CHARLES
STANLEY

European Banking Authority
Floor 46,
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02 February 2017

Dear Sirs,

EBA discussion paper: designing a new prudential regime for investment firms

Charles Stanley & Company Limited is a leading UK based private client investment firm, authorised by the UK Financial Conduct Authority. Client assets managed and administered exceed €25 billion. The firm is within the scope both of MiFID and the CRD/CRR. Our client base consists predominantly of retail investors, the majority of whom are UK resident, across a range of services: portfolio management, advisory and unadvised investment services. Custody services are also offered, on a ring-fenced basis. We operate on an agency basis only and do not undertake proprietary trading.

We acknowledge and welcome that there is a recognition that the current prudential regime is not an appropriate regime for the majority of investment firms that are neither banks nor systemic. The current regime was primarily developed for large global active banks and was subsequently extended to capture both credit institutions and investment firms.

However, we recognise also that the proposals contained in the paper represent a complete overhaul of the current prudential regime for MiFID investment firms. Whilst it may be right to design a prudential regime specifically for investment firms with a set of common principles, a degree of flexibility in the rules and their application will be necessary, to recognise the fact that the investment firm population itself covers a wide range of business models, such as broker-dealers, investment advisers, trading platforms, asset managers, corporate finance firms and commodity dealers, to name a few. Given the great disparity in the nature of their business, size, complexity and systemic importance, the danger of a one-size fits all approach – even with a tiered/class structure using different K-Factors - is that there is insufficient flexibility in the process to recognise individual firm's circumstances and the genuine risks inherent in very different business models.

An alternative approach could have been to keep the same prudential regime as banks, but allow investment firms more flexibility and simplification within the CRD/CRR structures.

Our detailed responses to the specific questions raised are set out in the Appendix to this response; however, I set out below some high level thoughts.

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VAT number: GB 524732945. Authorised and regulated by the Financial Conduct Authority. Member of the London Stock Exchange.

Choice of K-Factors

We remain to be convinced that the K-Factors, as listed in the paper, are adequate proxies for the risks to which investment firms, their customers and markets are exposed.

We are not aware of any recent retrospective analysis conducted by the EBA that might show relevant correlations. A calibration exercise was undertaken in summer 2016, which has led to the initial paper and its recommendations; but this calibration exercise – in which our firm participated – reviewed the MiFID activities of firm and P&L and balance sheet data. So far as we are aware, it was a survey only of existing investment firms – firms that have not failed or been wound down – and we are not aware of the EBA similarly conducting an analysis of historic failures over recent years or decades of firms that might be classified as Class 2 and 3 under the proposals in this paper.

Without understanding why or how such firms have failed, how the causes of failure differed between firms of different sizes and engaged in different activities, and how operational mitigants and other measures (such as insurance) impacted both on risk crystallisation and the consequent losses, we have concerns that whatever metrics the EBA is now proposing as proxies of risk are, in fact, not appropriate proxies but based more on an understandable desire to favour factors that are easy to measure, however little they might represent genuine risk.

Threshold between Class 2 and Class 3

The paper implies a prudential benefit for firms in Class 3, but without supporting historical analysis to demonstrate that Class 3 firms do indeed pose less risk. In the absence of an EBA analysis or data published elsewhere, we would like to understand better the likelihood of investors suffering greater losses between Class 2 and Class 3 firms, and the aggregate quantum of losses for each of the two classes within a given time period.

The paper suggests that the quantitative criteria for Class 3 may adopt those of EU's 'nano' firms, e.g. balance sheet and turnover less than €2m. However, simple maths shows that such a firm, charging investment clients 0.75% to 1% of AUA/M per annum, could be managing or advising on retail client investments worth between €200m and €300m. These are not immaterial sums. It is not clear to us, therefore, why such firms should be permitted to operate on the basis of disproportionately lower prudential capital.

Indeed, arguably such firms pose proportionately greater risks to customers than larger firms, because they are subject to lighter regulatory supervision. In the UK, smaller investment firms that could be classified as Class 3 are subject to much lighter regulatory supervision, when compared to larger competitors, with no direct regulatory contact and little or no external validation of the systems and controls required to mitigate risks to customers.

