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Virtu is a leading financial firm that leverages cutting edge technology to deliver liquidity to the global markets and innovative, transparent trading solutions to its clients. Virtu operates as a market maker across numerous exchanges globally. Virtu's market structure expertise, broad diversification, and execution technology enables it to provide competitive bids and offers in over 25,000 securities, at over 235 venues, in 36 countries worldwide. Virtu broadly supports innovation and enhancements to transparency and fairness that increase liquidity and promote competition to the benefit of all marketplace participants.

It is crucial that over the next five years the EU regains global competitiveness, in particular by developing deeper and more liquid capital markets so that EU companies and the broader EU economy can grow and flourish. To achieve this, however, it is crucial that policymakers must reflect on the functioning and attractiveness of EU markets and thoughtfully adapt the regulatory framework where necessary. It should be noted that regulatory requirements can influence firms' growth prospects and impact the development of capital markets. This is particularly important considering that other major jurisdictions do not apply banking regulation (e.g. Basel framework) to investment firms in the same manner as done within the EU.

We direct our comments to the most important questions and topics from our perspective, which we believe should be adapted within the IFR/D. These can be summarized as follows:

- **Maintain IFR/D as a prudential regulatory framework that is appropriately calibrated to investment firms' business models specifically**. Applying bank specific requirements to investment firms is not appropriate in our view and should be further revised. Unfortunately at present, many requirements for investment firms are still interlinked to the Bank Prudential Framework, despite the initial intention of creating a separate proportionate prudential regime for investment firms. Instead of classifying firms solely on the basis of regulatory permissions and balance sheet size, we propose the EBA consider the firm's entire business model and risk profile as demonstrated in the K-factors - a bespoke system to capture the risk profile of investment firms. This could more accurately accomplish the goal of assessing individual risks associated with firm activities while preventing a 'one-size-fits-all' approach that risks impeding smaller firms' ability to compete. We also note that there are new recommendations within the DP to further link the framework with that applied to bank requirements, which we think should be avoided. For example, rules related to resolution, or the Fundamental Review of the Trading Book (FRTB), were designed specifically to address concerns within the banking sector, whose business model is vastly different to that of most investment firms. Furthermore, we believe the way in which the banking regime is developing under the Basel Committee will make it increasingly difficult to reconcile to the business models of investment firms. As such, establishing a standalone legislative framework specifically tailored for investment firms and fully distinct from the current CRR/CRD framework would be beneficial for investment firms. A key part of this should be that Prudential requirements for investment firms should be based solely on a going concern basis, as opposed to a gone concern framework for banks. The primary focus of the regime for investment firms should therefore be orderly winding-down and the disapplication of BRRD to investment firms. Such requirements need to be harmonized to avoid any inconsistent application across the EU whereby firms located in certain jurisdictions would be subject to differing resolution/wind-down requirements.

- **Investment firms should have the optionality to apply FRTB & CVA**. Under IFR, Class 2 investment firms currently calculate market risk under Art 22 by using either:
    - the standardized approach under CRR2
    - the alternative standardized approach (ASA) under CRR3

- the alternative internal model approach under CRR3.

Having these options is positive and something we support. We recognize that in the DP the EBA state that "investment firms will continue to use the current standardized approach (i.e. the method envisaged in the CRR2) and will not be subject to the new simplified standardized approach envisaged in the CRR3". However, we also note that the DP in paragraph 141 states: "…the review of the IFR should amend the relevant provisions in order to introduce the simplified standard approach for investment firms". We believe such a change to IFR would be potentially problematic for many investment firms and not proportionate to their size and complexity. The SSA is simply the current standardized approach under CRR2 (which investment firms currently use to calculate K-NPR), with the addition of multipliers (1.3 for fixed income and 3.5 for equity) under Article 325(2). Replacing the current standardized approach under Art 22(a) with SSA would result in a very substantial increase in market risk capital requirements for the majority of investment firms, which we believe warrants further analysis and consideration before being proposed to the European Commission. Investment firms would either have to significantly increase capital to cover the higher capital requirement or be forced to switch to using the ASA under FRTB, which would involve substantial cost and operational uplift to support more complex data, calculations and controls. This could deter firms from growing their EU operations, contrary to the political objectives of developing deeper and more liquid capital markets. The application of FRTB to the calculation of market risk does not transfer easily to most investment firms' business models, considering they were designed with credit institutions in mind.

