Frankfurt am Main,
1 July 2021

BVI[1] position on disclosure of investment policy by investment firms under Article 52 of Regulation (EU) 2019/2033 on the prudential requirements of investment firms

According to Article 52(1) of Regulation (EU) 2019/2033 (IFR), certain investment firms must disclose four different sets of information on an annual basis: (1) the proportion of voting rights attached to shares held, (2) the firm's voting behaviour, (3) an explanation of the use of proxy advisor firms and (4) voting guidelines. These new requirements overlap with obligations already covered by other EU requirements such as the Transparency Directive 2004/109/EC amended by Directive 2013/50/EU and the Shareholders' Rights Directive 2007/36/EC amended by Directive (EU) 2017/828 (SRD 2) and supplemented by Implementing Regulation (EU) 2018/1212. In particular, the holder of voting rights (or of financial instruments granting access to voting rights) is obliged to disclose holdings of (at the minimum) 5% according to the Transparency Directive. Moreover, investment firms must disclose on an annual basis their engagement policy, implementation of their engagement policy including description of voting behaviour, explanation of most significant votes and the use of proxy advisors (cf. Article 3g of SRD 2).

In that way, we welcome the EBA's approach considering the already existing disclosure requirements and showing the gaps between the IFR and SRD 2 disclosure requirements. However, we request to clarify further aspects in avoiding different processes of shareholder transparency and to reduce the content of the templates on information which are valuable and required by the IFR. Moreover, we see the need for further adjustments of the scope regarding the term what 'shares held directly or indirectly' should mean.

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

- **Time of the determination of the threshold of 5 %:** We request clarifying in the instructions the point of time that shall be relevant for the obligation for a disclosure of holdings. From our point of view, investment firms should only be obliged to disclose their proportion of voting rights when they exceed 5 % of all voting rights at a given point of time these voting rights can be executed, namely in context with the general meeting. In other words, temporarily holdings exceeding 5 % of all voting rights during other periods of the year in which these voting rights cannot be executed should not trigger an obligation for disclosure when the holdings does not exceed 5 % of all voting rights at the above mentioned point of time.

- **Aggregated approach:** We suggest a clarification within the instructions that the templates IF PF2, IF PF3 and IF PF4 have to be filled in by investment firms on an aggregated basis and not on a company by company level.

[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 116 members manage assets some EUR 4 trillion for retail investors, insurance companies, pension and retirement schemes, banks, churches and foundations. With a share of 27%, 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.

BVI
Bundesverband Investment und Asset Management e.V.

Contact
Phone +49 69 15 40 90 0
www.bvi.de

BVI Berlin
Unter den Linden 42
10117 Berlin

BVI Brussels
Rue du Trône 14–16
1000 Bruxelles

BVI Frankfurt
Bockenheimer Anlage 15
60322 Frankfurt am Main

Executive Board
Thomas Richter CEO
Rudolf Siebel MD

***Question 2**: Do the respondents identify any discrepancies between these tables, templates and instructions and the requirements set out in the underlying regulation?*

Proportion of voting rights (Template IF IP1)

- **Threshold of 5 % (Annex II, Template IF IP1)**: The instructions concerning the proportion of voting rights should also clarify in the formula that only **exceeding** the threshold of 5 % triggers the disclosure obligation by setting a greater-than sign as follows:

  'Percentage between **>** 5 % and 100 %.'

- **Scope – 'relevant companies' (Annex I, Template IF IP1 on proportion of voting rights):** The new disclosure requirements of Article 52 IFR aim at providing a level playing field with the US (SEC filing 13F). The objective of SEC filing 13F was to increase the public availability of information regarding the securities holdings of institutional investors who exercise discretion over $100 million or more worth of listed securities. This is already addressed by the Transparency Directive and the SRD II. In order to avoid different processes of shareholder transparency we request to clarify in Annex II (instructions) that the relevant companies mean a company as defined in Article 1(1) of the Implementing Regulation (EU) 2018/1212 which has its registered office in a Member State and the shares of which are admitted to trading on a regulated market situated or operating within a Member State. This would align the scope with the SRD 2 to companies whose **shares are admitted to trading on a regulated market within the EU**. Moreover, it should be clarified that **only listed shares** are covered by the new disclosure. This would also be in line with the SEC filing 13F and the SRD 2 requirements which focus only on listed shares.

- **Scope – 'shares held directly or indirectly':**

  Shares under management held on behalf of clients by virtue of discretionary portfolio management arrangements: In general, portfolio managers not own the assets managed on behalf of clients. Instead, they belong to the clients (or to the investors of the clients). Therefore, we disagree with the assumption that shares under management are held by the investment firm directly. Shares held directly by an investment firm providing portfolio management services could only mean shares held on its own account being part of own funds of the investment firm.

  However, we can agree with the assumption made by the EBA in its hearing that the investment firms should also consider voting rights attached to the shares under management where the investment firm has a (given) right to exercise the voting rights. Such a case would be covered by the term of 'shares held indirectly'. However, it should be made explicitly clear in the instructions the investment firms has to consider these voting right only in cases where the firm has a given right (such as by contract between the firm and the client) to exercise the voting right.