For this reason we would not support any proposals for non-linear scalars that would increase the prudential requirements of larger firms disproportionately when compared to smaller firms undertaking the same activities.

Our view is that, in the UK, the current prudential and conduct regimes incentivises new entrants to remain small, so as to avoid the higher supervisory engagement and prudential requirements that comes with size. We would be concerned at changes that magnify the arbitrage opportunity.

Client assets and money

Paragraph 37(d) proposes a K-Factor for client assets and money that would be neutral between whether these were (a) held on the balance sheet of the firm, or (b) held on an agency basis and ring-fenced from the assets and money of the investment firm itself.

However, it is surely clear that the Risks to Customers under (a) and (b) differ greatly, with investors exposed to significantly different and higher risks when their client assets and money is held on an investment firm's own balance sheet. Where instead client assets and money are held on a ring-fenced agency basis, a failure of the firm would result in no customer detriment at all, assuming proper operational controls; the risks to the customer are purely operational risks, rather than linking to risks associated with the investment firm's own balance sheet.

We do not understand, therefore, why the EBA would seek to impose the same metrics to radically different RtC scenarios.

Fixed Overhead Requirement (FOR) and tied agents

In various places in the paper (paragraphs 20, 34, 45, 76 and elsewhere) a proposal is put forwards that tied agents should be treated the same as employees and addressed as an expense in calculating any FOR-like requirement.

We would be concerned if the proposal should be taken to mean that all costs of tied agents, including any variable remuneration, should be included in FOR calculations. If so it would include variable remuneration for tied agents, when it is rightly excluded for employees. Variable remuneration by definition is not fixed.

We do not think this is the EBA intention and would be grateful for confirmation.

Unintended consequences for customers

If not designed properly, the proposed framework could lead some firms' business models to become unviable and exit the market. Other firms may change their business models to reflect changing prudential rules. Such changes may not operate to the advantage of investors – for example, where:

- a firm holding customer assets on an agency basis and fully ring-fenced from its own assets, with strong systems and controls around the custody, but which receives no recognition of this in a mechanistic formula, is incentivised through prudential capital surcharges to outsource its custody operations instead to another firm whose operations may be worse, or which by holding customer assets on its balance sheet poses a different and possibly higher risk of customer detriment.

- notwithstanding market demand from mass market consumers, a firm engaged in both higher/lower margin investment activities such as Discretionary Management (higher margin) and Advisory (lower) would be incentivised to withdraw from the lower-cost and lower-margin Advisory services, in order to reduce prudential surcharges based on Assets under Advice.

The broader point is that K-Factors linked to low-margin activities – such as AUA and especially custodial activities – will invariably drive investment firms away from such activities.

We see no reference in the paper to the public policy consequences.

Unintended consequences for long-term planning by firms

The volatility and unpredictability of the suggested K-Factors may have an adverse consequence of reducing the ability of firms to plan long-term.

The suggested K-Factors in the Risks to Customers category are likely to move in tandem at the same time, can fluctuate materially from year to year, and this change will be largely beyond the control of the firm's management to mitigate:

- More often than not, measures of client assets (AUA, AUM, ASA) and client money (CMH) will move in the same direction at the same time, and to similar degrees, rather than counterbalancing each other by moving in different directions up or down.

- For many if not most firms, changes of value in these measures will be dependent primarily on movements in market values, which are beyond the control of the firm.

- Annual market movements can be significant – 10 to 20% a year up or down, or more, are not uncommon. It would be possible for the larger part of such significant moves to happen in the final month or even final week of a reporting period.

K-Factors will necessarily be volatile and, subject to the scalars used, prudential requirements based on these will be beyond the ability of firms to control or to plan for. Depending on the scalar, a firm could see its prudential capital requirement increase by 20% in a year, fall 10% the next and then rise 15% the third year. Planning the balance sheet would become next to impossible, with firms facing possible breaches of their prudential buffers merely because they had successfully invested clients' portfolios, something that could not have been known at the start of the period.

Conversely, in a market downturn where the above K-Factors fall, firms would have reduced capital requirements, leading to less protection when arguably the risks to customers and markets are greater.

