Assogestioni's response to EBA & ESMA discussion paper on the Commission call for advice on the investment firms' prudential framework.

General remarks

Assogestioni[1] is supportive of the ESAs' analysis of the potential improvements of the prudential framework that might lead to changes in the IFD-R framework. However, we believe that those discussions should not involve any change in the AIFMD and UCITSD well-established frameworks on capital requirements and remuneration (the latter with the exceptions specified below).

In our response we concentrate mainly on issues covered in Section 9 and Section 10.

As to Section 9:

- Assogestioni is always supportive of achieving an adequate prudential framework, however we are concerned about the approach taken which would reopen an historical debate on "the same regulatory standard" within different frameworks by suggesting, regardless of the review of UCITS and AIFM Directives only recently finalised, possible changes to the management company providing MIFID services without a clear mandate and a sound rationale. Therefore,
    - we strongly oppose changes in the capital requirements for UCITS management companies and AIFMs which have been long established and tailored to the specificities of these entities' business activities;
    - we reject even more the proposal that would limit MiFID activities for an asset management company which would be contrary to the primary purpose of such permissions, introduce inefficiencies on the market and restrict competition.

With reference to section 10:

- In general terms, this Association does not deem it necessary or appropriate to make changes to the provisions on remuneration in the UCITS and AIFMD frameworks for alignment with the IFD-IFR rules - despite those which could bring greater flexibility for the operators - in consideration of the specificities of the asset management sector with reference, among others, to the types of activities and associated risks;
- Assogestioni would appreciate the introduction under the IFD of a provision that would allow the subsidiaries of an investment firm not to apply the remuneration requirements on a consolidated basis if they are subject to a sector-specific EU legislation;

[1] Assogestioni is the trade body for Italian asset management industry and represents the interests of members who manage funds and discretionary mandates around € 2,348 billion (as of June 2024).

- With respect to the principles of diversity and inclusion in the asset management sector and, in particular, the implementation of gender-neutral remuneration policies, we would support an approach aimed at harmonizing the relevant European regulations and introducing provisions in these respects also in the collective asset management sector.

Section 3: Fixed overheads requirements (FOR)

Q4: Should the minimum level of the own funds requirements be different depending on the activities performed by investment firms or on firms' business model? If yes, which elements should be considered in setting such minimum?

Assogestioni would like to point out that the amount based on fixed overheads is also directly relevant for UCITS management companies and AIFMs. According to Article 7(1)(a)(iii) UCITSD and Article 9(5) AIFMD, the own fund of the management company shall never be less than the amount required under Article 13 IFR. Any adjustment to the amount would therefore also have a direct impact on them.

Regardless of the debate for investment firms, we would like to remind, as explained in more detail in our response to Question 24, that a comprehensive review of both AIFMD and UCITSD has just been finalised with no amendments to the provisions on capital requirements. As the EU legislators didn't see the need to adjust capital requirements for UCITS management companies and AIFM's there, we do not believe it is justified for it to be done through the review of a different framework such as IFD/IFR.

In any case, we would also like to point out that FOR is a simple minimum capital requirement that is common for all types of entities and any further differentiation according to activities performed by entities seems adding more complexity. As both frameworks, AIFMD/UCITSD for management companies and IFD/IFR for investment firms, include also other additional own-capital requirements that are more aligned with the type of the entity's business activities, we do not see a need for changes to be made in the provisions on FOR.

Section 9: Interactions of IFD and IFR with other regulations

Q24: Do you have any views on the possible ways forward discussed above concerning the provision of MiFID ancillary services by UCITS management companies and AIFMs?

Assogestioni is always supportive of achieving an adequate prudential framework, however we are concerned about the approach taken which would reopen an historical debate on "the same regulatory standard" within different frameworks suggesting possible changes to the management company providing MIFID services without a clear mandate and a robust motivation. We reject even more the proposal that would limit MiFID activities for an asset management company which would be contrary to the primary purpose of such permissions, introduce inefficiencies on the market and restrict competition.

As preliminary remarks, we would like clarification in relation with the content of the discussion paper as neither Article 66 of the IFD nor Article 60 of the IFR includes the review of the own-funds requirements for UCITS and AIF management companies within the scope of the review clauses or raises any level playing field issues on them, nor any limitation on the amount of "ancillary services" that UCITS management companies and AIFMs may provide.

It is worth noting that during the review of both the UCITS and the AIFM Directives, just concluded in March 2024[2], the issue of the same regulatory standard between management companies and investment firms evidenced in the ESMA's 2020 letter to the European Commission[3] was already addressed by the European Commission in the review process and the co-legislators did not finalise any initiative to change the own-fund requirements. On the contrary, they extended the MiFID services that can be offered by UCITS management companies with the reception and transmission of orders without any change to their own-funds requirements.

Recital 14 of the UCITSD, introduced more than 20 years ago when the activities by a UCITS's management company were broadened to certain MiFID services[4], states that it is considered desirable to have a common framework between investment services covered by MiFID. However, no changes to own-fund requirements have been made so far, despite calls from time to time, supporting the impression that the current calibration of prudential requirements is not really an area of concern and there is no a strong rationale for amending it to fit into IFD/IFR. Such changes are seen as unnecessary and burdensome, without providing any increased protection for investors.

