

Consultation Response

Draft Regulatory Technical Standards on Criteria to Identify Categories of Staff whose Professional Activities have a Material Impact on an Investment Firm's Risk Profile or Assets it Manages under Directive (IFD) 2019/2034

4 September 2020

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on **DRAFT REGULATORY TECHNICAL STANDARDS ON CRITERIA TO IDENTIFY CATEGORIES OF STAFF WHOSE PROFESSIONAL ACTIVITIES HAVE A MATERIAL IMPACT ON AN INVESTMENT FIRM'S RISK PROFILE OR ASSETS IT MANAGES UNDER DIRECTIVE (IFD) 2019/2034 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE PRUDENTIAL SUPERVISION OF INVESTMENT FIRMS**. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

AFME is registered on the EU Transparency Register, registration number 65110063986-76.

We summarise below our high-level response to the consultation, which is followed by answers to the individual questions raised.

Executive Summary

AFME is broadly supportive of the EBA's work to align the IFD requirements with those under the Capital Requirements Directive (CRD) where appropriate. In particular, we support the alignment of the implementation dates.

There are a few areas, outlined below, in which we request further clarification or slight amendment of the text to ensure that the correct individuals are captured as Material Risk Takers.

We also request confirmation of our understanding that the draft RTS will apply to the identification of 2021 Material Risk Takers and to the variable remuneration granted in 2022 in reference to performance year 2021 (provided that national transpositions are made by June 2021).

Association for Financial Markets in Europe

London Office: 39th Floor, 25 Canada Square, London E14 5LQ, United Kingdom T: +44 (0)20 3828 2700

Brussels Office: Rue de la Loi 82, 1040 Brussels, Belgium T: +32 (0)2 788 3971

Frankfurt Office: Bürohaus an der Alten Oper, Neue Mainzer Straße 75, 60311 Frankfurt am Main, Germany

www.afme.eu

Questions

Question 1: Are the definitions in Article 1-3 sufficiently clear?

AFME has no comments in response to this question.

Question 2: Is the Article 4 on the application of criteria appropriate and sufficiently clear?

We request clarification that, where the criteria are to be applied on a consolidated level, this refers to consolidation at the Investment Firm level, rather than at the group level. Use of the group level would result in some individuals being assessed against both CRD and IFD criteria, which would be duplicative. Instead, we understand that the IFD criteria should only apply to the IFD Investment Firm.

Question 3: What would be the appropriate percentage of own funds to determine that a business unit has a material impact on the risk profile of the investment firm? It would be most helpful if respondents could provide a quantitative estimation of the number of staff identified under this criterion at the indicated percentages in addition to the other qualitative criteria within the draft RTS as well as the cost for the application of that criterion.

AFME believes that it would be most appropriate to leave firms the flexibility to determine this threshold internally. Some IFD firms will have low capital requirements hence it would not seem proportionate to apply a single threshold to all IFD-regulated firms.

Question 4: Are the qualitative criteria within Article 5 appropriate and sufficiently clear?

AFME would like to raise the following points in relation to Article 5(8), which states that:

"The staff member has managerial responsibility for the execution or the approval of processes or systems, performing economic analysis, management of outsourcing arrangements of critical or important functions as set out in Article 30 (1) of the Commission Delegated Regulation (EU) 2017/565 or providing information technology or security that are relevant for the investment firm's business activities with regard to..."

First, in relation to the first sentence, we feel that the definition should be updated to only target individuals who are responsible for approval, in order to capture of the appropriate employee(s) who are responsible for approving and making key decisions. We recommend that the drafting is changed to *"The staff member has managerial responsibility for ~~the execution or~~ the approval of [...]"*; or to *"The staff member has managerial responsibility for ~~the execution or the approval of~~ [...]"*.

Second, we are concerned that there is some ambiguity in the phrase *"processes or systems"* which would benefit from clarification to avoid overly broad interpretation. We suggest that this is amended to *"key processes and systems"*, or removed entirely to align the language more closely to the technical standards under the Capital Requirements Directive.¹

Finally, in relation to *"...relevant for the investment firm's business activities..."* we would appreciate clarification that this applies only to *"providing information technology or security"* and not to the rest of the sentence. We suggest that it should be slightly amended to *"The staff member has managerial responsibility for the execution or the approval of processes or systems, performing economic analysis, management of outsourcing arrangements of critical or important functions as set out in Article 30 (1) of the Commission Delegated Regulation (EU) 2017/565, or providing information technology or security that are relevant for the investment firm's business activities, with regard to..."*

Question 5: Are the quantitative criteria within Article 6 appropriate and sufficiently clear?

AFME would like to raise the following points

First, Article 6(1)(a) contains the following criterion:

“the staff member has been awarded total remuneration which is equal to or greater than EUR 500 000 and equal to or greater than the average of the remuneration of members of the management body and senior management in or for the preceding financial year”

While we note that Article 6(1)(a) mirrors the equivalent technical standards for firms under the CRD, we note that this provision is not a requirement under the IFD.

Second, Article 6(1)(d), states that:

“the staff member was in or for the preceding financial year awarded total remuneration that is equal to or greater than the lowest total remuneration awarded in that financial year to a member of staff who meets one or more of the criteria in points of 1, 3, 4, 7, 8 or 9 Article 5”

This captures staff who would not meet the quantitative threshold under Article 6(1)(a). However, we note the equivalent provision under the CRD was removed in the recent updates to the relevant RTS. We therefore request that, in alignment with CRD, this provision is also removed from the IFD requirements.

If it is to be retained in the IFD, we request that a provision is added to Article 6(1)(d) to exclude those who earn less than the EUR 500 000 threshold. For example, there may be individuals who are members of a product committee (which takes decisions as a collective), but who earn below this threshold and should therefore not be included. This could be drafted as follows:

*“the staff member was in or for the preceding financial year awarded total remuneration that is equal to or greater than **the higher of (i) EUR 500,000 and (ii)** the lowest total remuneration awarded in that financial year to a member of staff who meets one or more of the criteria in points of 1, 3, 4, 7, 8 or 9 Article 5.”*

Finally, under Article 7(3), AFME supports that calculations should be based on *“either the preceding financial year in which the variable remuneration is awarded or the preceding financial year for which the variable remuneration is awarded”*.

Next steps

AFME welcomes the opportunity to submit comments, and would be pleased to engage further as the regulatory process continues.

AFME Governance

We confirm that AFME has put in place internal arrangements to manage our work in compliance with the conditions set by the EBA on Adam Farkas' appointment as CEO of AFME. As part of these arrangements, Adam Farkas has not been involved in the preparation of this consultation response.

AFME contacts

Richard Middleton, richard.middleton@afme.eu

+44 (0)20 3828 2709

Fiona Willis, fiona.willis@afme.eu

+44 (0)20 3828 2739