Unlike banks, investment firms in Class 2 and 3 may not have ready access to capital markets and, being unable to attract issue new eligible capital at short notice, a likely response would be to increase profits and balance sheet reserves artificially through the immediate reduction of expenditure – with a potential impact on longer-term investments in IT infrastructure and other desirable systems and controls. We would question whether this is the policy intent of the EBA.

Operational mitigants and use of insurance

Other thoughts we have are:

- The K-Factor approach affords no prudential recognition for firms that put in place comprehensive insurance for the mitigation of Risks to Customers. Where such insurance is in place, the impact of customer detriment (say from poor Advice or custody failings) would not fall so significantly on the firm's balance sheet.

- Firms holding client money and assets are already subject to the CASS requirements, but the proposed prudential requirement makes no reference to the effectiveness of the firm's CASS

practices. It is the effectiveness of those practices that determines the risk to customers, not the quantum of client money and assets held.

Supervisory Review & Evaluation Process (SREP)

We welcome the suggestion (para 160) that the EBA will consider revising the current SREP, which can be inappropriate and excessively burdensome for investment firms that are neither systemic nor banks.

Impact analysis

We understand that the aim of the EBA is to come up with something that would cover all types of investment firms, but to keep it as simple as possible and not to raise the overall levels of capital. Although the overall level of capital for investment firms is expected by the EBA to remain similar under the old versus the new regime, the proposed approach is fundamentally different and whilst it is difficult to quantify at this stage, it is likely that there will be a significant variance in the capital requirements for Pillar 1 for individual firms.

Until we have seen the final K-factors and constants / scalars / percentages, it is difficult for us to form a view on the potential implications. It would be helpful if the EBA were to undertake a proper impact analysis on investment firms before effecting the changes.

Please do let me know by post or at paul.abberley@charles-stanley.co.uk if you would like to discuss any of these points further.

Yours sincerely,

Paul Abberley

Chief Executive Officer
Charles Stanley & Co Limited

Question 1. What are your views on the application of the same criteria, as provided for G-SIIs and O-SIIs, for the identification of 'systemic and bank-like' investment firms? What are your views on both qualitative and quantitative indicators or thresholds for 'bank-like' activities, being underwriting on a firm commitment basis and proprietary trading at a very large scale? What aspects in the identification of 'systemic and bank-like' investment firms could be improved?

We agree that it would be sensible and proportionate to apply the G-SII and O-SII criteria to Class 1 firms, and that firms undertaking 'investment bank-like' activities, as listed, may also be presumed to be so classified.

Given the highly significant consequences for a Class 2 firm being deemed Class 1 by a national supervisor, and the need for long-term planning ahead of such a reclassification occurring, it is important that the definitions do not allow for overly flexible interpretation, whether within one member state or across member states.

Question 2. What are your views on the principles for the proposed prudential regime for investment firms?

We welcome the broad principle that investment firms should be subject to a different prudential regime than credit institutions, as existed prior to the Capital Requirements Directive.

However:

- In paragraph 12(b)(i) we would hope to see recognition of the role of insurance in mitigating losses to the firm caused by detriment to customers or disruption to markets.
- we disagree with paragraph 12(c). Firms holding client money and assets are already subject to the CASS requirements, and a prudential requirement makes no reference to the effectiveness of the firm's CASS practices. It is the effectiveness of those practices that determines the risk to customers, not the quantum of client money and assets held.

Question 3. What are your views on the identification and prudential treatment of very small and non-interconnected investment firms ('Class 3')? If, for example, such class was subject to fixed overheads requirements only, what advantages and drawbacks would have introducing such a Class 3? Conversely, what advantages and drawbacks could merging Class 3 with other investment firms under one single prudential regime with 'built-in' proportionality have?

Please refer to the covering letter.

The paper implies a prudential benefit for firms in Class 3, but without supporting historical analysis to demonstrate that Class 3 firms do indeed pose less risk. In the absence of an EBA analysis or data published elsewhere, we would like to understand better the likelihood of investors suffering greater losses between Class 2 and Class 3 firms, and the aggregate quantum of losses for each of the two classes within a given time period.

