STATE STREET GLOBAL ADVISORS

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Submitted via: online form.

Re: Discussion Paper on the Call for advice on the investment firms prudential framework

Dear Sir, Madam:

State Street Global Advisors ("SSGA"), the investment management division of State Street Corporation,[1] appreciates the opportunity to provide comments on the Discussion Paper ("DP") on the investment firms prudential framework issued by the European Banking Authority ("EBA") and the European Securities and Markets Authority ("ESMA").

With $4.4 trillion in assets under management, SSGA is the world's fourth-largest asset manager[2]. In the EU, SSGA provides investment services through its management company State Street Global Advisors Europe Ltd ("SSGAEL"), authorised and regulated by the Central Bank of Ireland under the Undertakings for Collective Investment in Transferable Securities ("UCITS") and Alternative Investment Fund Managers ("AIFM") Directives. SSGAEL manages a broad range of products and is the management company for our European UCITS, AIFs and ETFs fund ranges.

The DP touches on a broad range of topics, but the following comments are informed by our nature as an Irish-domiciled and authorised Management Company ("ManCo"). Therefore we focus our feedback on Section 9 of the DP, namely on the interaction between the prudential regime of the Investment Firm directive and regulation ("IFD", "IFR") with that established by the UCITS and AIFM Directives. In particular, we refer to the recently revised own funds requirements for UCITS and AIFMs Management Companies as introduced by the Central Bank of Ireland which have addressed some of the issues brought forward in the DP. These requirements entered into application on May 27, 2024.

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[1] Headquartered in Boston, Massachusetts, State Street Corporation is a bank holding company that through subsidiaries serves institutional investors through two core business lines, investor servicing (the provision of custody and related services) and asset management. State Street Bank and Trust Company, State Street's principal banking subsidiary, had approximately $44.3 trillion in assets under custody and/or administration as of June 30, 2024.

[2] Assets under management as of 30 June 2024. For more information, please visit SSGA's website at www.ssga.com.

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For what concerns Section 3 of the DP, dedicated to the calculation of the fixed overheads requirements, we would like to take the opportunity to express our support for the comments made by the European Fund and Asset Management Association ("EFAMA"). We believe that the EBA and ESMA proposals would introduce significant complexity without benefits in terms of risk mitigation. We consider the existing tools under art. 39(2) of the IFD sufficient to ensure that competent authorities have the powers to increase own funds requirements of individual firms when needed, under specific circumstances.

SSGA is willing to continue being an active and constructive participant in this discussion. Should you have any questions or wish to discuss any aspect of our response, please do not hesitate to contact me or a member of our teams.

Sincerely,

Ann Prendergast
Head of EMEA
State Street Global Advisors

Responses to individual questions

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?

Section 9 of the DP explores the future proofing of the IFR/IFD with respect to its coherence with other pieces of regulation and the changing landscape of industry players. In this context, we would like to address the issue of the potential misalignment between capital requirements for UCITS ManCos and AIFMs and the ancillary services they might be authorised to conduct on top of their core services, such as for example management of portfolio investments covered by MiFID.

While we consider the UCITS and AIFM Directives to have implemented comprehensive and robust capital requirements, appropriate for the business undertaken by UCITS ManCos and AIFMs, we acknowledge how the perceived risk of misalignment of capital requirements could be considered as altering the level playing field between investment firms subject to own funds requirements under the IFR/IFD and UCITS ManCos and AIFMs. We have already contributed via a data collection of the Central Bank of Ireland ("CBI") to the first step of the EBA and ESMA analysis, i.e. the mapping of the incidence of MiFID activities performed by asset managers. Below, we explore the two options identified in the DP to address any regulatory gaps that might emerge from this data collection exercise.

Firstly, from a risk management perspective, it is important to reiterate that entities should be adequately capitalised for all services provided. In this sense, we would like to refer to the regime currently applying in Ireland, where the CBI has addressed the issue of misalignment referenced above in its "*Consultation Paper 152 – Own funds requirements for UCITS ManCos and AIFMs authorised for discretionary portfolio management*".

Under the regime introduced by the CBI, UCITS ManCos and AIFMs authorised to provide discretionary portfolio management services are required to apply the higher of the own funds requirement under the UCITS/AIFM frameworks as applicable or, a Risk to Client K-factor own fund requirement modelled on the Risk to Client K-Factor applicable to MiFID investment firms under the IFR. These changes have entered into force on May 27, 2024.

We would be supportive of the proposal to introduce similar capital requirements at the European level, assuming alignment with the CBI's approach.

This would allow progress on an EU-wide solution to address risks relating to the provision of portfolio services by UCITS ManCos and AIFMs on a consistent EU basis. We would advocate that the Client K-Factor amount be subject to the same EUR 10m limit which currently applies to the initial capital requirement for UCITS ManCos and AIFMs providing portfolio management services. We think this would avoid excess capital being held by firms, with the resulting costs for end investors, while at the same time specific risk exposures or capital needs can always be addressed through the regular ICAAP process.

Such an approach, if pursued, should be implemented after an appropriate transition period of at least 12 months, giving the industry sufficient time to introduce the process changes required for capital calculations and reporting templates.

On the contrary, we have serious concerns with regards to the second option put forward in the DP, i.e. the introduction of limitations to the amount of ancillary services provided by UCITS ManCos and AIFMs.

We would have significant concerns in the event a limit were to be imposed on the level of business that UCITS management companies and AIFMs could perform under its top-up permissions. While we understand the importance of ensuring top-up permissions are not used to circumvent a requirement to obtain and maintain a MiFID licence, we consider the existing legislative and supervisory framework contains the necessary mechanisms to avoid such risk materialising. Indeed, the proposal in respect of capital requirements as noted above could supplement such existing mechanisms.

We do not believe the introduction of a limit of ancillary services provided by UCITS management companies and AIFMs would bring material benefits to investors, the industry, or individual firms. On the contrary, we have identified significant potential unintended consequences, specifically:

- To avoid breaching thresholds, we would expect a reversal of recent trends to consolidate permissions within a financial group of a regulated entity, thus returning to multiple regulated entities in a group, i.e. separate UCITS ManCos/AIFMs and MiFID firm entities. This in turn would limit operating efficiencies gained from the current model where UCITS ManCos and AIFMs can hold top-up permissions, and as entities part of a broader group they benefit from the fact that risks are managed through capital held at different levels of the financial group.
- It is possible that due to these inefficiencies, there will be an increase in the level of outsourcing by UCITS ManCos and AIFMs, i.e. a financial services group may not be able to justify separate entities performing the same investment activities, with the result that all portfolio management activities may be outsourced from the UCITS ManCos and AIFMs to another dedicated portfolio management firm. Such portfolio management firms may be EU MiFID firms or, in extreme circumstances, portfolio management entities based outside of the EU, with the overall result being an increased level of outsourcing to third countries.
- Overall, we believe this proposal would result in a significant increase in complexity and cost of doing business, not only negatively impacting EU competitiveness but ultimately negatively impacting EU investors.

Finally, we would like to remind that the AIFM and UCITS frameworks have just been reviewed at the European level and in that context the EU legislators considered that there was not a need to review requirements for the authorisation to provide ancillary services by UCITS ManCos and AIFMs. It would be detrimental from a regulatory stability perspective to reopen this discussion when the industry is now starting the process to implement the new amendments to the two UCITS and AIFM Directives.