.

- With respect to the provision of ancillary services, it is more pertinent to think about obligation of service recipients to ensure that the relevant services can be obtained from other parties in emergency situations than to impose business continuity obligations on service providers. Pricing and valuation services, risk modelling services and other back office functions are being offered by portfolio managers, but more often provided by specialised firms not subject to specific regulation. Therefore, it seems more important from the systemic perspective that business continuity of asset managers and other regulated entities **as recipients** of such services is warranted by appropriate measures. In Europe, fund managers are required to ensure continuity and quality of delegated functions in case of termination of relevant contracts.[11] In practice, this means that they need to establish emergency plans for situations in which the appointed delegate fails to provide its services or the quality of services deteriorates below an acceptable level.

- The German supervisory authority (BaFin) has established a simple calculation and reporting sheet for limited-licensed firms.[12] It could be helpful to evaluate BaFin's data base whether or not the current CRR capital requirements have been fulfilled by MiFID investment firms with a limited license in the past.

[10] In Europe, the introduction of the initial margin requirements has been postponed by one year. However, the intention is to implement the standards for variation margin on time, i.e. by 1 March 2017 (cf. draft Commission Delegated Regulation on margin requirements for uncleared derivatives from 28. July 2016, Article 36 (2) for variation margin and (3) for initial margin)
[11] Cf. Article 75 g) of the Delegated Regulation (EU) 231/2013 (AIFMD Delegated Regulation).
[12] https://www.bafin.de/SharedDocs/Downloads/DE/Formular/BA/dl_140414_meldebogen_ek_anlage_ba.pdf?__blob=publicationFile&v=1.

- It should be considered whether or not and to what extent risks have materialised in the past. The German investor compensation scheme, for instance, compensated only 22 cases of a MiFID investment firm being unable to meet its obligations to its investor clients since 1999 until the end of 2016. Only a very limited number of these compensation cases with a very low amount of compensation were related to MiFID investment firms with a limited license.

- With regard to the German asset management sector, we have a good overview because many of our members provide us on a voluntary basis with data on losses deriving from operational risk occurrences. According to our experience based on the so called BVI's Operational Risk Database statistics, operational risks materialising in our membership amount to about average 30,000 Euro per year and company and over a period of the last five years.

Only in the case that there is a need to extend the current capital requirements to an approach based on **K-factors** to MiFID investment firms with a limited license, the forthcoming discussion should clearly distinguish between MiFID services outside investment funds (discretionary portfolio management) and such services provided to collective investment undertakings such as UCITS or AIF or other discretionary portfolios by means of delegation agreements. In particular, rigorous capital requirements which reflect the risks of management of investment funds are already in place for the management companies under the UCITS Directive and the AIFMD. The investment management companies are obliged to cover operational risks (such as professional liability risks) through additional own funds.[13] In particular, the investment management company is required to cover the risks arising from portfolio management through own fund requirements regardless whether the portfolio management is delegated or not. Consequently, portfolios that are managed under delegation are excluded from the own capital requirements of the investment management company that manages the investment funds' portfolios on a delegated basis. **Depending on the general need for additional K-factor based capital requirements, the same approach should apply if a MiFID investment firm acts as an asset manager for a UCITS or AIF on a delegated basis as long as the assets under management are taken into account to determine the risk-based capital requirements of the UCITS or AIF management company.**

2. Specific remarks with regard to the Recommendations drafted by the EBA

With regard to the proposals presented by the EBA at 3 July 2017 in London, we would like to make the following remarks:

- **Recommendation 14:** There is no obvious reason why deductions from regulatory capital should always be applied in full and should not be subject to any of the thresholds currently applied in the CRR. This would constitute an unfair disadvantage in particular to investment firms with financial sector subsidiaries compared to CRR regulated entities. Therefore at least holding related thresholds should be adequately applicable.

[13] Cf. Article 14 of the Delegated Regulation (EU) No 231/2013 of 19 December 2012, BaFin Circular 1/2017 on the mini-mum requirements of risk management for investment management companies.

- **Recommendation 26:** It is not sufficiently clear in which cases the K-AUM or the **K-GIA** applies for advisory services. Double impact has to be avoided.

  Moreover, it should be clarified that the **K-COE** does not apply to orders executed as part of the portfolio management services provided on behalf of clients. We understand the K-COE as a factor for the investment service of execution of orders on behalf of clients in the meaning of Annex 1 Section A (2) of the MiFID.

- **Recommendation 27**: We request the EBA to minimise the coefficient for K-AUM from 0.02 % to 0.01 %. This would be in line with Article 14(2) of the Delegated Regulation (EU) 231/2013 that requires the amount of own funds of managers of AIF for covering liability risks arising from professional negligence.

