

21 August 2013

EBA
Tower 42
25 Old Broad Street
London EC2N 1HQ
United Kingdom

Dear Madame or Sir,

FIA European Principal Traders Association (FIA EPTA) welcomes the opportunity to submit comments to the European Banking Authority in relation to its Draft Regulatory Technical Standards “*On criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile under Article 90(2) of the proposed Capital Requirements Directive*”.

Please find below our replies to the questions set out in the consultation. Given that we are replying as an association of firms, we are unable to provide responses to questions on company specific impacts.

Background on FIA EPTA Members

FIA EPTA is an association of European principal traders formed in June 2011 under the auspices of the Futures Industry Association (FIA). FIA EPTA represents more than 20 principal trading firms that, on a combined basis, provide significant amounts of liquidity to European regulated markets and multilateral trading facilities (MTFs).

FIA EPTA Members are generally the electronic versions of the floor-based jobbers, market makers or specialists in equity and/or derivatives markets. They are all members of exchanges and hence supervised by those. Members exclusively trade their own capital and do not act as deposit takers in any form. They are generally highly enterprising and innovative partnerships, which have often remained owner-managed. Furthermore, they are relatively small relative to other firms in the financial industry. As a result of their small size, FIA EPTA Member firms' board members have a very good understanding of the various strategies deployed as well as the risks that they carry.

In short, Members satisfy the following conditions:

- Members trade their own capital as their material regulated activity. They do not carry out deposit taking which is a significant activity relevant to banks. Consequently, their key stakeholders are very limited and cannot be compared to deposit taking banks.
- Members have a strong emphasis on risk management through a robust operational risk framework given the electronic nature of its trading.
- Members have an employee size of less than 350 in Europe.

Draft RTS on categories of staff that have a material impact on an institution's risk profile

As a general comment, FIA EPTA would like to note that the EBA's draft regulatory technical standards leave no scope for a proportional application. This stands contrary to the approach chosen in many parts of the CRD IV level 1 text. We would encourage the EBA to consider revising their strict approach given the large variety of financial services firms affected by the final regulatory technical standards. Staff classified as having a material impact upon the risk profile of a firm will depend upon the firm's size and activities pursued.

Q1: Is the list of specific functions listed appropriate or should additional functions be added?

FIA EPTA Members believe that the functions listed in point e. are too far reaching. While we agree that staff members working in the area of IT and legal affairs may have a material impact on the risk profile of a firm, we would question whether employees working in other functions listed in this subsection have a material impact on the risk profile of a firm. Although the other functions mentioned are essential for the continued business operations of a firm, we do not regard them to have a significant impact on its risk profile.

We request that the EBA justify why employees working in particular in taxation, human resources and budgeting would be considered in this list.

Q2: Can the above criteria be easily applied and are the levels of staff identified and the provided threshold appropriate?

FIA EPTA would appreciate a clarification on what the EBA defines as a transaction. FIA EPTA believes that a transaction should only include the trading activities that have an impact on the profit and loss of a firm, and exclude non-trading activities.

In addition, FIA EPTA believes that the basis of 0.25% of a firm's common Tier 1 capital should be increased by the EBA. This threshold is too low and would include many employees that could not be considered as having a material impact on a firm's risk profile. FIA EPTA feels that it would make more sense to base the transaction size on a percentage of total capital resources.

Q3: Can the above criteria be easily applied and are the levels of staff identified and the provided thresholds appropriate?

The 0.25% threshold appears to be a much too low and not tailored to the activities and business model of FIA EPTA member firms. Again, we would like the EBA to clarify the basis for this percentage.

Q4 a) Is this criterion appropriate to identify risk takers?

Q4 b) Are the thresholds set in the criterion appropriate?

Q4 c) What would be the number of staff members identified in addition to all other criteria within the RTS?

Q4 d) What would be the additional costs of implementation for the above criterion if an institution applies Article 4 in order to exclude staff from the group of identified staff?

To Q4a) and Q4b):

The basis of the 75,000 Euros is set far too low if it is intended to cover only material risk takers (risk does not match reward).

Surely, the parameter should be raised to include a higher absolute variable number and higher % of fixed remuneration (base it on multiples of fixed remuneration, with fixed remuneration set at a higher minimum). Applying this criterion to FIA EPTA member firms could lead to a situation where a majority of the employees of member firms would be categorised as material risk takers, something we believe would be disproportional.

To Q4c) and Q4d):

No comment.

Q5 a) Can the above criterion be easily applied?

Q5 b) Would it be more appropriate to use remuneration which potentially could be awarded as a basis for this criterion?

Q5 c) What would be the difference in implementation costs if the potentially awarded remuneration would be used as a basis?

The financial results of FIA EPTA member firms can vary substantially over time. To remain flexible these firms aim to keep their fixed costs low and grant their employees a relatively low fixed salary. To compensate for the low salaries these employees receive a relatively high variable pay when the company is doing well (a profit share). This means, however, that the total gross remuneration for employees can also vary significantly from year to year, which under criterion (b) could lead to a situation whereby the total number of staff caught by this criterion will also vary substantially from year to year. This would result in a significant administrative burden as it would lead to an annual reclassification of staff members, which would have a material impact on the firm's risk profile.

Q6: Can the above criterion be easily applied and are the threshold and the levels of staff identified appropriate?

See answer to Q5.

Q7: Can the above criteria be easily applied and are the levels of staff identified appropriate?

No comment.

Q8: Are there additional criteria which should be used to identify staff having a material impact on the institutions risk profile?

No comment.