

EBA-Op-2016-16

19/10/2016

Opinion of the European Banking Authority on the First Part of the Call for Advice on Investment Firms

Background and legal basis

1. The EBA competence to deliver an opinion is based on Articles 8(2) and 34(1) of Regulation (EU) No 1093/2010¹, as prudential requirements for investment firms relate to the EBA's area of competence.
2. In accordance with Article 14(5) of the Rules of Procedure of the Board of Supervisors², the Board of Supervisors has adopted this Opinion.
3. Following the EBA report on investment firms³ (henceforth 'the Report') published on 15 December 2015, the EBA received a second call for advice (CfA) from the Commission⁴ in June 2016 to provide further technical advice on the first two recommendations in the Report.
4. The first two recommendations of the Report may be summarised as follows:
 - a) The first recommendation stresses the necessity to make a distinction between those investment firms for which the CRD and CRR provide appropriate prudential requirements and the investment firms for which those requirements are not appropriate;
 - b) The second recommendation suggests that a specific prudential regime should be designed for those investment firms for which the CRD and CRR are not applicable.

¹ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority) amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

² Decision adopting the Rules of Procedure of the European Banking Authority Board of Supervisors of 27 November 2014 (EBA/DC/2011/01 Rev4).

³ [Report on investment firms response to the Commission's call for advice of December 2014, EBA/op/2015/20](#), issued on 14 December 2015.

⁴ [Call for advice to the EBA for the purposes of the report on the prudential requirements applicable to investment firms](#), issued on 13 June 2016.

5. Therefore, in the first part of its Call for Advice (henceforth CfA) the Commission seeks advice on: a) the criteria to identify the class of investment firms for which the CRD and CRR are applicable and b) the rules which should apply to them. The analysis relating to these firms should be provided to the Commission by the end of September 2016.
6. This document is a response to this part of the Call for Advice. The response to the remainder of the CfA shall be provided separately by 30 June 2017.

Rationale and recommendations

Investment firms for which the CRD and CRR provide an appropriate prudential framework

7. According to the first Recommendation of the Report Class 1 firms should be made up of systemic, interconnected and bank-like investment firms to which the full CRD/CRR requirements should be applied, in particular because these firms are exposed to credit risk, counterparty credit risk and market risk for positions taken on own account be it for the purpose of external clients or not.
8. In order to identify the firms that should fall under this category, the following criteria should be considered relevant:
 - a) systemic importance;
 - b) interconnectedness with the financial system;
 - c) complexity;
 - d) bank-like activities.
9. For assessing the systemic importance of credit institutions and investment firms, the EBA has already developed technical standards for the identification of Global Systemically Important Institutions (G-SIIs)⁵ and guidelines for the identification of Other Systemically Important Institutions (O-SIIs).⁶ These regulatory products aim at capturing systemically important institutions for the purpose of ensuring stability, integrity and sound competition in the EU financial markets. Furthermore, to avoid regulatory arbitrages, it is important to ensure a certain level of consistency between the criteria for identifying systemic banks and systemic investment firms.
10. Therefore, the EBA finds the above-mentioned guidelines and technical standards appropriate and suitable to identify the investment firms that should be subject in full to the CRD and CRR.

⁵ Commission Delegated Regulation (EU) No 1222/2014 of 8 October 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards for the specification of the methodology for the identification of global systemically important institutions and for the definition of subcategories of global systemically important institutions (OJ L 330 of 15.11.2014).

⁶ Guidelines on the criteria to determine the conditions of application of Article 131(3) of Directive 2013/36/EU (CRD) in relation to the assessment of other systemically important institutions (O-SIIs) – EBA/GL/2014/10 of 16 December 2014.

11. In accordance with the current implementation of GSII regulation and the OSII guidelines, nine investment firms in the EU are currently classified as OSII and none as GSII. These would be the ones that, under this recommendation, would fall under the full CRD/CRR. Furthermore, consolidated subsidiaries of banking groups that currently fall under CRR at the consolidated level would continue to do so.
12. This approach has several advantages. Firstly, it relies on existing definitions in the Union's law; secondly, there is already a broad agreement across the Union on the principles and the process for the application of those guidelines.
13. The recommendation on relying on the OSII guidelines for this purpose, however, should be received together with substantial caveats.
14. Although the OSII guidelines follow the same criteria suggested for the identification of the systemic and bank-like investment firms, they were designed and developed within a different regulatory framework. At this juncture, where the prudential regime for investment firms is still under development, it is premature to conclude that the OSII guidelines perfectly fit the purpose of the identification of investment firms in that class. Therefore any review should consider the appropriateness of the current OSII guidelines for systemic and bank-like investment firms.
15. It is therefore suggested, within the review of the overall regulatory framework, to investigate the possibility to have a dedicated set of guidelines for the identification of systemic and bank-like investment firms. The rationale behind this is that a clear distinction between the investment firms may only be developed when the prudential regime for all the other investment firms is mature enough to judge its scope of applicability. Furthermore, the consultation process is still ongoing and at an early stage and valuable feedback may be provided by the industry stakeholders.

Recommendation 1:

The EBA recommends that the investment firms that should be subject to the full CRR and CRD should be those identified as G-SII or O-SII in accordance with the current regulatory framework.

Recommendation 2:

The EBA recommends that the suitability of the OSII guidelines for the purpose of identifying the investment firms that should be subject to the full CRR and CRD is revised after the new prudential framework for investment firms is completed.

Rules that should apply to systemic and bank-like investment firms

16. From the previous considerations, it is clear that the EBA is proposing that the investment firms identified as systemically important and bank-like should be subject to the full CRD and CRR. However, as for the other considerations, this conclusion should also be subject to some caveats.
17. First of all, the limited scope of the firms in this class, only eight in the EU, makes it difficult to draw conclusions on whether certain specific elements of the CRR and CRD deliver an acceptable treatment. For example, any requirement related to the level of deposits held should be subject to particular scrutiny because investment firms do not hold deposits for their customers. All considered, however, this does not necessarily imply the need of regulatory changes, as the overall framework may still deliver a sufficient level of comfort to the competent authorities.
18. Secondly, the EBA review is based on the current framework, which is likely to change as a result of the ongoing CRR review, especially in the area of counterparty credit risk and market risk. Should this review embed a higher degree of proportionality, the changes of the CRR in these areas should also consider the role of Class 1 investment firms. Therefore, it is the opinion of the EBA that it is premature to engage in any specific regulatory change related to investment firms until the approach taken under the planned CRR review has been clarified.

Recommendation 3:

Assuming that the only investment firms subject to the full CRD and CRR are those identified by the EBA in its recommendation, it is recommended postponing any specific regulatory change related to investment firms at this stage and starting the review of specific provisions once the CRR review has reached a more advanced stage.