Our view is that, in the UK, the current prudential and conduct regimes incentivises new entrants to remain small, so as to avoid the higher supervisory engagement and prudential requirements that comes with size. We would be concerned at changes that magnify the arbitrage opportunity.

The paper suggests that the quantitative criteria for Class 3 may adopt those of EU's 'nano' firms, e.g. balance sheet and turnover less than €2m. However, simple maths shows that such a firm,

charging investment clients of 0.75% to 1% of AUA/M per annum, could be managing or advising on retail client investments worth between €200m and €300m. These are not immaterial sums.

It is not clear to us, therefore, why such firms should be permitted to operate on the basis of disproportionately lower prudential capital. Indeed, arguably such firms pose proportionately greater risks to customers than larger firms, because they are subject to lighter regulatory supervision. In the UK, smaller investment firms that could be classified as Class 3 are subject to much lighter regulatory supervision, when compared to larger competitors, with no direct regulatory contact and little or no external validation of the systems and controls required to mitigate risks to customers.

Question 4.What are your views on the criteria discussed above for identifying 'Class 3' investment firms?
For the above question, it would be useful to receive detailed comments on each of the following items, which would preclude an investment firm from being in 'Class 3':

- **a) holding client money or securities,**
- **b) ancillary service of safekeeping and administration (B1),**
- **c) dealing on own account (A3),**
- **d) underwriting or placing with a firm commitment (A6),**
- **e) the granting of credits or loans to an investor (B2),**
- **f) operating a multilateral trading facility (or MTF) (A8),**
- **g) the MiFID II activity of operating an organised trading facility (or OTF),**
- **h) being member of a wider group,**
- **i) using a MiFID passport, and**
- **j) using tied agents.**

Please see our response to question 3, above.

Question 5.Do you have any comments on the approach focusing on risk to customers (RtC), risk to markets (RtM) and risk to firm (RtF)?

Please see our response to question two.

We can see the merits of this approach, but believe that it presents policy difficulties when it comes to selecting the appropriate metrics/proxies.

Question 6 What are your views on the initial K-factors identified? For example, should there be separate K-factors for client money and financial instruments belonging to clients? And should there be an RtM for securitisation risk-retentions? Do you have any suggestions for additional K-factors that can be both easily observable and risk sensitive?

We remain to be convinced that the K-Factors, as listed in the paper, are adequate proxies for the risks to which investment firms, their customers and markets are exposed.

We are not aware of any recent retrospective analysis conducted by the EBA that might show relevant correlations. A calibration exercise was undertaken in summer 2016, which has led to the initial paper and its recommendations; but this calibration exercise – in which our firm participated – reviewed the MiFID activities of firm and P&L and balance sheet data. So far as we are aware, it was a survey only of existing investment firms – firms that have not failed or been wound down – and we

are not aware of the EBA similarly conducting an analysis of historic failures over recent years or decades of firms that might be classified as Class 2 and 3 under the proposals in this paper.

Without understanding why or how such firms have failed, how the causes of failure differed between firms of different sizes and engaged in different activities, and how operational mitigants and other measures (such as insurance) impacted both on risk crystallisation and the consequent losses, we have concerns that whatever metrics the EBA is now proposing as proxies of risk are, in fact, not appropriate proxies but based more on an understandable desire to favour factors that are easy to measure, however little they might represent genuine risk.

Paragraph 37(d) proposes a K-Factor for client assets and money that would be neutral between whether these were (a) held on the balance sheet of the firm, or (b) held on an agency basis and ring-fenced from the assets and money of the investment firm itself.

However, it is surely clear that the Risks to Customers under (a) and (b) differ greatly, with investors exposed to significantly different and higher risks when their client assets and money is held on an investment firm's own balance sheet. Where instead client assets and money are held on a ring-fenced agency basis, a failure of the firm would result in no customer detriment at all, assuming proper operational controls; the risks to the customer are purely operational risks, rather than linking to risks associated with the investment firm's own balance sheet.

We think that the scalars are inappropriate as the quantum of client money and assets is subject to the CASS regime. The factors do not make any reference to the effectiveness of CASS controls, which are signed off by our external auditors annually.

We do not understand, therefore, why the EBA would seek to impose the same metrics to radically different RtC scenarios.

