

30 September 2016

## Questions and answers to the EBA data collection exercise on the revision of the prudential framework for MiFID investment firms

- 1. This document reflects the questions received in relation to the EBA data collection exercise on the revision of the prudential framework for MiFID investment firms. It will be updated as needed.
- 2. Any other comment or question regarding the data collection should be sent to the relevant competent authority, as indicated in the instructions of the data collection.

Question **Answer** Investment advice covers both professional and retail customers. According to MiFID article 4(1)(4) 1. Do assets under advice: "investment advice means the provision of - refer to all clients (both retail and professional)? personal recommendations to a client ... ", - relate to the 12 month period to the year-end 31 without making a distinction between December 2015. professional and retail. (item B.2, sheet "Financial Information") Regarding the timeframe, it refers to the 12 months to 31 December 2015. It refers to the total assets of the 2. If the firm is an entity wholly owned by a Banking consolidated group (regardless of whether group domiciled in another jurisdiction, does the the consolidated supervision is carried out) "total assets of the group" (item A.4.1) refer to at the level of the Member State. If the simply the total assets of the firm? The instructions firm is an entity wholly owned by a describe this field as total assets "at the highest Banking group domiciled, say, in the US, level of consolidation in the member state" then the total assets of the firm should be reported. (item A.4.1, sheet "General\_information") 3. Fields A.4 and A.5 must be filled when an Correct. An investment firm which is not investment firm is part of a banking group or part of part of a banking group or part of an an investment firm group. Therefore we understand investment firm group must reply "NO" to

that an investment firm which is not part of a

regulated entity must put "NO" for these two fields.

(items A.4 and A.5, sheet "General\_information")

items A.4 and A.5 in Part 1 General

Information.



4. There are cases where an investment firm is part of a regulated entity which is not a bank or an investment firm: for instance financial conglomerate or regulated market. We understand that in these situations, the investment firm must also put "NO", but it would be more logical to add fields in order to take these cases into account.

(items A.4 and A.5, sheet "General information")

Correct. An investment firm that is subsidiary of a regulated entity other than a bank or an investment firm would not be considered neither as part of a banking group nor as part of an investment firm.

More precisely, an investment firm should be considered as belonging to:

- a banking group, if one of its parent companies is a credit institution;
- an investment firm group, if it is not the only investment firm of that group and one of its parent companies is an investment firm.

5. How should both given and received commitments should be registered?

(item A.4, sheet "Financial\_information")

Only given commitments should be recorded under off-balance sheet positions.

6. For OTC transactions, the instructions document is not clear on the number (and the amount) of transactions to be recorded when the investment firm act as agent between the buyers and sellers but interposes itself for settlement purposes without taking any market risk.

If we take a case where the amount of the transaction is 10 million Euros, shall the investment firm record 2 transactions for an amount of 20 million Euros or 1 transaction for 10 million Euros?

Besides that, in a case where the transaction is between 1 buyer (10 million Euros) and two sellers (5 million Euros each), shall the investment firm record 3 transactions for an amount of 20 million Euros or 1 transaction for 10 million Euros?

It seems that the instructions document indicate that only 1 transaction should be recorded, but this is not totally logical considering that the investment firm faces settlement risks towards the two branches (or more) of the transaction

(section F, sheet "Financial\_information")

The instructions clearly assume that the number of sellers and the number of buyers is the same: "Transactions executed on behalf of clients should be registered as a single transaction, to avoid double-counting".

To have consistent reporting in the other cases, the number of transactions should be recorded as follows:

- a) If the number of buyers is the same as the number of sellers, then report the number of buyers
- b) If the number of buyers is not the same as the number of sellers, then report the average of the two.

Similarly for the amounts, in order to have consistency in the reported data, please report the amount of securities bought (i.e. one side only).



With respect to the proposed examples:

"The amount of the transaction is 10 million Euros, shall the investment firm record 2 transactions for an amount of 20 million Euros or 1 transaction for 10 million Euros?"

## Please report:

- 1. a single transaction;
- 2. an amount of EUR 10 million.

"The transaction is between 1 buyer (10 million Euros) and two sellers (5 million Euros each), shall the investment firm record 3 transactions for an amount of EUR 20 million or 1 transaction for 10 million Euros?"

## Please report:

- 1. "1.5" transactions, i.e. (1buyer +2 sellers)/2
- 2. an amount of EUR 10 million, i.e. one side only.

7. Instructions indicate that this part "refers to all the derivative contracts". Should we understand that the whole section only applies to derivative contracts?

(section G, sheet "Financial\_information")

No, lines G.1 to G.2.1 refer to the full portfolio as indicated in the template. Lines G.3 to G.4.1 refer to derivate contracts only.

We note the instructions may be misleading as they indicate "Refers to all the derivative contracts in force on 31 March 2016", while it should read "Refers to all the contracts in force on 31 March 2016". However, please follow the structure of the template in Excel, where there is a section for the "Full portfolio" and a separate one for "Derivative contracts".

