EC PROPOSALS FOR A DIRECTIVE ON THE PRUDENTIAL SUPERVISION OF INVESTMENT FIRMS AND A REGULATION ON THE PRUDENTIAL REQUIREMENTS OF INVESTMENT FIRMS

AMAFI'S AMENDMENTS

On December 20th 2017, the European Commission (EC) has published a proposal for a new prudential regime for investment firms (Investment Firms Regime, IFR), which consists of a proposal for a Directive on the prudential supervision of investment firms and a proposal for a Regulation on the prudential requirements of investment firms (the Proposal).

The Proposal which aims to put in place a more effective prudential and supervisory framework for investment firms (IF) is based on the "Opinion of the European Banking Authority in response to the European Commission's Call for Advice on Investment Firms" issued on September 29th 2017[1].

On September 27th 2018, the Committee on Economic and Monetory Affairs (ECON) has adopted a report respectively on the proposal for a directive[2] and for a regulation[3].

Given the importance of the subject for its members, AMAFI has closely followed the progress of this issue at the level of the European Banking Authority (EBA) over the past two years. In this respect, we attended various meetings organised by the EBA and the European Commission (EC) as well as hosted by the French supervisor (ACPR), and provided, at various stages of the consultation process, our input to the EBA and to the EC[4].

AMAFI supports the global framework proposed by the EC as it intends to meet regulatory principles of proportionality and fair competition. Moreover, AMAFI supports most of the amendments proposed by the European Parliament.

That being said, AMAFI would like to propose the following amendements on the ECON Reports.

[1] EBA/Op/2017/11
[2] (COM(2017)0791 - C8-0452/2017 – 2017/0358(COD))
[3] (COM(2017)0790 - C8-0453/2017 – 2017/0359(COD))
[4] 17-09 - EBA Discussion paper on a new prudential regime for Ifs, AMAFI contribution (2 February 2017); 17-54 - EBA Investment Firms Regime, AMAFI contribution (27 July 2017)

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Proposal for a Directive of the European Parliament and of the Council on the prudential supervision of investement firms and amending Directives 2013/36/EU and 2014/65/EU

On report COM(2017)0791 - C8-0452/2017 – 2017/0358(COD))

AMENDMENT 1

Article 4 a (new)	
Proposal for a Directive	Amendment [by Council]
Empowerment to subject certain investment firms to the requirements of Regulation (EU) 575/2013 Competent authorities, including consolidated supervisors referred to in Article 111 of Directive 2013/36/EU, may apply the requirements of Regulation (EU) 575/2013 to an undertaking that is not a credit institution as defined in Article 4 of that Regulation provided that the following conditions are met: (a) the undertaking is not a commodity dealer or an emission allowances dealer, or a collective investment undertaking or an insurance undertaking; (b) the undertaking carries out any of the activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU; (c) the undertaking carries out activities similar to those commonly associated with undertakings that take deposits or other repayable funds from the public and grant credit on their own accounts; (d) the activities referred to in points (b) and (c) of this subparagraph are carried out on such a scale that the failure of the undertaking could pose a systemic risk as defined in point (10) of Article 3(1) of Directive 2013/36/EU. EBA, in consultation with ESMA, and taking into account Commission Delegated Regulation (EU) 2015/488, shall develop draft regulatory technical standards to ensure a consistent application of	Empowerment to subject certain investment firms to the requirements of Regulation (EU) 575/2013 Competent authorities, including consolidated supervisors referred to in Article 111 of Directive 2013/36/EU, may apply the requirements of Regulation (EU) 575/2013 to an undertaking that is not a credit institution as defined in Article 4 of that Regulation provided that the following conditions are met: (a) the undertaking is not a commodity dealer or an emission allowances dealer, or a collective investment undertaking or an insurance undertaking; (b) the undertaking carries out any of the activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU ***and meets the criteria of "Other Systemically Important Institutions"*** ; (c) the undertaking carries out activities similar to those commonly associated with undertakings that take deposits or other repayable funds from the public and grant credit on their own accounts; (d) the activities referred to in points (b) and (c) of this subparagraph are carried out on such a scale that the failure of the undertaking could pose a systemic risk as defined in point (10) of Article 3(1) of Directive 2013/36/EU. EBA, in consultation with ESMA, and taking into account Commission Delegated Regulation (EU) 2015/488, shall develop draft regulatory technical

points (a) to (d) of the first subparagraph. EBA shall submit those draft regulatory technical standards to the Commission by ... [nine month from the date of entry into force of this Directive]. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.	standards to ensure a consistent application of points (a) to (d) of the first subparagraph. EBA shall submit those draft regulatory technical standards to the Commission by ... [nine month from the date of entry into force of this Directive]. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Justification

Paragraph (b) of article 4 a (new) gives the competent authorities the power to subject to the regulation of CRR investment firms that carried out any of the activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU.