It is worth reminding that the MiFID services an asset manager can be authorised to perform are far limited compared to the range of activities that an investment

[2] Directive (EU) 2024/927 of the European Parliament and of the Council of 13 March 2024 amending Directives 2011/61/EU and 2009/65/EC as regards delegation arrangements, liquidity risk management, supervisory reporting, the provision of depositary and custody services and loan origination by alternative investment funds (Directive 2024/927).

[3] ESMA letter of 18 August 2020 to European Commission, Review of the Alternative Investment Fund Managers Directive, Annex I, Point. 3 Scope of additional MiFID services and application of rules.

[4] Directive 2001/107/EC of the European Parliament and of the Council of 21 January 2002 amending Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) with a view to regulating management companies andsimplifiedprospectuses

firm or a bank can perform with a MiFID license. Although the principle "same business, same rules" is true, it is indeed, asset management is not the same business as investment firm or banks and their own requirements are tailored to their specificities business activities.

If the management company acts exclusively as agent for its clients and, for example, limit its services to investment advice or the management of individual portfolios, the risks inherent in the financial instruments mostly reside with its clients, meaning the firm's own risks from performing these services are limited. However, sufficient resources and arrangements are required to underpin the orderly functioning of these firms. Please also note that:

- the fixed overheads requirements in UCITSD and AIFMD are already aligned with IFR i.e. that shall never be less than the amount required under Article 13 of Regulation (EU) 2019/2033;
- the UCITS and AIFM Directives provide sufficient flexibility to accommodate specific market conditions and practices in different EU jurisdictions where a home Member State is able to establish stricter rules than those laid down in the Directives with regard to prudential requirements. In this context, in Italy a higher initial capital requirement is foreseen for asset management than that one established as minimum level in the Directives;
- a cap to EUR 10 million on the total of the initial capital and the additional own-capital requirement is set to avoid that an excessively high capital requirements will not to be effectively proportionate to the risk that the activities represent;
- double counting is avoided for the calculation of the additional own-capital requirements.

We therefore deem that an proportionate approach for asset management company prudential requirements is already in place under UCITSD and AIFMD and any changes thereof would only create additional and unnecessary complexity.

That said, as regard the way forward proposed by the ESAs, **we do strongly disagree with the option to introduce requirements "limiting the amount of provided ancillary services by UCITS management companies and AIFMs".**

This proposal should be discarded because, in addition to what has already been said above regarding the scope of the mandate, it goes beyond the objective of the co-legislators when they extended the activities permitted by the UCITS Directive, i.e. achieve significant economies of scale other than have an impact on the activity of some management companies involved in such services and an undesired impact on market competition. This would also defeat the intention of the Directives, on the one hand, by allowing the management company to be authorised to provide MiFID activities but, on the other hand, imposing capital requirements that are so onerous that it is not feasible to maintain the authorisation in practice. A revision

of the own-fund requirements could restrict the ability of certain management company to carry out the abovementioned activities.

Since economies of scale are related, among all, to business' size and to spread costs over a larger number of services, it seems contradictory a proposal to limit such services because "*the scale of the top-up services is not always warranting categorising them as ancillary to the main business of the entity*". Indeed the recital 13 of the UCITSD states: "*With regard to the scope of activity of management companies and in order to take into account national law and permit such companies to achieve significant economies of scale, it is desirable to permit them also to pursue the activity of management of portfolios of investments on a client-by-client basis (individual portfolio management), including the management of pension funds as well as some specific non-core activities linked to the main business without prejudicing the stability of such companies*.".

The qualification of all MiFID top-up services as ancillary services is also questionable.. Individual portfolio management, including the management of pension fund, is not qualified as a non-core activity in both the UCITSD and AIMFD framework, unlike investment advice, safekeeping and administration in relation to units of collective investment undertakings and reception and transmission of orders in relation to financial instruments (Article 6(3)b of UCITSD and Article 6(4)(b) of AIFMD). Individual portfolio management is connected with the main activity as it allows its promotion and development.

Section 10: Remuneration and its governance

Q27: Is the different scope of application of remuneration requirements a concern for firms regarding the level playing field between different investment firms (class 1 minus and class 2), UCITS management companies and AIFMs, e.g., in terms of the application of the remuneration provisions, the ability to recruit and retain talent or with regard to the costs for the application of the requirements?

Assogestioni appreciates the analysis conducted by EBA and ESMA on the differences in the remuneration frameworks envisaged for UCITS management companies/ AIFMs and the different types of investment firms. However, we believe that those differences are grounded on robust justifications, and we do not support any possible change of the remuneration rules provided under UCITS and AIFMD, since they have already been discussed and modified in the past and are now established and consolidated.

