

Webinar – Investment Firms Regulation and Directive: Overview



Securities and Markets Supervision

MFSA Q&As

This document groups together all questions received during the Webinar on Investment Firms Regulation and Directive held on 07 May 2021 hosted by the MFSA Securities and Markets Supervision function. If you have additional queries, please communicate with us on investmentfirms@mfsa.mt.

1a. Will the framework impact AIFMs and UCITS Managers which also provide MIFID II services?

b. The K factor requirement of a super-manco, AIFM, UCITS and Mifid manager adds up or can be netted?

c. Will the IFR/D be applicable to AIFMs and UCITS Management Companies when providing additional MiFID services? If so, will there be changes to Part BII and Part BIII Rulebooks?

d. Will any aspect of the IFRD package apply to a Category 2 ManCo providing management services to UCITS funds and not providing any other investment service?

e. During one of the first presentations, it was mentioned that the IFR/IFD is applicable to MAN Cos of UCITS. In the case of self-managed UCITS Fund, does it mean that IFR / IFD becomes applicable to the UCITS.

f. It can be argued that other than a change in calculation of fixed overheads, no other changes (e.g. New class of license, additional reporting, and rules on remuneration) will affect AIFM and UCITS managers providing top up Mifid services.

g. Do AIFMs that are licensed to manage (i) AIFs and (ii) provide MiFID services, BUT only currently managing AIFs (thus not providing MiFID services) need to be concerned with the implementation of these new requirements?

h. What about fund managers providing also mifid services? How these will be referred to?

i. Will there be a new reporting template for AIFMs providing ancillary MiFID services? i.e. will Appendix 2B be updated as from 26 June 2021 or remain unchanged?

The Investment Firms Regulation and Directive are not directly applicable to fund managers, except for the cross-referencing, under Articles 60 and 61 of the Investment Firms Directive, to

the Fixed overheads requirement. That said, *deminimis* fund managers that also provide MiFID II activities would fall under the IFR/D regime. Appendix 2B remains unchanged other than for the above-mentioned change resulting the cross-referencing to Articles 60 and 61 of the IFR/D.

2. Why are the changes being suggested to the ISA not being included in Regulations (LNs) instead?

Two reasons: Since the new articles are giving the Authority vast powers, namely to regulate unlicensed entities, the ISA is the best place to transpose them. The second reason is that they are amending articles which already exist. This still needs Parliamentary scrutiny.

3. What is the position in terms of licence and capital requirements of Cat 4 licence holders which are also Cat 2 licence holders? Will the capital requirements be cumulative?

Generally, different licences represent different business streams that have their inherent risks arising from the undertaking of the respective activities covered by the respective capital requirements. Whilst the capital required for authorisation (i.e. the initial capital requirement) cannot be considered on a cumulative basis (e.g. a firm which requires €730,000 of capital to be authorised as a Cat 4 also has enough capital to be authorised as a Cat2). On the contrary, any capital requirement related to the undertaking of business (e.g. Capital ratios under the current regime, k-factors under the IFRD) is intended to only cover the specific risks associated with the respective business activity and are therefore to be considered on a cumulative basis in terms of SLC 2.31 of Part BIV of the Investment Services Rules for Investment Services Providers (as will be amended in due course to reflect IFR/D implementation).

4. Will the categories of licences not impacted by the investment firm's regulation be impacted? Will they need to be revised?

All categories of Investment Services will be removed, including those not affected by the Investment Firms Regulation. The Authority will soon reach out to carry out an exercise to re-issue the current Investment Services Licences accordingly.

5a. Will the MFSA be issuing the equivalent of the COREP calibrated in line with the requirements of the IFR/IFD?

b. Will the COREP report template be amended featuring the new capital requirements, K-factors and capital ratios?

c. Will capital requirements and new ratios be by default part of the AFRs and COREPs? and automatically calculated?

The COREP will be replaced by the XBRL templates provided by the EBA. As these need to be passed directly to the EBA, the MFSA is not in a position to perform any amendments. This means that the calculations will not be automated from our end and need to be performed by the industry.

6a. So, my understanding is that the COREP will be completely replaced. When will be the last COREP reporting period?

b. The new rules are applicable as from 26 June. Does this mean that the new XBRL return will be applicable for Q2?

The last reporting period under CRR/D should be as of 30 June 2021. The new XBRL return will be applicable from Q3 2021. The Authority will soon be issuing additional guidance in this regard by way of a Circular.

7. Will any aspect of the IFRD package apply to regulated Credit Institutions having a category 2 investment services licence? Will any aspect of the IFRD package apply to regulated Credit Institutions having a category 2 investment services licence?