We have no comment on the RtM proposals.

Question 7.Is the proposed risk to firm 'up-lift' measure an appropriate way to address the indirect impact of the exposure risk a firm poses to customers and markets? If not, what alternative approach to addressing risk to firm (RtF) would you suggest?

We are broadly supportive however await further detail. Agency businesses like ours may have large volumes of assets, but equally large, and directly related, liabilities. These represent trades on behalf of clients that are not yet due for settlement, and are not 'gearing' in the same sense as a bank with instruments on its books.

As firms have adapted to the current prudential regime, we would expect a reasonable transition period if the proposal goes into EU legislation and is subsequently implemented.

Question 8.What are your views on the 'built-in' approach to delivering simpler, proportionate capital requirements for Class 3 investment firms, (compared to having a separate regime for such firms)?

We support a simpler approach, but have concerns that in practice this will translate into disproportionately low prudential requirements for Class 3 firms that do not accurately reflect their risk to customers and markets.

Question 9. Should a fixed overhead requirement (FOR) remain part of the capital regime? If so, how could it be improved?

We support this, but note that the definition should reflect genuine fixed overheads and not non-recurring expenditure.

In various places in the paper (paragraphs 20, 34, 45, 76 and elsewhere) a proposal is put forwards that tied agents should be treated the same as employees and addressed as an expense in calculating any FOR-like requirement.

We would be concerned if the proposal should be taken to mean that all costs of tied agents, including any variable remuneration, should be included in FOR calculations. If so it would include variable remuneration for tied agents, when it is rightly excluded for employees. Variable remuneration by definition is not fixed.

We do not think this is the EBA intention and would be grateful for confirmation.

Question 10. What are your views on the appropriate capital requirements required for larger firms that trade financial instruments (including derivatives)?

It is not clear to us whether 'firms that trade financial instruments (including derivatives)' would include firms trading shares and other such non-margined financial instruments, including on an agency basis, and if so why this would be felt necessary.

Question 11.Do you think the K-factor approach is appropriate for any investment firms that may be systemic but are not 'bank-like'?

Please see our response to Question 6 above regarding the actual choice of K-Factors.

We are broadly supportive of a K-Factor approach in principle, but have concerns that the actual K-Factors selected in practice may neither reflect actual risks properly, and thus be poor proxies, and furthermore may have adverse outcomes for customers and firms.

Unintended consequences for customers

If not designed properly, the proposed framework could lead some firms' business models to become unviable and exit the market. Other firms may change their business models to reflect changing prudential rules. Such changes may not operate to the advantage of investors – for example, where:

- a firm with strong systems and controls around the custody of client assets, but which receives no recognition of this in a mechanistic formula, is incentivised through prudential capital surcharges to outsource its custody operations instead to another firm whose operations may be worse.

- notwithstanding market demand from mass market consumers, a firm engaged in both higher/lower margin investment activities such as Discretionary Management (higher margin) and Advisory (lower) would be incentivised to withdraw from the lower-cost and lower-margin Advisory services, in order to reduce prudential surcharges based on Assets under Advice.

Unintended consequences for long-term planning by firms

The volatility and unpredictability of the suggested K-Factors may have an adverse consequence of reducing the ability of firms to plan long-term.

The suggested K-Factors in the Risks to Customers category are likely to move in tandem at the same time, can fluctuate materially from year to year, and this change will be largely beyond the control of the firm's management to mitigate:

- More often than not, measures of client assets (AUA, AUM, ASA) and client money (CMH) will move in the same direction at the same time, and to similar degrees, rather than counterbalancing each other by moving in different directions up or down.

- For many if not most firms, changes of value in these measures will be dependent primarily on movements in the values of market values, which are beyond the control of the firm.

- Annual market movements can be significant – 10 to 20% a year up or down, or more, are not uncommon. It would be possible for the larger part of such significant moves to happen in the final month or even final week of a reporting period.

K-Factors will necessarily be volatile and, subject to the scalars used, prudential requirements based on these will be beyond the ability of firms to control or to plan for. Depending on the scalar, a firm could see its prudential capital requirement increase by 20% in a year, fall 10% the next and then rise 15% the third year. Planning the balance sheet would become next to impossible, with firms facing possible breaches of their prudential buffers merely because they had successfully invested clients' portfolios, something that could not have been known at the start of the period.

