Consultation Response

EBA Draft Regulatory Technical Standards to specify the minimum content of the suitability questionnaire, curriculum vitae and internal suitability assessment to be submitted to the competent authorities for performing the suitability assessment referred to in Article 91(1f) and in Article 91a(5) for the entities listed in Article 91(1d) of Directive 2013/36/EU

26 May 2026

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on the ***EBA DRAFT REGULATORY TECHNICAL STANDARDS TO SPECIFY THE MINIMUM CONTENT OF THE SUITABILITY QUESTIONNAIRE, CURRICULUM VITAE AND INTERNAL SUITABILITY ASSESSMENT TO BE SUBMITTED TO THE COMPETENT AUTHORITIES FOR PERFORMING THE SUITABILITY ASSESSMENT REFERRED TO IN ARTICLE 91(1F) AND IN ARTICLE 91A(5) FOR THE ENTITIES LISTED IN ARTICLE 91(1D) OF DIRECTIVE 2013/36/EU*** (the "Draft RTS"). The Association for Financial Markets in Europe (AFME) is the voice of the leading banks in Europe's financial markets, providing expertise across a broad range of regulatory and capital markets issues. We represent over 150 leading global and European banks and other significant market players. Our members play a vital role in Europe's financial ecosystem, underwriting around 90% of European corporate and sovereign debt, and 85% of European listed equity capital issuances. Importantly, AFME members are market makers, providing liquidity, which is essential for ensuring financial markets can function efficiently. We also represent law firms and other associate members which advise market participants and support AFME's legal and regulatory initiatives.

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.

AFME Comments

We support the objective of enhancing supervisory convergence through the harmonisation of the minimum content of information to be submitted for suitability assessments under Article 91(10) of Directive 2013/36/EU as long as a consistent

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framework contributes to legal certainty and facilitates a coherent supervisory approach across the Union.

It should be noted that the Draft RTS, being a draft EC Delegated Regulation, will be binding and directly applicable in all Member States without the need for transposition.

Article 91(10) mandates the specification of the "*minimum content*" of the suitability documentation. According to the Recitals, the Regulation i) aims solely to specify further the content of the documents to be provided by the entities to competent authorities and ii) does not regulate the assessment criteria according to which the suitability assessment is carried out by the Board or by the competent authority. However, the provisions of the Draft RTS appear to go beyond this mandate and risk indirectly redefining the substantive standard of suitability itself.

The cumulative effect of the proposed requirements transforms what is intended to be a prudential assessment into a highly granular and formalised documentation exercise. In our view, the RTS should remain strictly confined to defining the information necessary to perform the assessment, without introducing additional substantive expectations not expressly grounded in Level 1 legislation.

In this regard, it is important to specify that the assessment of the suitability requirements is conducted primarily on the basis of the information made available by the individual concerned and, in any case, in accordance with the national provisions implementing the CRD. Therefore, members of the management body and heads of key corporate functions must provide all information necessary to enable the competent body to perform the required evaluations and assessments, submitting such information at the time of appointment and whenever subsequent events arise that may affect their suitability.

<u>General observations on proportionality, liability and individualisation of assessments</u>

The Draft RTS establishes joint responsibility on both the candidate and the entity for the completeness and accuracy of submitted information. While transparency is essential, the current drafting may create disproportionate personal exposure and deter qualified independent candidates, particularly in significant institutions. It should therefore be clarified that this joint responsibility applies to information provided in good faith and to the best of the signatories' knowledge at the time of submission and does not create strict liability for omissions not reasonably knowable.

Additionally, some related requirements are overly broad. Requiring information covering ten years may be disproportionate where older data is of limited relevance; a shorter, risk-based timeframe would better align with proportionality under CRD VI. Similarly, the obligation to disclose relationships with "suppliers or competitors" is too expansive and may capture ordinary interactions that are not material to suitability. The Draft RTS should specify that only relationships capable of creating genuine conflicts of interest need to be disclosed.

More broadly, the AML-related elements of the Draft RTS should be carefully calibrated to ensure that suitability assessments remain individualised. The existence of AML supervisory findings at entity level should not, in itself, affect the suitability of all current or prospective members of the management body. It should be clarified that entity-level deficiencies do not automatically translate into individual unsuitability

unless there is demonstrable and specific responsibility attributable to the individual concerned.

The Draft RTS also requires the collection of highly sensitive personal data such as cross-border criminal records, financial obligations, and family-related information. It should be explicitly clarified that such data may only be collected and processed in line with necessity and proportionality principles and limited to what is strictly required for the assessment.

Overall, while we support the harmonisation goal of Article 91(10) CRD VI, the Draft RTS should be revised to stay within the mandate of specifying minimum content, preserve proportionality and legal certainty, respect fundamental rights and the presumption of innocence, and avoid turning suitability assessments into an overly rigid and burdensome compliance exercise.

In accordance with the overall comments above, our comments on specific articles of the Draft RTS are as follows:

Article 2

We suggest the addition of the following final sentence: ***"The assessment of the suitability requirements is carried out on the basis of information provided by the member of the management body concerned and, in any case, in accordance with national regulations implementing Directive 2013/36".***

Article 4

The requirement that non-material weaknesses must be remedied within a maximum period of six months introduces a rigid timeframe not foreseen in CRD VI. Suitability under Article 91 is framed as an ongoing and principle-based obligation. While remedial measures are appropriate where weaknesses are identified, the imposition of a fixed maximum period may not be suitable in all circumstances, particularly in complex institutions or in cases involving specialised knowledge. We would therefore suggest replacing the six-month maximum with a requirement that remedial measures be implemented within a reasonable and proportionate timeframe, taking into account the nature of the identified gap and the responsibilities attached to the position.

