

FINANCIAL REGULATION

Second consultation paper on €30bn threshold

The European Banking Authority (EBA) has issued a second [Consultation Paper on Draft Regulatory Technical Standards \(RTS\)](#) on the calculation of the €30bn consolidated assets threshold for investment firms under the Investment Firms Directive and Investment Firms Regulation (IFD/IFR).

The EBA is opening a second consultation on these RTS to address concerns raised by industry in response to the EBA's first consultation about whether the application of the relevant thresholds would maintain a level playing field between EU and third country investment firms groups. The EBA is also seeking to ensure a proportionate and consistent methodology for the calculation of the relevant thresholds. A data collection exercise is being carried out alongside the consultation to assess the impact of the proposed provisions.

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Background

The RTS are relevant to MiFID investment firms which deal on own account or underwrite or place financial instruments on a firm commitment basis, when they are calculating whether they meet the relevant €30bn thresholds specified in the expanded "credit institution" definition set out in the Capital Requirements Regulation.

In very broad terms, the thresholds are calculated on the basis of consolidated average monthly total assets over a period of twelve consecutive months on either a solo or group basis.

Relevant investment firms whose consolidated assets reach the specified thresholds need to reauthorise as credit institutions, although in some cases the final decision on whether re-authorisation is required falls to the local EU regulator in consultation with the EBA.

In any event, re-authorising as a credit institution would be a major undertaking for any investment firm required to do so, and would have significant ongoing compliance impacts. Therefore, the calculation of the specific €30bn thresholds is clearly important for any investment firm who could fall within scope.

Purpose

The stated aim of the RTS is to apply a proportionate and technically consistent methodology for the calculation of total assets relating to the threshold and to clarify the concept of “relevant undertaking”. The RTS also seek to clarify elements relating to the application of accounting standards, the treatment of assets belonging to branches of third country groups and the treatment of intragroup exposures.

Details

Relevant undertakings are defined as any undertaking that deals on own account or underwrites or places financial instruments on a firm commitment basis. The total values of the assets of the relevant undertaking and all relevant undertakings in the group are to be determined on the basis of the most recent audited annual accounts prepared in accordance with the applicable International Financial Reporting Standards (IFRS). If the annual accounts are not prepared in accordance with IFRS, then the annual accounts prepared in

accordance with the accounting standards applicable in the Member State shall be accepted. A derogation is permitted where accounts are prepared in accordance with the accounting standards of third countries provided the accounts are adjusted.

The RTS set out the process to be followed by relevant undertakings and those relevant undertakings that are currently authorised under MiFID. Where relevant undertakings are currently authorised under MiFID and are part of a group, relevant intragroup exposures can be deducted from the value of total assets exceeding €30bn.

The RTS also prescribe a process for calculating the combined assets of third country groups, although an initial review of the RTS would indicate that further clarity may be needed on how the “third country branch” and “relevant undertaking” concepts interact with each other when performing the relevant calculations.

Finally, the RTS clarify that quarterly reference dates may be used for the purposes of calculating the average of monthly total assets.

What next?

Interested parties are invited to respond to three questions on the proposed RTS, relating to the accounting standards to be used, any clarifications required and any foreseen operational issues with calculating the consolidated or combined assets.

Interested parties have until 17 July 2021 to respond to the consultation. The intended implementation date for IFD/IFR is 26 June 2021, so the EBA has stated that firms may begin the process for authorisation as a credit institution pending the publication of final guidelines. Such firms will be subject to a derogation under IFR meaning they will be regulated under CRD until the authorisation is granted.

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