Unlike banks, investment firms in Class 2 and 3 may not have ready access to capital markets and, being unable to attract issue new eligible capital at short notice, a likely response would be to increase profits and balance sheet reserves artificially through the immediate reduction of expenditure – with a potential impact on longer-term investments in IT infrastructure and other desirable systems and controls. We would question whether this is the policy intent of the EBA.

Question 12. Does the definition of capital in the CRR appropriately cater for all the cases of investment firms that are not joint stock companies (such as partnerships, LLPs and sole-traders)?

No comment.

Question 13. Are the cases described above a real concern for the investment firms? How can those aspects be addressed while properly safeguarding applicable objectives of the permanence principle?

We have no comment on these.

Question 14. What are your views on whether or not simplification in the range of items that qualify as regulatory capital and how the different 'tiers' of capital operate for investment firms would be appropriate? If so, how could this be achieved?

We support the simplification provided. Capital should be genuinely capable of absorbing losses.

Question 15. In the context of deductions and prudential filters, in which areas is it possible to simplify the current CRR approach, whilst maintaining the same level of quality in the capital definition?

We support the proposal in paragraphs 94 and 95 to allow competent authorities to use 'prudential filters' where the accounting value of certain items can be adjusted for 'real world' impacts.

The example cited in paragraph 95 relates to defined benefit scheme deficits. We support the proposal to allow for actuarial adjustments.

Question 16. What are your views overall on the options for the best way forward for the definition and quality of capital for investment firms?

We do not have strong view on this, though consider that simplification is generally advisable.

Question 17. What are your views on the definition of initial capital and the potential for simplification? To what extent should the definition of initial capital be aligned with that of regulatory capital used for meeting capital requirements?

We support this.

Question 18.What aspects should be taken into account when requiring different levels of initial capital for different firms? Is there any undesirable consequence or incentive that should be considered?

We do not have any comment on this.

Question 19. What are your views on whether there is a need to have a separate concept of eligible capital, or whether there is potential for simplification through aligning this concept with the definition of regulatory capital used for meeting capital requirements?

We support simplification. We think that regulatory capital ought to be available to meet all requirements.

Question 20. Do you see any common stress scenario for liquidity as necessary for investment firms? If so, how could that stress be defined?

No. We consider that stress scenarios should be considered as relevant to a firm's business model. The sector is too diverse for any common stress scenarios to be likely.

Question 21. What is your view on whether holding an amount of liquid assets set by reference to a percentage of the amount of obligations reflected in regulatory capital requirements such as the FOR would provide an appropriate basis and floor for liquidity requirements for 'non-systemic' investment firms? More specifically, could you provide any evidence or counter-examples where holding an amount of liquid assets equivalent to a percentage of the FOR may not provide an appropriate basis for a liquidity regime for very small and 'non-interconnected' investment firms?

We support the idea that a firm should hold sufficient liquid resources to cover an element of regulatory capital, such as the FOR or wind down.

We are generally against any proposal to introduce liquidity requirements under Pillar 1, as we have these already under Pillar 2 and the paper does not appear to contain any proposals to reduce Pillar 2 assessments for liquidity; so presumably those would still apply, which would be duplicative.

Question 22. What types of items do you think should count as liquid assets to meet any regulatory liquidity requirements, and why? (Please refer to Annex 4 for some considerations in determining what may be a liquid asset).

We think that any asset that is either cash or readily convertible into cash is liquid. These include cash at bank with less than 3 months duration, or quoted instruments in an active market.

Question 23. Could you provide your views on the need to support a minimum liquidity standard for investment firms with the ability for competent authorities to apply "supplementary" qualitative requirements to individual firms, where justified by the risk of the firm's business?

We do not consider this necessary as it is already addressed under Pillar 2.

Question 24. Do you have any comment on the need for additional operational requirements for liquidity risk management, which would be applied according to the individual nature, scale and complexity of the investment firm's business?

We refer to the response to question 23.