Article 5

With specific reference to the assessment of reputation, it is important that - both in the text of the Draft RTS and in the Draft Guidelines[1] - administrative proceedings are considered as not relevant, given their preliminary nature limited significance. Similarly, civil judgments do not necessarily impair integrity and their inclusion would otherwise excessively broaden the range of relevant facts.

More generally, the repeated use of the expression "*at least*" when referring to the information to be collected should be reconsidered. A formulation such as "*among others*" would better reflect the principle-based nature of the assessment and avoid

[1] The Draft Joint ESMA and EBA Guidelines on the Assessment of the Suitability of Members of the Management Body and Key Function Holders under Directive 2013/36/EU and Directive 2014/65/EU, which are also under consultation.

creating an exhaustive or cumulative documentation expectation that may be impractical.

Several documents envisaged under Article 5 may not be realistically obtainable, particularly in cross-border contexts or where national authorities do not issue the certificates referenced. In such cases, it should be clarified that duly signed declarations by the candidate, made in good faith and to the best of their knowledge, may suffice, subject to subsequent verification where necessary. A rigid documentary requirement may otherwise create disproportionate barriers and legal uncertainty.

Furthermore, the reference to "*any other reliable internal or external resources available to the entity*" is excessively open-ended and may generate inconsistent interpretation and unnecessary collection of personal data. The Draft RTS should clarify that only information that is objectively relevant, proportionate and directly related to the suitability assessment under Articles 91 and 91a of CRD may be considered, in line with the principles of necessity and data minimisation.

Finally, although the text refers to the presumption of innocence, the provision risks creating indirect adverse effects for individuals based solely on ongoing investigations or unresolved allegations. The Draft RTS should explicitly clarify that such circumstances do not in themselves give rise to a presumption of unsuitability unless supported by objective, substantiated facts directly attributable to the individual.

Suggested amendments to Article 5:

Article 5, paragraph 2, please change as follows: *"When considering any relevant criminal* ***~~or administrative~~*** *records or proceedings* ***or administrative sanctions****, the individual assessment shall take into account […]."*

Article 5, paragraph 3: *"The assessment shall be based at least on the following information:*
[…] (b) relevant ***~~civil,~~*** *administrative and disciplinary decisions, including bankruptcy, insolvency and similar procedures […]"*

Article 7
This article requires detailed annual estimates of time devoted to mandates, number of meetings and time allocation per activity. While sufficient time commitment is clearly required under Article 91 CRD, the level of predictive quantification required by the Draft RTS is inherently speculative and may expose both institutions and candidates to supervisory scrutiny based on ex-post deviations from ex-ante estimates. The RTS should clarify that time commitment assessments may be based on reasonable and good faith estimates, without requiring precise quantitative forecasting that cannot realistically be guaranteed.

Article 8
While collective competence is a central element of the suitability framework, the Draft RTS risk imposing a uniform and formalised assessment structure irrespective of institutional size, complexity or governance model. The Draft RTS would benefit from a clearer articulation of the proportionality principle, ensuring alignment with CRD VI.

Article 10
Regarding the information to be included in the questionnaire (Article 10), it appears important that the responsibilities for providing the necessary information are

properly differentiated between the individual and the institution, respectively. Indeed, the institution may be deemed responsible solely for aspects referred to the assessment conducted at individual and collective level, but not for information concerning the individual.

Suggested amendment to Article 10 Paragraph 1:
"The individual and the entity shall be ***~~jointly~~*** *responsible* ***- each one for the information within their own remit -*** *for providing the competent authority with complete and accurate information regarding the proposed appointment. In this regard, the individual and the entity have the responsibility to disclose to the competent authority all matters that may be relevant to the assessment."*

As regards the detailed information set out in paragraph 2, we suggest the following:

In letters (i) and (j): a) remove the obligation to provide information on any commercial/professional relationships maintained by the individual concerned, by their close family members, and by companies in which the individual currently holds or has previously held a corporate office, with suppliers and competitors of the bank. This stems from the fact that such an obligation would require consideration of a significant number of persons and entities, without any real advantages in terms of managing conflicts of interest. As an alternative, the scope of such disclosure should be strictly limited to relationships maintained solely by the individual concerned with the bank's main suppliers and competitors, meaning, for example, the top 5 or top 10 counterparties; b) limit the set of personal, commercial and professional relationships with members of the management body or key function holders - especially those of other Group companies - and with qualifying shareholders to those that are significant.

In letter (k): remove the obligation to provide information regarding any financial relationships maintained with the bank and the group by companies in which the individual has previously held a corporate office, given the irrelevance of such relationships for the purpose of managing conflicts of interest, as the individual no longer has any interest or associated position in the company concerned. As an alternative, a time limit should be introduced, beyond which such information would no longer need to be collected.

Suggested amendment to Article 10 Paragraph 2:
"(i) any of the ***material*** *individual's personal, business or professional relations with: i. other members of the management body and/or key function holders of the institution, the parent undertaking or their subsidiaries; ii. qualifying shareholders of the entity, the parent undertaking or their* ***main*** *subsidiaries;* ***~~iii. suppliers or competitors of the entity, the parent undertaking or the entity's subsidiaries.~~***
~~(j) any personal, business or professional relations provided under letter (i) related to individual's close relatives and any legal person in which the individual is or was a member of the management body, or a qualifying shareholder, at the relevant time;~~
(k) any financial obligations towards the entity, the parent undertaking or their subsidiaries the individual or his close relatives or any legal person in which the individual is ***~~or was~~*** *a member of the management body, or a qualifying shareholder,* ***~~at the relevant time,~~*** *have, including any loans of any value that are not negotiated under market's conditions or are non-performing."*

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