In our view, this framework is more relevant to traditional credit institutions, which the Basel committee impact assessed when originally developing the rules. We are of the view that the current market risk options already available in IFR are appropriate and should remain unchanged. Were there a desire to move firms toward the FRTB, we believe the best approach would be to maintain the FRTB alternative standardized approach as an option for investment firms subject to NCA approval, as laid down in paragraph 145 (b) of the DP. We also believe optionality should be provided to investment firms in respect to CVA methodologies. We would therefore support Option b under paragraph 154 should the EBA propose one.

- **Refine the liquidity requirements to better align them with investment firms' business model.** We would underline that the calculation of liquidity requirements under IFR/D is clear and well understood by members. Nevertheless, we believe there is an opportunity to adjust certain aspects of the rules as they apply to investment firms. For instance, the types of assets that are eligible to qualify as liquid assets and how liquidity requirements should apply to certain types of investment firms. As acknowledged within the DP, there is a need to reflect on whether the current liquidity requirements are fit for purpose and if they are appropriate for all business models, including those firms that do not have external clients. Under the current rules, the definition of liquid assets is linked to the methodology designed for credit institutions to calculate their liquidity coverage ratio (LCR). In our view, this is a very bank specific metric related to unencumbered assets, which was developed with a specific business model and risk profile in mind and which does not reflect the types of liquid assets that may be relevant for investment firms. For example, Commission Delegated Regulation (EU) 2015/61 determines which liquid assets a credit institution may hold to meet its liquidity requirements. It does not directly refer to the types of liquid assets that are relevant for investment firms. Such entities' main assets are its trading book positions in financial instruments. These positions are usually held with a number of prime brokers who have a margin requirement which sets the minimum value of the net equity that the trading firm must maintain with the prime broker to support the positions that are held. The excess of the net equity over the margin requirement is then considered to be the amount of available liquid assets. However, the requirements in Delegated Regulation (EU) 2015/61 do not refer to these assets, so it is not clear that these assets can be used to meet the liquidity requirement under IFR. As such, we believe certain adjustments could be made to better reflect how investment firms manage their assets and shift away from the perspective of a universal bank where there can be much more significant long-term funding maturity mismatch. By way of an example, we would argue that a portion of trade receivables could be deemed liquid assets (subject to a haircut) if receivable within 30 days for broker dealers, similar to the regime adopted by the FCA in the UK. Separately, we would also welcome further guidance for how firms should assess liquidity requirements under Pillar 2 and how stress testing should interact with Pillar 2 capital requirements. Having further clarity on the above would help both firms and supervisors better understand the regulatory requirements, while at the same time, ensure a level playing field across the EU Single Market.

On the other hand, there is no clear justification that the Fixed Overhead Requirements (FOR) liquidity requirement should be extended beyond one month, which is neither reasonable nor proportionate for investment firms. Currently, there is no actual evidence that the existing liquidity requirements are insufficient or inadequate for investment firms. The suggestion to increase the liquidity horizon up to three months instead one effectively triples the liquidity requirements from covering one third of the FOR in liquid assets to covering 100%. This drastic increase would significantly elevate the amount of liquidity investment firms must hold, coupling it with their capital requirements and imposing excessive burdens on investment firms without an actual need. Therefore, this substantial increase solely for the sake of making the liquidity requirements more stringent is unnecessary and would imposes significant costs on investment firms, reducing their efficiency without enhancing financial stability.

For agency brokerage firms, they are required to include brokerage costs in the FOR calculation, despite the fact that these would ordinarily be considered variable in nature – if the firm stopped executing client orders, the brokerage costs it pays to CCPs / trading venues / brokers would also stop – however under the IFR RTS, agency brokers are effectively required to include such costs as fixed in their fixed overhead requirement. Accordingly, if the liquidity requirement was increased to three months, such firms would be forced to hold cash reserves to cover three months worth of these variable costs. For such firms, this would seem both illogical and detrimental to the sustainability of the business – in a business as usual environment, firms would be required to tie up significant amounts of capital in cash that would likely yield a return significantly below the firm's cost of capital / the opportunity cost of deploying this capital operationally in the business, and so would be detrimental to the firm's sustainability. Alternatively in a wind down scenario, firms would be required to hold three months worth of cash against a variable expense that ceased when commercial operations ceased.