Question 25. What are your views on the relevance of large exposures risk to investment firms? Do you consider that a basic reporting scheme for identifying concentration risk would be appropriate for some investment firms, including Class 3 firms?

We do not consider this to be relevant. Our large exposures are with the banks that hold our cash.

Question 26. What are your views on the proposed approach to addressing group risk within investment firm-only groups? Do you have any other suggested treatments that could be applied, and if so, why?

We have no views on this.

Question 27. In the case of an investment firm which is a subsidiary of a banking consolidation group, do you see any difficulty in the implementation of the proposed capital requirements on an individual firm basis? If so, do you have any suggestion on how to address any such difficulties?

This is not applicable to our firm.

Question 28.What other aspects should the competent authorities take into account when addressing the additional prudential measures on an individual firm basis under the prudential regime for investment firms?

We do not think that any further measures are necessary. The sector is sufficiently diverse that common measures under Pillar 1 are unlikely, and company-specific risks are addressed under Pillar 2.

Question 29. What examples do you have of any excessive burden for investment firms arising from the current regulatory reporting regime?

Our experience of the various CRDs is that they have introduced unnecessary complexity into the reporting regime. Our firm is in the same regime as international banks. This has caused us to incur heavy expenditure on systems, consultancy and ongoing contracts and does not align in any way with the internal Management Information used by the Board and senior management.

Question 30. What are your views on the need for any other prudential tools as part of the new prudential regime for investment firms? And if required, how could they be made more appropriate? In particular, is there a need for requirements on public disclosure of prudential information? And what about recovery and resolution?

We do not think there is any further need for other prudential tools. We note also that public disclosure is, in practice, never requested by potential shareholders. It adds little to the disclosures we are already required to make in our Report & Accounts.

Question 31. What are your views on the relevance of CRD governance requirements to investment firms, and what evidence do you have to support this?

For smaller and non-systemic investment firms, the CRD governance requirements are unnecessarily prescriptive. Whilst they do permit for proportionate application, our experience and the experience of our peers is that the national regulator will usually apply a highly literal (or over-literal) interpretation of the requirements. The result can be perverse, in that a strict application of the CRD governance requirements, in circumstances that do not warrant them, can actually damage the proper governance of an investment firm. We would prefer for Class 2 and 3 firms to be exempted from the CRD governance requirements altogether or, if this is not possible, to have a greater focus on the proportionality permitted them.

Question 32.As regards 'systemic and bank-like' investment firms, do you envisage any challenges arising from the full application of the CRD/CRR remuneration requirements, and if so, what evidence do you have to support this? For all other investment firms, what are your views on the type of remuneration requirements that should be applied to them, given their risk profiles, business models and pay structures?

We have no views on this.

Question 33.What is your view on a prudential remuneration framework for other than 'systemic and bank-like' investment firms that should mainly aim to counteract against conduct related operational risks and would aim at the protection of consumers?

We think that the existing framework is sufficient, subject to the continuing application of proportionality to smaller firms, as currently permitted in the UK.

Question 34. What are your views on having a separate prudential regime for investment firms? Alternatively, should the CRR be amended instead to take into account a higher degree of proportionality? Which type of investment firms, if any, apart from systemic and bank-like investment firms, would be better suited under a simplified CRR regime?

We support having a fully separate regime for investment firms. The prudential regime prior to the CRD was much more industry-specific.

Question 35. What are the main problems from an investment firm perspective with the current regime? Please list the main problems with the current regime

The main problems with the current regime are twofold:-

- The existing regime is derived from Basel II and III, and as such is intended to regulate credit institutions. Our firm is not a credit institution and has very few similarities with a banking business model. We have found that, from CRD onwards, the regulatory treatment is inconsistent with the way that the firm is managed. All the disclosures under CRD and CRD IV have resembled those of a bank, and not of an investment firm. Our firm is not a bank and should not be regulated as one.
- Furthermore the existing regime is exceeding complex. As noted earlier we have had to have a detailed understanding of complex, and legalistic rules if only to determine that those rules do not apply. We have found that the CRR is poorly written and does not flow logically in the same way as previous regulatory requirements. This has introduced unnecessary complexity as well as increasing the risk of inadvertent error.