



Investment Firms: Central Bank Notice on Competent Authority Discretions in the IFD/IFR

November 2021

On 29 October 2021, the Central Bank published an Implementation Notice outlining its approach to national competent authority (**NCA**) discretions in the Investment Firms Directive ((EU) 2019/2034) and Investment Firms Regulation ((EU) 2019/2033) (**IFD/IFR**) (**Implementation Notice**). As discussed in our January 2021 briefing (available [here](#)), the Implementation Notice was preceded by an industry consultation process that concluded last March and following which a feedback statement was published by the Central Bank. The Implementation Notice does not propose any amendments to the proposed approach to IFD/IFR NCA discretions outlined in the Central Bank's industry consultation paper, which relies on a case-by-case approach for individual firms with the onus on firms to apply for exercise by the Central Bank of a discretion.

Section 2: Application of the CRDIV/CRR Regime to Investment Firms

- The Central Bank has reserved its discretion to apply the CRR regime on a case-by-case basis to (and thereby classify as Class 1 firms):
 - investment firms carrying out bank-like services with consolidated assets \geq €5bn; and
 - those investment firms with consolidated assets of between €5-15bn, where justified in light of the size, nature, scale and complexity of the activities of the investment firm concerned.
- The Central Bank may allow, on receipt of a notification from the firm and subject to being satisfied as to a range of matters, investment firms which are part of a banking group and consolidated under CRDIV/ CRR not to apply IFD/IFR on a solo basis.

Section 3: Assessment of Internal Capital and Liquid Assets

- The Central Bank will not exercise the available discretion to exempt Class 3 firms from the requirement to undertake the IFD's version of the ICAAP in order to determine additional Pillar 2 style capital add-ons. Class 3 firms are, therefore, required to carry out a regular assessment, proportionate to their nature, scale and complexity, of their internal capital and liquid assets to ensure they have adequate capital to cover risks to which they may be exposed or post to others.

Section 4: Liquidity Requirements

- MiFID investment firms, unless regarded as systemic, are currently not subject to the liquidity requirements under the CRDIV/CRR regime. IFD/IFR introduces a minimum liquidity requirement for investment firms to hold at least one third of their FOR in liquid assets at all times (the **Liquidity Requirements**).

- While IFR allows NCAs to exempt Class 3 firms from the Liquidity Requirements, the Central Bank will not in general exercise this discretion but may do so on receipt of a Class 3 firms' waiver application "*in exceptional circumstances*" as the Central Bank "*does not consider the liquidity requirements overly burdensome*" and "*believes it is important for all MiFID investment firms to hold a minimum amount of liquid assets to support their resilience*".

Section 5: K-Factor Adjustment

- In certain circumstances, Class 2 Firms may use projections rather than historical data for the purpose of k-factor calculations. This will only apply where there has been a material change in the firm's business model, for example a change in the business activities if the relevant k-factor capital requirement would change by at least 30% or there is an absolute change of €2m.

Section 6: Variable Remuneration

- IFD variable remuneration rules subject to proportionality (i.e., the payment in instruments, deferral and retention requirements) can be disapplied by a firm across its identified staff where the firm's balance sheet assets are equal to or less than €100m and Member States have discretion to increase (or decrease) the firm asset size threshold from €100m to a maximum of €300m.
- While not addressed in the industry consultation, the Implementation Notice includes the Central Bank approach to Member State discretions on variable remuneration following the allocation of such discretions to the Central Bank by the Minister of Finance.
- The Central Bank will, on a case-by-case basis, exercise its allocated discretion to increase (or decrease) the default threshold of €100m assets up to a maximum of €300m where the following are met:
 - the Central Bank is satisfied that it is appropriate to apply a threshold of the specified amount taking account of the nature and scope of the firm's activities, its internal organisation and (if applicable) the characteristics of the group to which it belongs; and
 - the investment firm:
 - is not subject to (simplified or otherwise) recovery and resolution obligations under the Bank Recovery and Resolution Directive (i.e., 730k firms);
 - does not have a balance sheet trading book business that exceeds €150m;
 - does not have a balance sheet derivatives business that exceeds €100m; and
 - is not one of the top three largest investment firms by assets in the State

Next steps

Following publication of the Implementation Notice and the adoption of the Central Bank's case-by-case approach to NCA discretions under IFD/IFR, Class 2 and, in particular, Class 3 firms should be alert to the need to specifically apply for any waivers available under IFD/IFR. The Central Bank also advises firms of the need to reapply for the continued application of discretions on a case-by-case basis where the conditions relevant to their exercise have changed.

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