

16 June 2008

By email to [markt-crd2008-survey@ec.europa.eu](mailto:markt-crd2008-survey@ec.europa.eu)

Dear Sirs

### **IMA response to CRD potential changes**

The Investment Management Association (IMA) are grateful for the opportunity to comment on the proposals for amending the Capital Requirements Directive.

The IMA represents the UK-based investment management industry. Our members include independent fund managers, the investment arms of retail banks, life insurers and investment banks, and the managers of occupational pension schemes. They are responsible for the management of over £3.1 trillion of funds (based in the UK, Europe and elsewhere), including authorised investment funds, institutional funds (e.g. pension and life funds), private client accounts and a wide range of pooled investment vehicles. In particular, our members represent 99% of funds under management in UK-authorised investment funds (i.e. unit trusts and open-ended investment companies).

### **LARGE EXPOSURES**

We fully support the proposed exemption from the large exposures regime for those firms falling within Article 20(2) or 20(3) of the Capital Adequacy Directive. These firms are inherently different from credit institutions for whom the regime was originally designed. They do not deal on own account, do not lend nor accept deposits, and all client moneys received are segregated from the operation of the firm, ensuring protection is provided to the client at all times.

The IMA has previously responded to the CEBS consultations on large exposures, and advocated throughout the need for investment management firms operating under limited licence to be exempted from the large exposures regime. Indeed, as far back as 2005, we supported Amendment 467 (proposed by John Purvis, MEP), which would have provided an exemption for firms falling within the definition of Directive 93/6/EEC Article 20(2) from the large exposure rules.

The application of the large exposures regime to investment firms with limited licence has resulted in fees due to an investment manager for the management of a collective investment undertaking being captured as a large exposure. As such, when performance is good, large fees are due which could require a capital injection to

prevent the firm breaching large exposures limits. The regime therefore effectively penalised good performance, and is entirely inconsistent with the intended purpose of the regime.

As such, we are fully supportive of the proposal to exempt such firms from the regime. However, we would suggest one drafting amendment. The proposed amendment to Article 28 of the CAD states:

1. Institutions, except investment firms that fulfil the criteria set out in Article 20(2) and 20(3), shall monitor and control their large exposures in accordance with Article 106 to 118 of Directive 2006/48/EC.

Articles 20(2) and 20(3) of the Directive are drafted to apply to different firms and are therefore mutually exclusive – it is not possible to be both an Article 20(2) firm and an Article 20(3) firm. We would suggest therefore that the draft Article 28 proposal is amended to state:

1. Institutions, except investment firms that fulfil the criteria set out in Article 20(2) or 20(3), shall monitor and control their large exposures in accordance with Article 106 to 118 of Directive 2006/48/EC.

## **TECHNICAL AMENDMENTS**

We are supportive of the proposal to amend Article 87(11) and (12). The current requirements do not consider the practicalities involved, and result in a competitive disadvantage being applied to collective investments when compared against direct investment.

However, whilst we support the initiative, we consider that more fundamental changes are required in order to implement a solution which is consistent with the inherent risk and logistically possible.

The current requirement at Article 87(11) is unfeasible, as it will in effect require the IRB bank to have access to complete portfolio information from the collective investment undertaking (CIU). This would not be consistent with the Commission's 'better regulation' agenda, as it would allow the investing bank to replicate the CIU and would have a counter-productive effect on the competitiveness of the CIU.

The alternative currently available in Article 87(12) results in a risk weighting which is highly exaggerated when compared with direct investment in the underlying instruments of the CIU, and does not therefore prove attractive to an IRB institution wishing to invest in a CIU.

Consequently, current requirements – if left unaltered – will have a detrimental impact on the investment of IRB institutions in CIUs. This is neither warranted nor desired.

Whilst we support the principle that full look-through should be the desired solution which results in a capital requirement most consistent with the risk inherent in the underlying instruments, there must be acceptance that any alternative should be practical for both the investing institution and the CIU.

In addition, there is a need to ensure that this alternative is not unduly burdensome for either the investment institution or the CIU. The CIU could receive investment from any number of institutions, and must therefore be able to standardise the information which is provided to those investors. The cost of providing bespoke data to every investor would be extremely high – both in monetary terms and in terms of resources and administrative requirements. This again would not be consistent with the 'better regulation' agenda of the Commission.

We consider therefore that there is a pressing need for further simplification of the requirements in order to implement a solution which is both practical and results in a capital requirement which is consistent with the risk applicable to the investment. In addition, the calculation must be standardised to recognise that investment could be received by the CIU from any number of institutions, and should not therefore require bespoke calculations for every such investor. Such an obligation when combined with an exaggerated capital requirement significantly dilute the benefit of investment in a CIU, and will result in a overriding reluctance from IRB banks to invest in CIUs. This would be an unacceptable outcome of the regulation, and must be addressed to ensure the ongoing competitiveness of CIUs is maintained.

We would welcome the opportunity to discuss these issues with you in more detail.

Yours faithfully

Nathan Douglas  
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