//ASCOSIM
SOCIETA' di CONSULENZA FINANZIARIA

European Banking Authority
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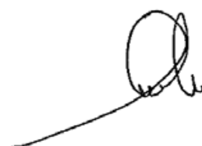
Object: Reply to EBA Discussion Paper - EBA/DP/2016/02 – 4 November2016 - Designing a new prudential regime for investment firms

Milan, 2nd February 2017

Dear Sirs,

We thank you for the opportunity to participate in the consultation on the EBA Discussion Paper - "Designing a new prudential regime for investment firms".
Our Association represents Italian investment and financial advisory firms. The Ascosim member are mainly small sized investment firms.
In order to provide comments to EBA Discussion Paper shared by Italian investment firms, we organized a meeting in January to discuss the topics addressed in DP.
We collected the comments coming from the investment firms that attended the meeting.
Furthermore we informed 25 Italian investment firms on the EBA Discussion Paper and our related comments.
Please find our comments in the Annex.
We remain at your disposal for any request of additional information.
Kind regards.

The Chairman
Massimo Scolari



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ANNEX

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

We agree with the view that a less complex prudential regime seems appropriate to address the specific risks that investment firms, not considered 'systemic and bank-like', pose to investors and to other market participants.
It appears acceptable to the principle whereby companies that are more exposed to risk to customers, markets or balance sheets, should hold more capital.

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?*

"Very small and 'non-interconnected'" or Class 3 investment firms warrant a different prudential treatment. The prudential regime that better meets the objective of proportionality could be based mainly on fixed overhead requirements (FOR) and initial capital; such a prudential regime fulfils the objective of setting aside sufficient capital for ensuring safe and sound management of risks. These firms should also be subject to simplified reporting obligations.

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.

In our view the activities listed from a) to e), holding client money or securities belonging to clients, the ancillary service of safekeeping and administration (B1), dealing on own account (A3), underwriting or placing with a firm commitment (A6) and the granting of credits or loans to an investor (B2), reflect higher risk and preclude an investment firm from applying the simpler capital treatment.
Conversely, being member in a wider financial group should not be considered a criteria for investment firms classification, taking into account the application of consolidated supervision and capital requirements.
Operating in more than one Member State, given the level playing field granted by Mifid Directive, should not be a valid criteria to apply a more severe prudential regime and additional capital requirements.
Furthermore, when an investment firm makes use of tied agents could increase the risk. Nevertheless tied agents could be compared to employees and therefore addressed as an expense in calculating FOR requirement. Therefore, any additional control risks associated with the use of tied agents should be captured through other requirements.
We also highlight that Italian domestic legislation provides that investments firms marketing their service outside their headquarter are obliged to make use of tied agents. In this context even very small investment firm use a few number of tied agents to provide their service to customers.
As far as quantitative criteria of classification are concerned, we disagree on the threshold of 2 million euro for turnover/income. It should be a too strict measure for the majority of investment firms. Referring to the EU SME definition of “Small”, as reported in the footnote 12 (at page 15 of the Discussion Paper), we would welcome a threshold of 10 million.

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)?*

Risk to Customer (RiC) - Asset under Advice

We consider that the size of Asset under Advice could capture the risk of unsuitable advice where the service is provided on an on-going basis.
In order to determine the relevant k-factor, in our view two elements are to be take into account. Firstly it is necessary to distinguish the service provided to retail customers from the advice to professional or institutional customers. Both of them expose the investment firm to legal and reputational risk but, according to Mifid Directive, at very different degree. Secondly, if an investment firms provides advice service without holding the money of the customer, the asset under advice is not always an objective measure. For example, when institutional customers are involved, the total Asset under Advice could be larger than the effective recommended portfolio. In addition the investment advice service, even with a large portfolio, could be more “generic” with fixed remuneration. In this case the investment firms are not exposed to risk related to Asset under Advice.