8. What is initial capital?

(item A.2, sheet "Solvency")

Initial Capital is the minimum regulatory capital a firm must hold in order to be authorized. The initial capital requirements in the CRD 4 contain fixed amounts. National requirements may differ. Please refer to p. 56 of the EBA First report on investment firms for some context.



9. What is the combined capital buffer requirement? How should we calculate this requirement? Is it 2.5% of the total risk exposure amount as indicated in article 129? (item B.4, sheet "Solvency")

CRD Article 129 refers to the capital conservation buffer, which a different concept from the combined buffer requirement described in CRD Article 128(6).

Please refer to the COREP template C 04.00 "Capital Adequacy – Memorandum Items", row 740, column 010.

Reporting entities that currently are not required to calculate this figure are invited to provide their own estimate, keeping in mind that the exercise is on a best effort basis.

1) CRR article 97.

Please refer to:

2) The Commission delegated regulation explaining the methodology for

calculating fixed overheads<sup>1</sup>

- 3) Pages 59 and 60 of the EBA 2015 Report on Investment Firms<sup>2</sup> to find more information about the FOR
- 4) COREP template C 04.00 "Capital Adequacy Memorandum Items", row 840, column 010, "Own Funds based on Fixed overheads"

If fixed overhead requirements are not readily available, please provide an estimate.

11. What is the difference between categorization under MiFID I and expected categorization under MiFID II? There is only one MiFID categorization for reference in the instructions.

10. What is the fixed overheads requirement? We

do not find any details in the delegated regulation

EU 241/2014 as indicated in the instructions.

(section D, sheet "Solvency")

(item B.7, sheet "Solvency")

Firms that fall under the scope of MiFID I should provide the same reference (i.e. the one provided in the instructions) for both categorizations (i.e. items D.1 and D.3). Both answers should be identical provided that MiFID II enforcement does entail a change in categorization of the firm.

<sup>1</sup> http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R0488&from=EN

<sup>&</sup>lt;sup>2</sup> https://www.eba.europa.eu/documents/10180/983359/EBA-Op-2015-20+Report+on+investment+firms.pdf

discretion) which the customer accepts or rejects.



Firms that only fall under the scope of MiFID II should only fill item D.2 (expected categorisation under MiFID II), and not item D.1 (categorisation under MiFID I). Credit lines should not be included in the 12. Can available credit lines be included in the cash cash balance. balance? (item B.1, sheet "Liquidity") 13. For pure agency activity, the investment firm record, on trade date, transactions that are to be settled (delivery versus payment) generally two days after trade date according to the European rules and The reference date (31/12/2015) used for market practices. On trade date, the net cash this part should limit the occurrences of position is equal to zero (the amount the investment this scenario. However, in such case, the firm has to pay is equal to the amount the investment firm should reflect adequately investment firm has to receive), but cash the expected situation of its cash balance, requirements may occur on settlement date, for i.e. the investment firm should record instance if the buyer is not able to pay the securities zero. on that date. For agency activities shall the investment firm record 0 (expected situation) or record the amount of the investment firm has to pay on settlement date (worst case scenario)? (section B, sheet "Liquidity") The outflows and inflows requested in the 14. Do total payables and total receivables and template are not collected for the purpose marketable assets correspond to outflows and of computing the LCR. However, firms that inflows used for the purpose of the LCR? compute the LCR for prudential purposes may use some of the components of the (section C, sheet "Liquidity") LCR to report the outflows and inflows in this section. Please follow the definition indicated in 15. Instructions do not refer to criteria used in art. the templates and instructions "An 395 of CRR to define large exposures (25% of eligible institution's exposure to a client or group capital or EUR 150 million). Does this mean that the of connected clients shall be considered a data reported in part 5 should be different from the large exposure where its value is equal to one reported in COREP for large exposures? or exceeds 10 % of its eligible capital. (sheet "Large\_exposures") 16. In relation to B.2 in the Financial Information Correct. 'Assets under advice' relates to sheet, we would appreciate if you could clarify what the provision of the MiFID investment constitutes 'assets under advice' as distinct from service 'investment advice' (as per point 5 of Section A of Annex I of Directive 'assets under management' in B.1. We note that the EBA's instructions provide a description of 2004/39/EC). It excludes the ancillary 'assets under advice' as being where the firm 'has service of 'advice to undertakings on an on-going relationship, where it gives advice (no capital structure, industrial strategy and

related matters and advice', i.e. point 3 of



[...] This should exclude one-off advice on a transaction.' We would appreciate if you could advise whether this only relates to the provision of the MiFID investment service, 'investment advice' and as such, excludes under the ancillary service of 'advice to undertakings on capital structure, industrial strategy and related matters and advice' provided as an ancillary service.

Section B of Annex I of Directive 2004/39/EC.

(item B.2, sheet "Financial\_information")