

European Banking Authority (EBA)

Date: 17 March 2021

Public consultation: Guidelines on internal governance for investment firms

The following answers have been filed by The Danish Association of Asset Management and Investment Firms ("DAAMIF") (in Danish: Den danske Fondsmæglerforening) which is the primary association for investment firms in Denmark who represents 28 registered Danish Asset Management and Investment Firms out of 50 firms.

The answers have been filed via EBA's [website](#) on 17 March 2021.

General remarks

The guidelines should be adapted to investment firms

The Danish Association of Asset Management and Investment Firms welcomes the elaboration of a distinct set of guidelines applicable to investment firms in order to address the specific issues relevant to investment firms and to avoid over-regulation of investment firms.

The DAAMIF in this respect refers to Recommendation 58 of EBA's Opinion in response to the European Commission's Call for Advice on Investment Firms (EBA/Op/2017/11) according to which EBA recommends that the governance requirements set out in CRD fully applies to Class 1 firms, while a lighter governance framework should be applied to Class 2 and Class 3 firms. We were supportive of EBA's recommendation in particular and generally of the extensive work undertaken by EBA with the aim of finding a new way of regulating investment firms adapted to the industry and taking into account the differences in the industry's potential impact on the risks of their clients and on the financial stability, compared to the potential impact of credit institutions.

It is, however, apparent from the structure and the content of the draft guidelines that they are based on the parallel Draft Guidelines on internal governance under Directive

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2013/36/EU (EBA/CP/2020/20) which has been drawn up with credit institutions in mind and that the current draft guidelines in substance only contain minor differences.

The guidelines should take into account MiFID II and avoid over-regulation

Moreover, the DAAMIF finds that the guidelines should take into account the existence of the regulation of internal governance included in MiFID II. This is in particular relevant in relation to the MiFID II Level 2 Regulation on organisational requirements and operating conditions for investment firms (Regulation (EU) 2017/565) and namely in respect of the compliance function, the risk management function and the internal audit function. The DAAMIF finds it essential for the avoidance of over-regulation of the industry that the guidelines do not regulate areas already covered by MiFID II. Furthermore, the DAAMIF finds that the terminology applied should be aligned in order to avoid any confusion.

The DAAMIF is of the view that guidelines on governance which may collide with provisions of MiFID II should be made in close cooperation with ESMA in order to take into account the specific characteristics of investment firms and their regulatory framework.

Specific remarks

Question 1

Subject matter

In setting the subject matter of the draft guidelines, it is implied that there may be overlaps with a number of provisions under MiFID II, including the Commission Delegated regulation (EU) 2017/565. The DAAMIF is of the opinion that dual regulation in this area is unjustified, unnecessary and burdensome to investment firms and we find that appropriate carve outs should be made, in particular with respect to the specific regulation of the compliance function, the risk management function and the internal audit function respectively.

Date of application

Given that the draft guidelines address the obligations under a new set of rules and that there is not identity between the investment firms previously regulated under the CRD rules and the firms subject to the draft guidelines, we find that a suitable transitional period should apply. Due to the limited period remaining until June 2021 we would recommend a transitional period of at least six months in order for the firms to be provided with a reasonable implementation period.

Question 2 - Title (I and) II

We assume for the purpose of our answer to this question that it covers both Title I and Title II regarding proportionality and the role of composition of the management body respectively.

We find that the list of criteria under paragraph 20 should include the activities of the subsidiaries in the question of proportionality of applicability on a consolidated level.

Question 5 - Title V

The DAAMIF finds that the items 18, 19, 20 and 21 should be excluded from the draft guidelines. In this respect we refer to the fact that MiFID II, and in particular its Regulation (EU) 2017/565, includes appropriate provisions on compliance, risk management and internal audit which have been adapted to the activities of investment firms. Moreover, we note that ESMA has developed guidelines regarding the compliance function. Therefore, this dual regulation seems inappropriate and unnecessarily burdensome to firms.

With respect to requirements to the compliance function and the risk management function we note that there might be inconsistencies between the references to the responsibilities of the management body of MiFID II and the draft guidelines, partly due to differences in the definitions of the management body applied in MiFID II and the IFD/IFR. In this respect we note it is not always clear from the guidelines when the management body is referred to in its supervisory function.

In particular with respect to the risk management function we note that the relevant provisions MiFID II and Regulation (EU) 2017/565 do not include references to the management function. References are instead made to senior management of the investment firm.

Should EBA decide to uphold the dual regulation of this area, the DAAMIF is of the view that the competences of the management body should be aligned with MiFID II.

Kind regards

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Chairman