Contrary to the regulatory objective, this provision could end up with imposing CRR requirements to investment firms that are not actually systemic and creating distortion of implementation within the EU.

Proposal for a Directive of the European Parliament and of the Council on the prudential supervision of investement firms and amending Directives 2013/36/EU and 2014/65/EU

On report COM(2017)0791 - C8-0452/2017 – 2017/0358(COD)

AMENDMENT 2

Article 30 (k)	
Proposal for a Regulation	Amendment [by council]
(k) at least 50% of the variable remuneration shall be deferred over a five year period as appropriate, depending on the business cycle of the investment firm, the nature of its business, its risks and the activities of the individual in question, except in the case of a variable remuneration of a particularly high amount where the proportion of the variable remuneration deferred is at least 60%;	(k) at least ~~50%~~ ***40 %*** of the variable remuneration shall be deferred over ***a three to*** five year period as appropriate, depending on the business cycle of the investment firm, the nature of its business, its risks and the activities of the individual in question, except in the case of a variable remuneration of a particularly high amount where the proportion of the variable remuneration deferred is at least 60%;

Justification

Compared to the Commission intitial proposal, the report reinforces constraints on variable remuneration by increasing the percentage of deffered remuneration and the period of deferral.

If there is no doubt that the deffered regime is appropriate to ensure that remuneration policy fits the actual mid an long term risks taken by investment firms, the Reporrt proposal sets up too much operational constraints in regard of the actual level of deffered remuneration actually compensated by investment firms.

Proposal for a Regulation of the European Parliament and of the Council on the prudential requirements of investement firms and amending regulations (EU) No 575/2013, EU No 600/2014 and (EU) No 1093/2010.

On report (COM(2017)0790 - C8-0453/2017 – 2017/0359(COD))

AMENDMENT 1

Article 6 (d) (i)	
Proposal for a Regulation	Amendment [by Council]
(i) the investment firm meets the conditions set out in Article 12(1)	***Deleted***

Justification

There is no reason to limit this exemption to small and non-interconnected investment firms. For others, it would introduce a double regime, CRD/CRR on one side, IFD/IFR on the other side. The new situation will be more complex and expensive than the current one which is contrary to the regulatory objective that aims to have a simplified regime.

Proposal for a Regulation of the European Parliament and of the Council on the prudential requirements of investement firms and amending regulations (EU) No 575/2013, EU No 600/2014 and (EU) No 1093/2010.

On report (COM(2017)0790 - C8-0453/2017 – 2017/0359(COD))

AMENDMENT 2

Article 6 1a. (d) (i)	
Proposal for a Regulation	Amendment [by Council]
(i) the investment firm meets the conditions set out in Article 12(1)	***Deleted***

Justification

There is no reason to limit this exemption to small and non-interconnected investment firms. For others it would introduce a double regime, CRD/CRR on one side, IFD/IFR on the other side. The new situation will be more complex and costly than the current one which is contrary to the regulatory objective to have a simplified regime.

Proposal for a Regulation of the European Parliament and of the Council on the prudential requirements of investement firms and amending regulations (EU) No 575/2013, EU No 600/2014 and (EU) No 1093/2010.

On report (COM(2017)0790 - C8-0453/2017 – 2017/0359(COD))

AMENDMENT 3

Article 6 – paragraph 3 (new)	
Proposal for a Regulation	Amendment [by Council
	3. By derogation of article 5, competent authorities may authorize investment firm groups to comply with the requirements laid in Parts two to seven at the parent undertaking level, where all of the following apply: **(a) both investment firms and their parent undertaking are subject to authorisation and supervision by the same Member State;** **(b) the competent authorities of the Union parent investment firm or the competent authorities determined in accordance with article 42 (2) of Directive (EU) ----/--(IFD) agree to such level of application** **(c) own funds are distributed adequately between the parent undertaking and the investment firms and all of the following conditions are satisfied:** **(i) there is no current or foreseen material practical or legal impediment to the prompt transfer of capital or repayment of liabilities by the parent undertaking;** **(ii) upon prior approval by the competent authority, the parent undertaking declares that it guarantees the commitments entered into by the investment firms or that the risks in the investment firms are of negligible interest;** **(iii) the risk evaluation, measurement and control procedures of the parent undertaking include the investment firms;** **(iv) the parent undertaking holds more than 50% of the voting rights attached to shares in the capital of the investment firms or has the right to appoint or remove a majority of the members of the investment firms' management bodies.** **In respect of Part Five, the parent undertaking has established centralised liquidity management functions.**

Justification

Investment firms that are part of an investment firm-only group cannot benefit from the exemption stated in article 6.1.a of the draft Regulation.