First of all, in our view (and with the exception of the implementation of the gender neutrality principle- see below under Q28), the differences of the remuneration regimes for the asset management firms do not have impact on the level playing field and, in particular, on the firm's ability to recruit and retain talent and with regard to the costs for the application of the requirements.

Asset managers, indeed, cannot be compared with investment firms -especially those of bigger dimensions- in terms of business model and risks. Accordingly, asset managers do not trade on their own books, but they act on clients' behalf, and they do not directly hold assets, which are instead kept by depositaries. Consequently, the remuneration framework envisaged for UCITS Management Companies and AIFMs is not aimed at addressing the risks of dealing on own account and those deriving from holding assets.

Differences in the activities performed determine also different needs in terms of employees' professionality and skills. While asset managers would tend to recruit more professionals in the fund management area, investment firms, which amongst others have the ability to distribute different types of financial instruments, would seek also skills in the fields of target market and distribution. Therefore, existing differences should not have any impact on the level playing field in terms of firms' ability to recruit and retain talents. Moreover, a general level playing field in this area has been granted from the beginning, since all frameworks on remuneration in the financial sector stem from common principles[5] while it is necessary to consider also the specificities of each type of financial entity.

Additionally, the implementation of the current remuneration frameworks on remuneration has required a big effort and led to a general level of satisfaction with it. Accordingly, we would not support any change, despite those which could bring greater flexibility for the operators.

In that regard, we would appreciate the introduction under the IFD of a provision that would allow the subsidiaries of an investment firm not to apply the remuneration requirements on a consolidated basis if they are subject to a sector-specific EU legislation – as in the case of subsidiaries that are UCITS management companies and managers of AIFs -. This provision is, indeed, already envisaged in the CRD by art. 109 (4) (a), as recalled in the Discussion Paper. We would therefore appreciate an alignment between IFD and CRD in that respect. This would ensure a level playing field between asset managers that are subsidiaries of banks and investment firms under the CRD framework and those which are in the consolidation scope of class 2 investment firms, and, more in general, it would favour the consistency of the regulatory framework of the asset management industry in Europe.

Q28: Are the different provisions on remuneration policies, related to governance requirements and the different approach to identify the staff to whom they apply a concern for firms regarding the level playing field between different investment firms (class 1 minus under CRD or class 2 under IFD), UCITS management companies and AIFMs, e.g. in terms of the application of the remuneration provisions, the ability to recruit and retain talent or with regard to the costs for the application of the

[5] FSB Principles on Sound Remuneration Practices and G20/OECD Principles on Corporate Governance.

We would like to take the opportunity of this consultation to share some remarks regarding the implementation of the principle of equal pay for equal work in the asset management sector, as part of the broader objective of encouraging, diversity, equity and inclusion in this sector.

Indeed, in our view, promoting diversity, equity and inclusion in financial entities can support prudential objectives by improving the quality of corporate governance; can create better outcomes for consumers by improving understanding of their diverse needs; can improve the competitiveness of the financial entities by expanding the talent pool. Remunerations represent a powerful tool for promoting diversity, equity and inclusion within organizations. Fair and equitable remuneration practices are indicative of an organization's commitment to equal treatment towards all employees regardless of their gender, backgrounds and personal characteristics.

European legislation on financial intermediaries includes provisions aimed at promoting diversity, equity and inclusion as well as gender neutrality of remuneration policies only for banks (so-called CRDs) and for investment firms (so-called MiFID, also governed by the IFD/IFR framework). In contrast, as highlighted in the consultation paper, no provision regarding the gender neutrality of the remuneration policy is present in either Directive 2009/65/EC (so-called UCITS Directive) for UCITS fund managers or Directive 2011/61/EU (so-called AIFMD) for AIF managers. With reference to the insurance and pension funds sector, EIOPA has highlighted in various places the need to intervene on the topic (see Letter to the European Parliament, the Council of the EU and the European Commission on diversity in management bodies of 29 April 2022 and EIOPA Technical advice for the review of the IORP II Directive of 28 September 2023).

The current legal framework applicable in Italy (see the Bank of Italy Regulation for the implementation of articles 4-undecies and 6, paragraph 1, lett. b) and c-bis), of the Italian consolidated law on finance – issued on December 5th, 2019) shows a more advanced approach on this topic, as it promotes diversification within management bodies and a full gender parity in remuneration requirements applicable to the staff employed.

Therefore, we would be favourable to an approach aimed at harmonizing European regulations concerning diversity, equity and inclusion in corporate governance of entities operating in all regulated sectors (banks, investment firms, insurance companies, asset managers) and, in particular, with regard to the gender neutrality of remunerations, introducing provisions in these respects also in the collective management sector.

With respect to gender neutrality of remunerations, while in the near future regulations with a broad application in terms of addressing the issue of gender pay gap will be implemented by way of a cross-cutting approach (for example, in accordance with Directive EU 970/2023), we consider it essential to address the

lack of specific rules on this matter in the asset management sector, in comparison with other financial sectors (banking and investment services sector). In other words, European measures in this regard would be desirable in order to avoid that our market segment “stays behind” on matters linked to diversity, equity and inclusion at European level.