  'shares held indirectly': We strongly disagree with the proposed approach that the term 'shares held indirectly' should involve shares held by subsidiaries of the investment firm or other undertakings where the investment firm exercises significant influence or control over this undertaking or where close links exist. Such an approach conflicts with the application of the prudential consolidation in a group context and should be clearly separated by the question if shares are held indirectly. In that context, we refer to our concerns in our position paper on the proposals for a Draft RTS on prudential consolidation of investment firm groups (Article 7(5) of the IFR). As long as the application of the prudential consolidation of investment firm groups has not been clarified, further details

on this in other legal texts should be strictly avoided. In our view, an investment firm can only hold shares indirectly, if the firm is able to exercise the voting rights itself. This is not the case for entities being part of the group which exercise their own voting rights. Otherwise we speak about prudential consolidation where the responsible parent undertaking must ensure that entities within the group implement arrangements and processes to ensure proper consolidation (cf. Article 7 IFR) to the extent where the group capital test is not applicable (cf. Article 8 IFR).

Proposal for amendments: Therefore, we request to amend the instructions on pages 3 and 4 (column e, proportion of voting rights attached to shares held directly or indirectly as set out in Article 52(2) IFR) as follows:

> 'The shares in the scope of this disclosure may be held directly by the investment firm ***on its own account*** ~~*, including those under its management*~~ for the exercise of voting rights.
>
> Shares in the scope may be held indirectly ~~*by*~~ ***under management on behalf of clients by virtue of discretionary portfolio management arrangements where the investment firm has a given right to exercise the voting rights*** ~~*a subsidiary or a branch of the investment firm, or by an undertaking over which the investment firm exercises a significant influence. Investment firms shall include, when disclosing this information, those shares belonging to shareholders represented by the investment firm at the shareholders' meeting*~~.'

Voting behaviour (Template IF IP2)

- **Table on the description of voting behaviour (Annex I, Template IF IP2.01): Rows 7 and 8 should be deleted.** The identification of conflicts of interest as a duty of conduct must be strictly separated from a description of voting behaviour. Investment firms are already required under the MiFID framework to establish, implement and maintain a conflict of interest policy (which would also involve any conflicts of interests in the group context, cf. Article 34 of the Delegated Regulation (EU) 2017/565). The disclosure of such conflicts of interests and the policy is also required under the MiFID framework for certain cases. Additional disclosure requirements of conflict of interest policies are not covered by the IFR. We therefor request to delete such references in the templates.

- **Template on voting behaviour (Annex I, Template IF IP2.02): Row 5 should be deleted.** We cannot see the significance of the information about general meetings in which the firm has opposed at least one resolution. Such an information could give the impression that where would be a need to oppose at least one resolution. A more valuable information would be whether the company has followed the voting guidelines or deviated from them and if so, why.

- **Table on explanation of the votes (Annex I, Template IF IP2.03): Row 3 should be deleted.** We do not see added value in the information on numbers of full-time equivalents used to analyse resolutions and examine voting records.

Proxy advisor firms (Template IF IP3)

- **Number of templates (Annex I, Templates IF IP3.01 and IF IP3.02):** We suggest merging templates IF IP3.01 and IF IP3.02 in one single template since both templates partially contain similar information (a/b). This could reduce administrative efforts.

- **Template on the links with proxy advisor firms (Annex I, Template IF IP3.02): Column e) should be deleted.** As stated above, the disclosure of conflicts of interest policies are already required under MiFID und should be separated from the questions on disclosure about an explanation of the use of proxy advisor firms.

- **LEI as an identifier for proxy advisers**: We welcome the approach that the LEI should be used (where applicable) for the identification of a proxy adviser firm. Following issues with data quality and lack of comparability of data resulting thereof, the regulatory authorities are increasingly engaged in the standardisation of certain data (e.g. Identifiers (ISIN, LEI)) and reporting messages. This regulatory "nudging" towards the use of standards may also help the industry to standardise other flows of other reference and market data the exchange of which is currently often inhibited by proprietary standards and licence requirements. However, we expect that proxy advisor firms do not have valid LEIs.

Voting guidelines (Template IF IP4)

- **Table on voting guidelines (Annex I, IF IP4):** It could be helpful to clarify that the proposed summary of the voting guidelines is a general one. In particular, portfolio managers do not have specific voting guidelines for each equity holding but general voting guidelines which are assessed against the proposals put forward by the management as a basis for the voting decision. Portfolio managers 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 is not in the shareholders' interest.

Question 3: *Do the respondents agree that the new draft RTS fits the purpose of the underlying regulation?*

The RTS itself – excluding Annex I (templates) and Annex II (instructions) – fits the purpose of the underlying regulation. We refer to our answers to questions 1 and 2 regarding our concerns on the templates and instructions.

Question 4: *What is respondents view on whether template IF IP2.05 on the ratio of approved proposals should include separate information on the resolutions put forward by the investment firm itself?*

We disagree to add information on the resolutions put forward by shareholders that are approved by the investment firm itself. The information should be limited to the legal requirements in Article 54(1)(b) IFR which only ask for information about the ratio of proposals put forward by the administrative or management body of the company which the investment firm has approved. **Therefore, row 2 of the template IF IP2.05 should be deleted.**

****