- **Need for risk mitigation measures:** Moreover, in evaluating any factors for calculation of own fund requirements also risk mitigating measures should be taken into account. The discussion is still focusing on any "risk-driving" factors while neglecting "risk-reducing" factors. We therefore propose to consider also risk mitigating factors such as capital commitments given within a group by the parent company or coverage of risks through insurances. Moreover, the approach stated in Article 14(4) of the Delegated Regulation (EU) No 231/2013 could also be appropriate. According to this approach, the competent authority may authorise the company to provide lower additional own funds if it is satisfied – on the basis of a historical loss data as recorded over an observation period of at least three years prior to the assessment – that the company still provides sufficient additional own funds to appropriately cover professional liability risks. Additionally, the relationship between K-factors (e.g. assets under management) and own fund requirements should be non-linear. Such an approach would meet the requirement of proportionality.

V. Other prudential requirements

All other requirements of the CRD and CRR with regard to liquidity, leverage, large exposure and corporate governance currently do not apply to MiFID investment firms with a limited license. Limited-licensed MiFID investment firms do not take investment risks (including liquidity risks) onto their balance sheets. Operational risk management standards with regard to the management of the clients' portfolios are already in place. The MiFID (and the future MiFID II) requirements already address the governance requirements in an appropriate manner. We therefore would like to point out the following issues:

1. Liquidity requirements

Recommendation 36: In our view, a more general approach without pre-defined list of liquid assets would be a better approach to determine the liquidity of assets which qualify as regulatory capital. Such an approach could be designed in a comparable manner as defined under the AIFMD. According to Article 9(8) of the AIFMD, own funds shall be invested in liquid assets or assets readily convertible to cash in the short term and shall not include speculative positions. Such an approach would give more flexibility and would reflect the different business models and activities of investment firms. However, if the EBA would prefer a list of pre-defined liquid assets, the list should include bank deposits and units of open-ended investment funds too, as these are liquid or readily convertible to cash on short notice. This would also reflect the current situation of MiFID investment firms. The alignment with the proposed HQLA list defined under the Delegated Act on LCR would lead to disproportional burden and organisational expenditure as eligible criteria are extensively referring to CRR regulations being not relevant in other respects (e.g. credit ratings). A more general approach without a pre-defined list of liquid assets would give more flexibility and would better reflect the different business models and activities of MiFID investment firms. In this context, we would like to draw the EBA's attention to the FAQ published by BaFin in which BaFin states which kinds of assets should be considered liquid in the meaning of Article 9(8) of the AIFMD.[14]

In any case liquidity needs must not trigger additional license requirements. In Germany, for example, the purchase and sale of financial instruments for own account which does not constitute trading on own accounts in the meaning of the MiFID investment service is also deemed to be a financial service requiring approval (proprietary business).[15]

2. Concentration risks

Large exposure risks associated with the activities of investment firms cannot be totally ruled out and should hence be subject to supervisory monitoring. However, the EBA should bear in mind that – unlike credit institutions – the typical activities of portfolio managers do not incur significant credit risks. Hence, the relevance of a large exposure regime (including a large exposure reporting scheme) for investment firms requires an in-depth discussion, particularly in light of the principle of proportionality. Therefore, **Recommendations 41-42** should be amended with proposals for exemptions for limited-license MiFID investment firms. The typical activities of these firms do not incur significant credit risk. Therefore, in this business area concentration risks (including reporting) have much less importance.

3. Remuneration

We disagree with **Recommendation 57** and the suggested indistinctive application of Articles 92 and 94 CRD to risk-takers of all Class 2 investment firms. The risk profiles of MiFID investment firms differ significantly depending on their activities. In particular for limited-licensed MiFID investment firms, the full application of the banking remuneration requirements is disproportionate to the risk profile of such firms. As the EBA states itself in its discussion paper, for many investment services the remuneration depends to a larger extent on fees paid. As regards the management of client assets, the specific risk appetite and framework is laid down in the investment management agreement with the client and determined by the client. Moreover, it must be noted that that all investment firms already comply with MiFID remuneration requirements and, as such, have remuneration policies in place that are appropriately considering the protection of consumers. Therefore limited-licensed firms should be treated like Class 3 firms (Recommendation 57 c)) or at least the different risk profiles of investment firms should be recognised in Recommendation 57 d) by a clarification that remuneration requirements should apply on a proportionate basis. Consequently, it should be clarified that the suggestion to consider a bonus cap should not apply to limited-licensed investment firms. For example, the German legislator requires MiFID investment firms with a limited license to fulfill the general remuneration requirements of the CRD (without identification of risk takers, without applying all pay-out rules). A bonus cap, moreover, does not apply. The current German approach, in our view, could be also appropriate at the European level.

[14] http://www.bafin.de/SharedDocs/Veroeffentlichungen/DE/FAQ/faq_anlage_Eigenmittel_160628.html.
[15] Cf. Article 1(1a) Sentence 3 of the German Banking Act.

VI. Transitional period

In case of extending the prudential requirements of limited-licensed MiFID investment firms, it is sufficient to implement a general transition period for the implementation (not limited to commodities firms as proposed by the EBA under Recommendation 54).

VII. Competent Authority

A completely new regime for MiFID investment firms outside the banking requirements should be clearly required under guidance of securities regulators and authorities, especially ESMA.

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