Further, we believe the EBA should consider the existing framework in the UK with regards to FOR where MIFIDPRU 4.5.3 allows for an 80% deduction of the value of any fees in the calculation of FOR for the purposes of brokerage and other charges, excluding any fees or charges to which MIFIDPRU 4.5.4R applies, paid to central counterparties, exchanges and other trading venues and intermediate brokers for the purposes of executing, registering and clearing transactions for:

- investment firms dealing on their own account, and
- where charges that are directly passed on to customers.

Such fixed costs would immediately disappear on winddown for brokers and therefore it does not make sense to include this as a cost to wind down such a business. These deductions alleviate unnecessarily high barriers of entry for smaller trading firms.

- **Adjust remuneration rules to ensure a level playing field across sectors.** In line with comments outlined above, we believe that remuneration rules should also be decoupled from that of CRR/CRD and should be better aligned with the remuneration rules in the UCITS and AIFMD frameworks to ensure they are proportionate to the size and business model of investment firms and do not impact firms' ability to attract and retain talent. Specifically, we would make the following recommendations:
  - We believe the €100mn threshold size which triggers enhanced remuneration and governance requirements should be increased to at least €1.5bn. At present, the requirements take limited account of business model type or the capacity of the firm. For example, no distinction is made between entities which trade on own account or those who invest on behalf of clients, while more broadly the rules capture more staff than what was originally intended by the EBA (e.g. 10%).
  - The quantitative threshold to classify someone as identified staff should be removed in order to align the framework with that of AIFMD and UCITS. This would ensure a level playing field across similar financial services sectors. Failing that, it should at least be

moved in line with CRD (e.g. EUR 750,000 only and no requirement to run an exclusion process for investment firms as laid down in Commission delegated regulation 2021/2154) or set higher, given the number of staff with no impact on the risk of the firm who may be well remunerated. The current threshold places investment firms at a competitive disadvantage, especially those with strong technology capabilities to AIFMD/UCITS firms and technology companies.
    - Full alignment with AIFMD/UCITs should be pursued in respect of: 1) rules requiring firms obtain regulatory approval to exclude staff earning above €750k from the scope of identified staff 2) removal of minimum retention periods for vested deferred remuneration and 3) the prohibition on dividends to allow accrual should be permitted.

- **Create a standalone K-Factor framework within IFR and recalibrate certain calculations.** In line with previous comments, we believe the time is right for policymakers to specify and calibrate k-factors on their own within the IFR/D regime without having to refer to any CRR/CRD concepts. While we understand the rationale for cross-referencing to CRR/D (e.g., to reduce the provisions of IFR/D), we think fully separating the two regimes has added benefits considering revisions of the frameworks are not always done in parallel, while the objectives of reviews can also be influenced by other factors (e.g. turmoil in the banking market may lead to a revision of own funds definitions, which then fails to take into consideration how this may affect investment firms). In addition to this, we note that within the DP it is suggested that new K-factors could be developed for risks not yet captured by the existing rules, while other existing factors may need to be recalibrated, like K-CMG. In our view, any new K-factors – such as for MTFs – needs to be justified with further analysis in order to maintain the intended objective of keeping the IFR framework as simple as possible. In terms of the current K-Factor regime and the areas highlighted in the DP, we would highlight the following:
    - The scope and definition of K-COH should be clarified as it is currently unclear. Specific examples should be provided on what activities are in scope of K-COH. Firm's are unsure as to what agency activities fall within scope of K-COH or K-DTF.
    - The scope of K-TCD should exclude all contracts cleared through a CCP. Currently only derivative contracts cleared through a CCP are exempt from the calculation. For example, this should be expanded to repurchase transactions cleared through a CCP.
    - Adjustments to K-DTF coefficients for stressed market conditions could be explored as it is currently overly cumbersome and leads to disproportionate outcomes, resulting in firms not applying the methodology. That being said, we would underline that at times firms internal pillar 2 assessments of operational risk may be higher than the K-DTF amount and in such circumstances, this will ultimately lead to the excess being included in the Pillar 2 Requirement and in the firms' overall capital requirements. Separately, we believe the duration adjustment for interest rate derivatives in K-DTF should also be applicable for bonds. This would correct a mismatch where firms hedging a portfolio of government bonds with bond futures would take a much higher DTF charge for the bonds traded compared to the futures. Concerning the calculation of operational risk via K-DTF, it is noted that there is a proposal to revert to the basic indicator approach currently used as part of the capital requirement calculation for banks under the CRR/CRD. This proposal would not align with the objective of the IFR/IFD in creating a standalone calibrated approach to capital requirements for investment firms. Any approach should focus on working within the K-Factor framework as set out within IFR/IFD to ensure a distinct and business model proportionate result is achieved to the calculation of operational risk capital.
    - It is also important to note that the revisions with regard to the changes to the existing K-factors or development of an alternative K-factor should adequately reflect the actual risk profile of proprietary trading firms. Proprietary trading firms often operate with a business model where they are "flat" at the end of the day, meaning they close out positions to minimize the risks. Additionally, these firms frequently hedge trades in real time, which further limits their exposure to market risks. Therefore, the existing K-DTF factor, which is based on the volume and value of trades, may already impose capital requirements that do not accurately correspond to the limited risk these firms actually take on. If the K-DTF is revised to impose higher capital requirements without adjusting

