Frankfurt am Main,
4 September 2020

BVI[1] Position on the EBA's consultation paper (EBA/CP/2020/07) on Draft Implementing Technical Standards on reporting requirements for investment firms under Article 54(3) and on disclosure requirements under Article 49(2) of Regulation (EU) 2019/2033

We take the opportunity to present our views on the second consultation paper of the EBA related to the proposed Draft Implementing Technical Standard on reporting requirements for investment firms under Article 54(3) and on disclosure requirements under Article 49(2) IFR (**Draft ITS on reporting and disclosure**).

Germany represents about 700 MiFID investment firms, accounting for nearly one quarter of all European investment firms affected by the new IFD/IFR framework. The vast majority of these firms (about 600) is only authorised to provide MiFID services such as portfolio management, investment advice, reception and transmission of orders in relation to one or more financial instruments or execution of orders on behalf of clients without a licence 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 all concerned firms by category there are a total of about 870 investment firms in the EU with such a limited licence. Therefore, Germany is the biggest market in this field (about 70 per cent of such limited licence firms in the EU).

It is of utmost importance to carefully analyse whether the proposals applicable to firms with such a limited licence is workable, effective and proportionate, even in cases where they are classified as Class 2 firms which do not meet the conditions for qualifying as small an non-interconnected investment firms set out in Article 12(1) IFR. **This applies even more as all these limited licence firms are currently not required to disclose certain information under the CRR. The implementation of disclosure processes will therefore be a completely new requirement for them and will lead to an administrative effort that should be limited to the most necessary.**

Because these limited licence firms are not affected by the rules for reclassification of investment firms as credit institutions and monitoring of information related to thresholds for credit institution reporting requirements for investment firms under Article 55(5) IFR, we limit our response to the Draft ITS on reporting and disclosure as follows:

Reporting ITS

Own funds: level, composition, requirements and calculation

***Question 1**: Are the instructions and templates clear to the respondents?*

Yes, the instructions and templates are clear. It is very helpful that the instructions refer to the legal requirements.

[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. Asset Managers 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 114 members manage assets more than 3 trillion euros for retail investors, insurance companies, pension and retirement schemes, banks, churches and foundations. With a share of 23%, Germany represents the largest fund market in the EU. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.

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***Question 2**: Is the level of detail on small and non-interconnected investment firms' templates and instructions sufficient and proportionate for the level of activity of these firms?*

The level of detail on the reports for the small and non-interconnected investment firms (category 3 firms) seem appropriate based on what is asked by BaFin under the current CRR framework and what is required under the IFR.

Small and non-interconnected investment firms

***Question 3**: Are the instructions and templates IF 05.00 and IF 05.01 clear to the respondents?*

Yes, the instructions and templates are clear for the small and non-interconnected investment firms. It is very helpful that the instructions refer to the legal requirements.

K-Factor requirement

***Question 4**: Do the respondents identify any discrepancies between templates IF 06.01 - IF 06.13 and instructions and the calculation of the requirements set out in the underlying regulation?*

Generally, we see only the following minder discrepancies:

- For IF 06.01: The three most recent months are requested, whereas under Article 17 of the IFR the three most recent monthly values are excluded when calculating K-AUM.
- For IF 06.04: Eight months of data is requested, whereas the calculation only requires six months of data for calculating K-CMH. This point applies to all K-factors included within template IF 06.00.
- Table 06.11 in the IF 06.00 template: Should this table be populated with data relating to only the trading book exposures or should it include other data?

Concentration risk

***Question 5**: Do the respondents identify any discrepancies between templates IF 07.00 – IF 08.00 and instructions and the calculation of the requirements set out in the underlying regulation?*

According to the common understanding of our members, the reporting obligations regarding to concentration risks (Art. 54(2) IFR) do not apply to investment firms such as portfolio managers without a licence on dealing on own account. Because the definition of concentration risks in Article 4(1)(31) IFR explicitly refers only to risk positions in the trading book of an investment firm vis-à-vis a client or a group of related customers whose value exceeds the thresholds mentioned in Article 37(1) IFR. It could be helpful to clarify that understanding in the instruction of the templates. We therefore very welcome the statement made by the EBA at its hearing that investment firms without a licence to deal on own account or hold client money do not have to submit reporting obligations on concentration risks. It would be helpful to clarify that approach in the instructions.

