



## EUROPEAN COMMISSION

Directorate-General for Financial Stability, Financial Services and Capital Markets  
Union

Director General

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Mr José Manuel Campa  
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**Subject: Draft regulatory technical standards (RTS) on own funds requirements for investment firms based on fixed overheads under Regulation (EU) 2019/2033**

Dear Mr Campa,

On 16 December 2020, the EBA submitted to the Commission the draft regulatory technical standards (RTS) on own funds requirements for investment firms based on fixed overheads under Regulation (EU) 2019/2033.

While the Commission agrees with the substance of the submitted draft RTS, it considers that the draft would benefit from one additional element. An investment firm that is a market maker should be allowed to deduct from the total expenses used to calculate the fixed overheads requirement, those trading fees it paid on the preceding year (year of reference for the calculation) for transactions executed for the sole purpose of providing liquidity to the market or markets for which it provides market-making activities, with the exception of the trading fees that would be incurred to sell a portfolio of securities equivalent to the end-of-day inventory of securities of business days  $d$ , held by the market maker for market-making purposes, for all business days  $d$  of the preceding year. Indeed, only those latter fees would need to be included in the fixed overhead requirement as equivalent amounts would indeed be incurred in case of an orderly winding down scenario of the investment firm. As a matter of fact, this amount for deduction that we propose to add in the RTS is not included in its Article 1(6), point (a), as this point only allows deduction of trading fees “*only where they are directly passed on and charged to customers*”, and according to Directive 2014/65/EU, a market maker is not considered to be buying/selling to “customers” when acting as a market maker, and hence cannot benefit from the

deduction provided under that point.

Therefore, the Commission intends to amend the draft RTS accordingly. In addition, the Commission intends to make some technical adjustments that have been discussed with your services. These amendments would be fully in line with the objective of the draft.

I therefore inform you that the Commission, acting in accordance with the procedure set out in the fourth and fifth sub-paragraphs of Article 10(1) of Regulation (EU) No 1093/2010, intends to endorse with amendments the draft RTS submitted by the EBA on own funds requirements for investment firms based on fixed overheads, as provided for in the amended draft RTS attached.

Yours sincerely,

John BERRIGAN  
(e-signed)

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Enclosure: Amended draft regulatory technical standards (RTS) on own funds requirements for investment firms based on fixed overheads under Regulation (EU) 2019/2033