for the risk-reducing strategies that these firms employ, the IFR/D regime would effectively penalize firms for their trading volume rather than their risk exposure leading to a situation where capital requirements are disproportionally high compared to the actual risks the firms face.

- Proprietary trading firms thrive on high-frequency trading, where the ability to execute large volumes of trades with minimal risk exposure is critical to their business model. However, an increase in capital requirements due to a revised K-DTF factor would force these firms to hold more capital against each trade, even when the risk associated with these trades is minimal due to hedging strategies or the firm's flat position at the end of the trading day. This mismatch could lead to inefficient capital allocation, potentially impacting the firm's profitability and operational strategies, where funds that could otherwise be used for trading activities are locked up as regulatory capital, and subsequently to reduced competition, trading activity and lower market liquidity. It is therefore expected that capital requirements are risk-sensitive, meaning that they reflect the actual risk profile of the firms, including its risk management strategies.
- The current definition of the concentration risk, including the notion of 'client'/'counterparty', hinders a proportionate application of K-CON to investment firms. While banks typically face diverse and complex concentration risks due to their extensive client bases and the variety of financial services they provide, where those risks are managed through the comprehensive capital requirements, investment firms generally do not engage in the same range of activities or have the same level of client-related risks, where their exposures are often limited to key counterparties for specific operational purposes. Investment firms typically rely on large, stable credit institutions, in particular SSM significant institutions, for loans and trade settlements, meaning that the likelihood of their default is low, especially given that these counterparties are often "too big to fail". Therefore, the investment firms' concentration risks related to their counterparties are minimal compared to the concentrations risks that banks face with their clients with varying level of creditworthiness. Moreover, including broker margin in the K-CON calculations is not proportionate because it does not reflect an actual risk of loss to the investment firm as these margins are usually highly liquid and easily retrievable, further reducing any potential risk. The broad application of K-CON could result in disproportionately higher capital requirements for investment firms, capturing operational activities that do not contribute to client-related risks, where these firms would be compelled to hold additional capital not because of an increased risk but due to a regualtory framework that does not differentiate between concentration risk and low-risk operational necessities like broker margin. Therefore, a more nuanced approach to K-CON, which takes into account the different risks of investment firm's business activities and excludes broker margin from concentration risk calculations, is necessary.
- Adding new K-Coefficient requirements for MTFs without any reasoning, other than the view that "all MiFID investment services and activities should have a K-Factor associated with them" risks stifling innovation by creating even higher regulatory barriers to entry for prospective market entrants. Furthermore, there was no evidence presented insinuating MTFs are under capitalized. Given the nature of business for MTF operators, the proposed new K-factor requirements for MTF operators raise concerns due to the lack of clear connection to specific risks or operational needs. This implies that although MTF operators are not permitted to engage in proprietary trading or matched principal trading by MiFID II, they would still be subject to higher capital charges. This could create uncertainty and raise concerns about the proportionality and appropriateness of this additional requirement for MTF operators, and also lead to a potential reduction in the EU's attractiveness for new MTF operators considering establishing business in the region, inadvertently hindering the growth and competitiveness of the EU financial markets. The primary risk of operating an MTF is operational risk. Operational risk is accounted for in Pillar II. Pillar II provides the flexibility to properly account for the firm specific operational risk and ensures that each firm is capitalised to the correct level. A one-size fits all approach does not work for investment firms with regards to operational risk due to the possibility of many different

business models. It is crucial to ensure that any new regulatory initiatives strike balance between effective risk management and maintaining an environment conducive to innovation and market development.

