MANAGED FUNDS ASSOCIATION

EBA CONSULTATION PAPER RESPONSES ON THE NEW PRUDENTIAL REGIME FOR INVESTMENT FIRMS

Consultation Paper on Draft Regulatory Technical Standards related to implementation of a new prudential regime for investment firms	
EBA Questions	**Proposed Response**
Is the proposed articulation of the K-factors calculation methods, in particular between AUM and CMH and ASA, exhaustive or should any other element be considered?	**A. Calculating K-AUM** MFA supports the adoption of an appropriate methodology for the calculation of AUM for K-AUM purposes. MFA notes that the IFR does not state how an investment firm should treat any negative values or liabilities it manages within a portfolio, for example from derivatives or leverage. That being the case, MFA respectfully suggests that the EBA utilizes, for the purposes of the new prudential regime, the standard approach to calculating AUM as already widely adopted by the investment management industry. In particular, this would entail off-setting negative values from AUM and excluding from consideration leverage employed. For derivatives, the amount attributable as AUM would comprise the capital that has been deployed from the portfolio to maintain the derivatives position. This approach would result in AUM being calculated as the net value of assets the investment firm manages on behalf of its clients, which MFA considers to be a more accurate reflection of the actual risk to the firm's clients and, hence, more appropriate for the purposes of K-AUM as a "Risk-to-Client" K-factor. **B. Calculating K-COH**

	Provision of Delegated Portfolio Management Services on Behalf of Investment Funds MFA notes the third subparagraph of Article 20(2) of the IFR provides that "*Without prejudice to the fifth subparagraph, COH shall include transactions executed by investment firms providing portfolio management services on behalf of investment funds*". Under the fifth subparagraph of Article 20(2) of the IFR, investment firms are able to exclude, in their calculations of K-COH: i. transactions handled by the investment firm that arise from the servicing of a client's investment portfolio where those assets are under the investment firm's management and already included in its K-AUM calculation; and ii. transactions handled by the investment firm that arise from the servicing of a client's investment portfolio where that activity relates to the delegation of management of assets by a financial entity. In the interest of clarity, it would be helpful for the EBA to confirm that the exclusions from COH in (i) and (ii) above will be applicable equally with respect to transactions relating to the provision of delegated portfolio management services on behalf of investment funds.

Consultation Paper on Draft RTS on classes of instruments that adequately reflect the credit quality of the investment firm as a going concern and possible alternative arrangements that are appropriate to be used the purposes of variable remuneration	
EBA Questions	**Proposed Response**
Question 3: are the provisions in Article 6 appropriate and sufficiently clear? Where respondents are of the view that the draft RTS should define a set of specific arrangements rather than providing conditions that such arrangements should meet, comments are most helpful, when they clearly describe the alternative arrangements that investment firms desire to use to ensure that variable remuneration is aligned with the long-term interest of the investment firm and its risk profile.	MFA supports the EBA's views in paragraph 2 of the Consultation Paper that "*The possibility for certain investment firms to use alternative arrangements is aimed at reducing the regulatory burden for those institutions, which do not issue any of the instruments included in Article 32(1)(j) of IFD*". Investment firms engaging in portfolio management (with the exception perhaps of the largest of such firms whose shares may be publicly traded, but which make up only a minority of investment firms engaging in portfolio management) will need to utilize "alternative arrangements". If investment firms engaging in portfolio management were required to obtain individual approval from their relevant national competent authorities before using "alternative arrangements", the application process would be time consuming for such firms and processing the applications may be time consuming for the relevant national competent authorities. In the interest of efficiency and simplicity, MFA respectfully suggests that the EBA grants national competent authorities with an ability to provide a blanket consent for the use alternative arrangements where the variable remuneration reflects the performance of assets managed by the firm, without firms being required to obtain individual approval for such arrangements from their national competent authorities. We note that alternative arrangements where the variable remuneration reflects the performance of assets managed by the firm would be consistent with the EBA's draft RTS. In particular, MFA notes that Article 6(g) of the Draft IFD RTS provides that "… *where the alternative arrangement allows for predetermined changes of the value received as variable remuneration during deferral and retention periods, based on the performance of the investment firm or the managed assets; the following*

	conditions shall be met: … (iv) where the value change is based on the performance of assets managed, the percentage of value change should be limited to the percentage of value change of the managed assets …". From Article 6(g) of the Draft IFD RTS, it appears that the EBA already sees alternative arrangements where the variable remuneration reflects the performance of assets managed by the firm as being appropriate to meet the variable remuneration requirements under the IFD.