

Asset Management & Investment Funds Update

December 2022



New Prudential Rules for Fund Managers with MiFID Top-Ups

On 1 December 2022, the Central Bank published for consultation, revised capital requirements for UCITS managers and AIFMs (**CP152**).

The revised rules set out in CP152 are relevant for those fund managers which, in addition to being authorised to carry out collective portfolio management (**CPM**) services, are also authorised to provide individual portfolio management (**IPM**) services under, as relevant, Regulation 16(2) Irish UCITS Regulations/Regulation 7(4) Irish AIFM Regulations (**MiFID top-up managers**).

Responses to CP152 must be submitted by 23 February 2023.

Revised capital requirements for MiFID top-up managers

The Central Bank is consulting on revisions to the capital requirements for MiFID top-up managers as existing fund manager capital requirements (under Regulation 17, UCITS Regulations and Regulation 10, AIFM Regulations) only take account of fund managers' CPM activities i.e., the requirements do not take account of IPM activities.

While MiFID top-up managers are required by the Central Bank, as a condition of authorisation, to comply with additional capital requirements (calculated by reference to those applicable for investment firms performing similar services i.e., MiFID firms), such conditions are not set down in legislation/governing regime rules. Furthermore, the additional requirements which are applied as a condition of authorisation are not aligned with the latest rules (introduced in 2021) for MiFID firms set out under the Investment Firms Regulation.

To address the above issues, the Central Bank is proposing amendments to the UCITS Regulations and AIF Rulebook to provide for the following capital requirements for MiFID top-up managers (save for distinctions as noted, the new capital requirements are proposed as equally applicable to UCITS managers as to AIFMs with a MiFID top-up licence):

- **Small and non-interconnected MiFID top-up managers:** to be subject to existing CPM capital requirements under, as relevant, Regulation 17 UCITS Regulations/Regulation 10 AIFM Regulations. As a result, no additional capital requirements would be applicable to such MiFID top-up managers as a condition of authorisation.

UCITS managers with a MiFID top-up would qualify as '**small and non-interconnected**' if they satisfy all of the following, where each are calculated based only a MiFID top-up manager's IPM activities and in accordance with prescribed methodologies:

- (i) AUM in respect of IPM activities is less than €1.2 billion;
- (ii) ASA (client assets safeguarded and administered) are zero;
- (iii) CMH (client money held) is zero;
- (iv) on- and off-balance-sheet total of the fund manager is less than €100 million;
- (v) total annual gross revenue from IPM services is less than €30 million, calculated as an average on the basis of the annual figures from the two-year period immediately preceding the given financial year.

AIFMs with a MiFID top-up would qualify as '**small and non-interconnected**' if they satisfy (i) – (v) above and, as an additional condition, that the value of orders that the AIFM handles for clients through the receipt and transmission of client orders is [less than] (i) €100m/day for cash trades or (ii) €1b/day for derivatives.

- **MiFID top-up managers that are not small and non-interconnected:** to be required to hold the higher of (i) the existing CPM capital requirement applicable under, as relevant, the UCITS/AIFM Regulations and (ii) new Risk to Client K-Factor requirement calculated in accordance with revised UCITS/AIF Rulebook requirements. The K-Factor requirement would be calculated based only a MiFID top-up manager's IPM activities by adding together the following (each calculated using the prescribed methodology):
 - K-AUM - assets under discretionary portfolio management (including those subject to delegation, but excluding those under sub-delegation, arrangements) multiplied by 0.02%
 - K-CMH - client money held on segregated accounts multiplied by 0.4% or on non-segregated accounts by 0.5%
 - K-ASA - assets safeguarded and administered for clients (including those subject to delegation arrangements) multiplied by 0.04%
 - (for AIFMs only) K-COH – value of client orders handled for both cash trades and derivatives multiplied by 0.01%
- **All MiFID top-up managers:** to be "*required to have in place sound, effective and comprehensive arrangements, strategies and processes to assess and maintain an adequate level of internal capital on an ongoing basis and to submit an ICAAP questionnaire to the Central Bank on an annual basis.*" It is proposed to amend the UCITS Regulations and AIF Rulebook to formally provide for this requirement which is currently a condition on authorisation of MiFID top-up managers. In addition, it is proposed to amend the current Minimum Capital Requirement Report to allow for reporting of compliance with the proposed capital requirements for MiFID top-up managers under CP152.

Next steps

Provision is made for MiFID top-up managers that are not small and non-interconnected managers to limit any increase in their capital requirements arising from the above proposals to twice their fixed overheads requirement for the period to end-June 2026.

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