Liquidity requirements

***Question 6**: Are the instructions and templates clear to the respondents?*

Yes, the instructions and templates are clear. It is very helpful that the instructions refer to the legal requirements.

Group Capital Test

***Question 7**: Are the instructions and templates (IF 11.01, 11.02, 11.03) clear to the respondents?*

We disagree with the suggested group approach proposed by the EBA under the first consultation paper (Draft RTS on prudential consolidation of investment firms groups (Article 7(5) of the IFR). For instance, we encourage the EBA to clarify if IF11.02 (OWN FUND INSTRUMENTS - GROUP CAPITAL TEST) is in line with Art. 15(1)(d) CRR.

In respect to Annex VIII, IF 11.02 we would like to make the following additional suggestions:

0010	CET1 instruments of financial sector entities in the investment firm group where the parent undertaking has a significant investment in those entities ***to the extent the parent is invested in.***
0020	AT1 instruments of financial sector entities in the investment firm group where the parent undertaking has a significant investment in those entities ***to the extent the parent is invested in.***
0030	T2 instruments of financial sector entities in the investment firm group where the parent undertaking has a significant investment in those entities ***to the extent the parent is invested in.***
0040	Holdings of financial sector entities in the investment firm group ***to the extent that they do not constitute own funds for the group entity the parent is invested in.***

Furthermore, in respect to ANNEX IX, IF 11.2 row 0070 we would like to make the following suggestion:

0070	**Total own fund requirements for the subsidiary undertakings** ***In case of application of*** Article 8(4) IFR

The envisaged reporting requirements for investment firms with a limited licence scope should not exceed the reporting obligations for institutions under the CRR. Therefore, we would like to request the EBA to carefully analyse and consider whether and to what extent there is an impact on the instructions and templates for the group capital test.

Disclosure ITS

Template IF EU CC1

***Question 8**: Do the respondents identify any discrepancies between the template and instructions and the requirements set out in the underlying regulation?*

We see only the following discrepancies:

- Template EU IF CC1: Sources based on the balance sheet in the audited financial statements – Some of these items are not individually disclosed on the balance sheet in the financial statements. It would be helpful to understand why this information is required.

Template IF EU CC2

***Question 9**: Do the respondents identify any discrepancies between the template and instructions and the requirements set out in the underlying regulation?*

We do not see any general discrepancies. However, it would be helpful if the definition of "accounting" in relation to the template could be clarified as it is currently unclear if the definition refers to regulatory purposes or to statutory accounting.

Template IF EU CCA:

***Question 10**: Are the instructions and templates clear to the respondents?*

Yes, the instructions and templates are clear. It is very helpful that the instructions refer to the legal requirements.

Draft ITS on reporting and disclosures of investment firms

***Question 11**: Is the ITS text clear to the respondents?*

In general, we would like to express our full support for an EU-wide standardisation of reporting obligations under the IFD framework. Development of supervisory guidance on reporting is an essential element of the practical implementation and for ensuring efficient supervisory monitoring. It is necessary that the investment firms are provided with practical guidance for establishing and handling of reporting and disclosure systems. In this context, we would like to highlight the following main issues:

1. Reporting

- **First submission of the reports:** We would like to request the EBA to clarify the expected first deadlines for the first submission for all investment firms (Class 2 and 3). The EBA had stated at the hearing that the deadline for the first submission of quarterly reports by Class 2 investment firms to supervisors should be the 30 September 2021. We understand this to mean that the reporting reference date is to be 30 September 2021 (cf. Article 2(1)(a) of the Draft ITS), but that the reporting remittance date is then only 11 November 2021 (cf. Article 3(1)(a) of the Draft ITS).