The IFRD package does not apply to Credit Institutions even where these also offer MiFID II services as they will continue to be governed by the CRD V/ CRR II framework.

8. For the calculation of overheads, the rules permit the deduction of staff bonuses and other remuneration, to the extent that they depend on the net profit of the investment firm in the respective year. The RTS provide further details on this and we would like to confirm our understanding: if bonuses are paid in H1 2021 based on net profit of H2 2020 then these cannot be deducted.

These bonuses may nonetheless be deducted if that payment "will have no impact of the firm's capital positions in the year of payment". We understand that such bonuses should have already been accounted for and deducted from the own funds for them to be deductible for Fixed Overheads Requirement purposes.

9a. If one of the class 3 criteria is not met but the entity falls under the quantitative thresholds mentioned therein, would it still be considered as a class 2?

b. Would a Cat 2 IF automatically be considered as Class 2 even if does not hold and control client's monies and assets? Otherwise said, the IF provides only investment advice event if it is authorised to provide discretionary portfolio management services. Please confirm my understanding that the IF will be **initially classified as Class 3 and if it holds and controls clients' monies for more than 3 months will be reclassified as Class 2.**

An investment firm currently categorised as a Category 2 would not be automatically considered a Class 2 firm. In the case at hand, if the firm is only providing investment advice but is licensed to also provide DPM and to hold and control clients' monies but is not actually holding and controlling clients' monies and assets, it could be classified as a Class 3, provided

that all other conditions under Article 12 IFR are also met. Should the firm start holding clients' money, it shall cease to be considered a Class 3 with immediate effect. That said, please note that the licence holder is expected to revise its licence in the event of unused services for a period extending more than 12 months.

10. Will there be a convertor provided to convert from Excel to the new version?

Investment Firms will have to report the new returns directly in XBRL format and they should consider the software needed to ensure that they can comply with such requirements. The Authority will be issuing further guidance in due course on the first submission deadline for the XBRL returns.

11. With regards to the calculation of K-COH, would this need to be calculated by both the firm which carries out reception and transmission of orders and the firm executing the order?

Yes. Both firms providing reception and transmission of orders and execution of orders have to calculate K-COH.

12. As per Article 5 of REGULATION (EU) 2019/2033 Investment firms shall comply with the requirements laid down in Parts Two to Seven on an individual basis. Does this mean that consolidated figures required only for qualification as Cat 1, Cat 2 or Cat 3 firm?

No. Please refer to Article 7 IFR that lays down prudential consolidation requirements applicable to investment firms groups.

13. Will you be holding further webinars, possibly at slower speed, but in more detail?

We will be issuing additional guidelines and briefings covering areas discussed during the meeting in further detail.

14. Should COH exclude orders executed on behalf of Discretionary and Advisory Accounts because these accounts are captured under AUM? I am referring here to the following provision "COH shall exclude transactions **handled by the investment firm that arise from the servicing of a client's investment portfolio where the investment firm already calculates K-AUM in respect of that client's investments or where that activity relates to the delegation of management of assets to the investment firm not contributing to the AUM of that investment firm by virtue of Article 17(2).**"

COH shall exclude those transactions from investment advice or when servicing an investment portfolio provided that those assets are under its management (also including advice of ongoing nature) and hence included within its K-AUM.

15. Will we be receiving the templates in advance of it coming into force, so we have time to familiarise ourselves with the required calculations?

The respective [implementing technical standard](#) and the [3.1 reporting framework](#) are already available on the EBA website.

16. When considering firm classifications, is the reference to “holding AND controlling clients’ money” or “holding OR controlling clients’ money” please?

With respect to firms’ classification, specifically for the definition of a Class 3 firm, reference is made to clients’ money held.

17. How are orders remaining open for several days to be included in the COH calculation? Is the investment firm expected to capture it only for the day when it was transmitted/placed, or for the entire period for which it remains pending (unless cancelled)? Reference is made to the following provision "Investment firms may exclude from the measurement of COH any orders which have not been executed, where such non- execution is due to the timely cancellation of the order by the client."

If the firm is calculating COH in relation to Reception and Transmission, then the order shall be included at the point at which the investment firm transmits the order to the executing broker. Where no price is contained in the order, it shall use the market price of the financial instrument at the day of transmission. If the firm is calculating COH in relation to Execution of orders, it shall include it in the calculation of COH at the point at which it has confirmation that the execution has taken place and the price is known. Orders not executed due to their timely cancellation by the client are not to be included within the COH calculation.

18. For Custodians, are the assets under custody to be included in the K-ASA calculation?

We understand that ASA captures the risks associated with the MiFID II ancillary activity of safeguarding and administering clients’ financial instruments and should not include depositary and custodianship services in relation to Collective Investment Schemes.