

Response to the consultation on draft RTS on the calculation of the threshold referred to in point (1)(b) of Article 4(1) CRR (Article 8a(6) point (b) of the CRD)

July 2021

ABN AMRO Clearing Bank N.V. (AACB) welcomes to opportunity to comment on the draft RTS on the classification of investment firms as credit institutions. AACB has been an outspoken supporter of safe, transparent and efficient markets for decades, and welcomes the more tailored regulatory approach that has been taken in the regulation of Investment Firms. We believe that proper regulation of all market participant benefits the resilience of financial markets, and we appreciate the leading role Europe has taken in this field. We also support the intention of the European legislators and the EBA to ensure a global level playing field.

AACB is one of the largest General Clearing Members globally and provides clearing and related services on all major CCPs in Europe, the United States and Asia-Pacific. AACB solely acts as third party clearer and does not trade on its own account, nor against its clients, thereby ensuring full alignment of incentives. All our activities are for the risk and the account of underlying clients. Our client base includes some of the world's largest market makers and liquidity providers in listed derivatives.

Proportionate approach

Although support the intention of the European legislators and the EBA to ensure a global level playing field, we believe that a more proportionate approach should be taken in the draft RTS on classification. While we understand the need for a more stringent supervision of large investment firms, we would underscore that quite a few firms that are in the scope of the draft RTS are merely dealing on own account and are not providing classic banking services. A more proportionate approach would be in line with the relevant level 1 legislation, and would also better satisfy global level playing field concerns. It would also ensure that the attractiveness of EU capital markets is not hampered and sufficient liquidity remains available to market participants.

Level-1 text and global level playing field

Our understanding of the level 1 text is that the calculation of the total asset threshold should only include EU-assets, be it assets held by EU-entities or assets held by EU-branches of non-EU entities. While we understand and support the intention to ensure a global level playing field, we would like to note that this is not achieved in the current draft RTS. The application of the CRR/CRD-requirements for non-EU groups will be limited to their EU-entities, while EU-headquartered firms will have to

comply with CRR/CRD-requirements on a consolidated level. This will put EU-headquartered firms at a disadvantage compared to their non-EU competitors.

Potential consequences of classifying larger investment firms as credit institutions

We believe that the current approach taken by the EBA could have significant consequences on the attractiveness of EU capital markets. Larger third country investment firms will be discouraged to be active on EU capital markets by the substantial burden of having to comply with regulation that is more fit for banks than for their activities. In addition, third country investment firms that are already active on EU capital markets might reconsider their current activities and withdraw from the continent.

As is mentioned above, the impact on EU investment firms is even larger than on third country firms, as they have to comply with CRR on a consolidated level. This would not only put them at a considerable disadvantage compared to their global competitors, it would also deteriorate their ability to grow their European business.

Suggested approach

Given the above we would suggest to only include EU-asset in the calculation of the total asset threshold. This would be in line with the level-1 text, would ensure a global level playing and would preserve the attractiveness of the European capital markets.

Thank you again for the opportunity to contribute to this important debate. We welcome any questions you may have regarding our position.