  For small and non-interconnected investment firms (Class 3), it was not clear at the EBA hearing whether they should submit their annual reports for the first time also on the reference date of 30 September 2021 (with the reporting remittance date of 11 November 2020) or on the reference date of 31 December 2021 (with the reporting remittance date of 11 February 2022). In our view, the first annual report of Class 3 firms should be submitted for the first time on the reference date of 31 December. That would be in line with the proposed reporting reference and remittance dates for the annual reporting in Articles 2(1)(b) and 3(1)(b) of the Draft ITS.

- **Formats of the reports**: We support the proposed approach in Article 9 of the Draft ITS that the data exchange formats and representations should be specified by competent authorities. In particular, the very reduced reporting requirements for small-sized investment firms do not justify high standardised IT solutions. In that context, we are very concerned with the announcement of the EBA to introduce additional XBRL taxonomies at a later stage which are not part of the consultation

paper (cf. paragraph 12 of the explanations of the consultation paper). This could involve additional administrative burden for a binding IT implementation with a high cost and manpower effect (in particular, for small-sized investment firms) that should be avoided.

Moreover, the implementation of high standardised XBRL taxonomies could also affect the question when investment firms must provide the first reports. Therefore, the implementation of the XBRL reporting format might not be feasible for the first round of reporting starting in September 2021 depending on the final EBA approach to the transitional period and the availability of the complete programming template sufficiently in advance. In any case, we believe that the EBA should grant then certain leeway for submissions of regulatory reports in the first two years.

- **Data point model (DPM):** The EBA will complement the reporting requirements defined in the relevant legal standards with a data point model (DPM). According to the EBA explanations (cf. paragraph 12 of the consultation paper), a DPM shall support a harmonised implementation of the reporting framework and shall bridges the gap between business definitions and IT. However, at the current stage, we are not able to analyse the impact of such a DPM. This applies even more as the EBA refers to the similar banking DPM with extensive reporting requirements and that the DPM under the IFR shall provide the metadata support to fully automate the production of data exchange specifications, such as XBRL taxonomies, or other equivalent exchange formats. We disagree with the assumption made by the EBA that the development of a DPM and XBRL taxonomy is not pre-empting any decision by competent authorities on the format in which the data will be collected by them. It is of utmost importance to discuss such technical issues in a separate consultation without time pressure and with the possibility of a careful cost-benefit analysis. **Therefore, we propose to delete the reference to the DPM in Article 9 and Annex V of the Draft ITS.**

2. Disclosure

- **Scope of the disclosure requirements:** We strongly disagree with the proposed detailed disclosure requirements suggested in Article 11 of the Draft ITS with reference to the templates of Annex VI and the relevant instructions set out in Annex VII. **We cannot see that the content has been significantly simplified compared to the CRR rules and that the disclosure framework will bring simpler and more proportionate requirements for investment firms relative to their size and complexity in comparison with the CRR/CRD framework.** We are aware that the EBA states at its hearing that the CRR requirements will be used as a basis for orientation and that the implementation effort on disclosure will therefore be less complex. Such an approach is reasonable for all investment firms which are currently subject of the disclosure requirements of the CRR.

  However, limited licence firms such as portfolio managers which will qualify as class 2 firms under the new IFD/IFR framework are not required to disclose certain information under the CRR. The implementation of disclosure processes will therefore be a completely new requirement for them. **These new disclosure requirements are very extensive and require new internal control and quality assurance processes. Such an implementation process is very complex and will lead to an administrative effort that should be limited to the essential elements. We therefore urge the EBA to simplify the templates in an appropriate way.**

- **First submission of disclosure:** The requirements in the Draft ITS on the disclosure requirements for own funds are to apply as early as 26 June 2021, whereby, according to Art. 46(1) and (2) IFR, these are to take place simultaneously with the publication of the annual financial statements. We

therefore request the EBA to clarify when the investment firms must submit their first annual disclosure.

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