- **Contribution to resolution funds.** The Irish resolution fund applies to all credit institutions, authorized branches of non-EEA firms and investment firms that are in scope of the EU's Bank Recovery and Resolution Directive (BRRD) – excluding those which fall under the Single Resolution Mechanism (SRM). The calculation of the fund is done in accordance with various EU delegated acts and SI No 226 of 2023. Specifically, in-scope investment firms' contribution to the fund is defined within thresholds aligned to balance sheet size. Having this fund should bring more stability into the system generally and help fund resolution cases should they occur. This is a sensible approach for firms which hold client deposits. However, for investment firms which either deal on their own account as principal traders or support loan origination through underwriting, competent authorities preferred strategy, should the investment firm get into difficulty, is usually not to start a resolution process. Instead, the firm will typically opt to commence a wind-down plan and/or appoint a liquidator, in line with the regulatory expectations. Therefore, it seems unreasonable for firms to have to contribute potentially significant amounts to a scheme which neither it nor its creditors will ever be likely to benefit from. At the same time, it is our understanding that in other EU jurisdictions contribution amounts are much smaller for investment firms, impacting the level-playing field within the EU. As the EBA will be aware, the EU wide methodology is set out in Commission Delegated Regulation (EU) 2015/63. Article 10 of this delegated regulation sets out a simplified approach for small institutions, which is defined as those whose total liabilities minus own funds and covered deposits is below EUR 300m, among other criteria. Firms that do not meet the criteria for the simplified approach have a much more complicated methodology, which includes calculating derivative exposures under specific methodologies related to CRR rather than IFR. It appears that in some EU jurisdictions the simplified approach is applied to all firms regardless of size. This means issues such as requiring external legal opinions on derivative netting sets under CRR are not relevant to these firms, among other additional costs. Taking this into consideration, we would recommend that investment firms contributions to resolution funds should be specific to those firms which hold retail client funds and who will be resolved by NCAs.

- **Ensure that reporting requirements is fully harmonized at EU level.** We note that within the DP, the EBA suggest potentially extending the reporting requirements for investment firms to financial information or allowing NCAs obtain this information and requiring Class 3 firms to report on a quarterly basis like other firms. We would point out that financial information is already reported to some competent authorities, like Ireland, in the FINREP submission, which has the same frequency as IFREP. As such, we do not believe firms should be required to submit similar information in IFREP. More broadly, the EBA should avoid any situation whereby different NCAs apply different reporting regimes. Reporting requirements should be fully harmonized within the IFR to avoid a situation whereby certain jurisdictions reporting requirements is more onerous than others. Having these regulatory discretions only results in undermining the level playing field within the single market, something which has been specifically questioned by Enrico Letta in his recent report to EU leaders. Harmonized reporting would also aid the EBA in making comparisons of financial data across member states on a like for like basis. We would also highlight that in Ireland additional reporting of intra-day capital requirements has been required from certain firms on a monthly basis, despite the introduction of IFR. Such deviations unfortunately put members located in Ireland at a competitive disadvantage to those located in other jurisdictions where similar requirements do not exist.

- **Threshold classification for small firms needs to remain simple and should avoid any additional burden.** We note that within the DP questions are raised in respect to the categorization of investment firms (e.g. reporting requirements for monitoring purposes) and how firms should be treated between Class 2 & 3 status. Our overarching consideration is to ensure simplicity in the framework, while avoiding over burdening smaller firms with additional regulatory requirements. In light of this, we would underline the following:

  - Removing the €5bn reporting threshold is unnecessary in our view and will only create additional reporting requirements for relatively very small and non-complex firms with limited added benefit. As acknowledged by the EBA, the obligations to report and comply with the various thresholds within the IFR is for each individual firm. Considering the €5bn threshold is well below that of the €15 bn or €30bn thresholds, we think the reporting of such information is highly unlikely to result in changes to firms' classification, thereby not materially contributing to the regulatory framework from either a firm or supervisory perspective. Extending such reporting to all firms below €5bn is also unduly burdensome as the reporting can be complex for entities with subsidiaries that are not under IFRS, and any requirement that all firms conduct monthly consolidation is also potentially quite burdensome, particularly from a cost benefit perspective. Additionally, we believe National Competent Authorities (NCAs) should have the adequate knowledge and oversight of firms located in their jurisdiction to determine if they should re-classify.

We hope that you find our comments above helpful and would be happy to discuss them further with you and/or your colleagues should that be desirable.

Respectfully,

David Furlong

CEO, Virtu Europe Trading Limited.