This situation would lead to several undesirable practical consequences which would be contrary to the political goal that aims to introduce a simplified regime for investment firms:

- Individual firms would have to capitalise intercompany transactions, including when they are purely technical or designed to perform transfer of scarce resources (capital, liquidity) within the group; in addition, such transactions would be double-counted, as an exposure between entity A and its subsidiary B would be capitalised both within A and B. From our views, this would lead to a very substantial increase in capital requirements which would not reflect an increase in the level of risk borne by the firms considered. K-CON (concentration risk) capital requirement is of specific concern in this context.

- Pillar 2 rules (e.g. ICAAP / SREP) would have to apply at individual level, even in the case of very small subsidiaries with no consistent risks borne in their balance sheet; it has to be reminded that, considering class 2 investment firms, in most cases even the group would be a relatively limited unit both in terms of size and complexity.

- It would generate additional reporting workload with no value added in terms of capacity to provide an accurate view of risks, as in many cases a consistent view of risks would only be provided by consolidated reports.

- Governance rules, such as, for example, risk and remuneration committees with only non executive directors would have to be duplicated for each individual entity comprising the group. This would both add substantial additional burden and impair the ability of the governance structure to assess and monitor the actual risk profile of the institution.

For all these reasons, a provision equivalent to article 7.1 CRR should exist for non-systemic groups of investment firms in the future regime. It must be recalled that, in all cases, it would be submitted to approval by the national supervisor. Therefore, we do not see any risk of consolidated supervision creating situations of inappropriate or "under-calibrated" supervision.

Draft report on the proposal for a regulation of the European Parliament and of the Council on the prudential requirements of investement firms and amending regulations (EU) No 575/2013, EU No 600/2014 and (EU) No 1093/2010.

On report (COM(2017)0790 - C8-0453/2017 – 2017/0359(COD))

AMENDMENT 4

Article 61 – paragraph 1(1a) (new) Regulation (EU) N° 600/2014 Article 17(a) (new)	
Proposal for a regulation	Amendment [by Council]
Systematic internalisers' quotes, and price improvements on those quotes, shall comply with tick sizes set in accordance with Article 49 of Directive 2014/65/EU;"	Systematic internalisers' quotes, and price improvements on those quotes ***when they are close in price, at the time of publication, to quotes of equivalent sizes for the same financial instrument on the most relevant market in terms of liquidity*** , shall comply with tick sizes set in accordance with Article 49 of Directive 2014/65/EU;"

Justification

On September 20th 2018, ESMA submitted to the European Commission an opinion on "Amendments to Commission Delegated Regulation (EU) 2017/587" (RTS1). In its opinion, ESMA proposed to amend article 10 of RTS 1 in ordrer to ensure that prices published by systematic internalisers reflect the minimum price increments applicable to orders and quotes advertised on trading venues.

This proposal, which establishes an actual level playing field between trading venues and systematic internalisers when pre-trade transparency is due and when competition occurs between all kinds of trading systems, is very welcome.

That being said, the Raport proposal raises serious issues:

- The industry has not been consulted on this modification contrary to the rules of the European legislation process ;
- Imposing systematic internalisers to follow the tick size regime when dealing in all sizes could have negative effects for investment firms which deal large transactions for their clients ;
- And above all, that was not the intent of the legislator to impose any kind of quoting obligation when the size of the trade is above the standard market size. Indeed, article 14(2) of MiFIR (Obligation for systematic internalisers to make public firm quotes in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments) states that "*This Article and Articles 15, 16 and 17 shall apply to systematic internalisers when they deal in sizes up to standard market size.* ***Systematic internalisers shall not be subject to this Article and Articles 15, 16 and 17 when they deal in sizes above standard market size****".*

This amendment would bring consistency between level 1 provisions and the coming amended Commission Delegated Regulation (EU) 2017/587.

Draft report on the proposal for a regulation of the European Parliament and of the Council on the prudential requirements of investement firms and amending regulations (EU) No 575/2013, EU No 600/2014 and (EU) No 1093/2010.

On report (COM(2017)0790 - C8-0453/2017 – 2017/0359(COD))

AMENDMENT 5

Recital 35 a	
Proposal for a regulation	Amendment [by Council]
With the aim of guaranteeing a level playing field and promoting the transparency of the Union market, Regulation (EU) No 600/2014 should be amended to subject systemic internalisers' quotes, price improvements and executions prices to the tick size regime when dealing in all sizes. Consequently, the currently applicable regulatory technical standards dealing with the tick size regime should also apply to its extended scope.	With the aim of guaranteeing a level playing field and promoting the transparency of the Union market, Regulation (EU) No 600/2014 should be amended to subject systemic internalisers' quotes, price improvements and executions prices to the tick size regime when ***dealing at price levels that could be traded on a trading venue at the time of publication*** ~~in all sizes~~. Consequently, the currently applicable regulatory technical standards dealing with the tick size regime should also apply to its extended scope.

Justification

To ensure consistency whith amendement 4 above