

February, 2, 2017

**AFG’s response to the EBA discussion paper**

**designing a new prudential regime for investments firms**

**(EBA/DP/2016/02)**

The Association Française de la Gestion Financière (French Asset Management Association - AFG) represents and promotes the interests of third-party portfolio management professionals. It brings together all asset management players from the discretionary and collective portfolio management segments. These companies manage more than €3.6 billion in assets, including €1.7 billion in French funds and €1.9 billion in discretionary portfolios and foreign funds.

AFG welcomes the opportunity to respond to the EBA on its proposal for a new prudential regime for investment firms.

We recognize that securities, banking and insurance regulators are justified in periodically reassessing the risks within the financial industry, an industry in which asset managers play a significant role. Therefore, the French asset management industry supported the introduction of the AIFM directive on the ground that there should be no part of the industry escaping from a specific regulation as well as a proper supervision.

As you may know:

1. **The activity of portfolio management on behalf of third-party clients broadly falls under three different EU legal regimes**:
* Collective portfolio management performed by a UCITS management and/or investment company, authorised under and complying with the UCITS Directive,
* Collective portfolio management performed by an alternative investment management company, authorised under and complying with the AIFM Directive, and

*Both UCITS and AIFM directives allow management companies to undertake individual portfolio management on a discretionary basis (“MIFID add-on services”).*

* Individual discretionary portfolio management performed by investment firms on a client-by-client basis, authorised under and complying with the Markets in Financial Instruments Directive, as per Annex I Section A, point 4 (as recently amended by MiFID II).

Capital requirements fort UCITS/AIF management companies are comprehensively regulated by these directives (see point 3 below), taking into consideration MIFID add-on services. We would therefore recommend any change to be entrusted to the supervision of ESMA.

1. **Asset managers, regardless of their regime, do not hold clients assets on their own balance sheet[[1]](#footnote-1) :**

Clients assets are always segregated and held in custody with an eligible depositary institution in the name of the funds or of the client. Asset managers act as agent for the client investors who entrust them with their money. They are paid a fee by investors who take all the market risks, including credit, counterparty and liquidity risks. As a consequence, Asset managers exclusively managing assets on behalf of third-parties (hence not “bank-like”) cannot be systemic in a bak or insurance-like way.

**Therefore, asset managers only have operational risks**, market risks being borne by investors: asset managers have to manage operational risks thanks to an appropriate organization and adequate human and technical means.

It should be noted that:

* 1. Asset managers cannot grant a guarantee to a fund or to an investor.,
	2. Asset managers collect information about each client in order to assess the suitability of a given instrument for that client (“suitability requirements”).
	3. Asset managers shall ensure that investors benefit from a clear information that is not misleading and give a fair and prominent indication of any relevant risks

Therefore, potential losses to clients corresponding to the depreciation in value of their invested portfolio would definitely not merit a corresponding capital charge for the investment firm managing it in the absence of any guarantee or agreement to repay the actual amount of any initial investment

1. Currently, the **minimum capital requirement is as follows** :

The minimum capital requirement is the higher of:

* 1. The initial capital requirement plus the additional amount (see below) and
	2. The expenditure requirement :

As follows :

* The initial capital requirement amounts to 125,000 €. When the net assets under management exceed M€ 250, there is an additional amount of capital equal to 0.02% of the net asset value exceeding M€ 250. Total capital is capped to M€ 10;
* The expenditure requirement is equal to one quarter of the management company’s annual total expenditure. This provision has been designed to ensure that a management company facing financial difficulties will have sufficient time to pursue its business and transfer the client’s assets to another management company.
	1. Moreover, Alternative Investment Fund Managers have an additional capital requirement to cover potential liability risks arising from professional negligence, equal to a minimum of 0.01% of the value of the portfolio of AIFs under management.

Alternatively, this risk may be covered by a professional insurance contract.

It should be noted that the above mentioned minimum capital requirement does not apply to management companies who are part of a banking or insurance group and are therefore prudentially consolidated within their parent company.

**Therefore, we consider that the scope of the discussion paper should be limited to firms providing individual portfolio management as a core service under a MIFID license presently falling within the prudential treatment of CRD/CRR and that, in any case, the specificity of asset management as a non-balance-sheet business must be fully taken into account.**

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1. It should be noted that, in very specific circumstances, asset management companies may have to hold financial assets on their balance sheet. The holding may be temporary (i.e. seed capital) or required by regulation (i.e. retention requirement). However, those are included into the scope of the current capital requirements. [↑](#footnote-ref-1)