MFSA MALTA FINANCIAL SERVICES AUTHORITY

Circular

08 June 2021

The Investment Firms Regulation and Directive – 4th Briefing

1. Introduction

On 26 June 2021, the Investment Firms Regulation ("IFR") and Directive ("IFD") (jointly "the IFRD Package") become applicable.

For ease of reference, the MFSA has created a section on its website dedicated to the circulars issued in relation to the IFRD Package.

The purpose of this fourth briefing, from a series of regulatory briefings, is to provide an insight into the high-level changes to be made to the Investment Services Rules for Investment Services Providers, Part BI applicable to MiFID Firms, ("the Rulebook"). In particular, the legislative options available for Member States and Competent Authorities under the IFRD Package and to enable the industry to provide feedback on the applicability of these legislative options. It is pertinent to note that where legislative options are not available in the IFRD package, Member States do not have any discretion in the transposition or implementation of the IFRD package.

2. Rulebook Changes

The Rulebook is being amended to include both the IFRD Package and also the CRR II and CRD V amongst others. Therefore, the Rulebook will refer to two different prudential frameworks, whereby licence holders would need to apply the contents based on their respective Class applicability.

The implementation and transposition date of the IFRD package into local legislation is 26 June 2021. In terms of the IFR, all necessary referencing of IFR Articles will be included within the Rulebook. Since the IFR is a Regulation and is directly applicable, there is no leeway as to the contents thereto. Similarly, this approach has also been taken with the content related to the CRR II. The Rules will therefore include cross-references under the respective sections to the relevant provisions in the IFR and the CRR II, and other applicable regulations.

With respect to the IFD, this required transposition into the Rulebook amongst other legislative instruments. These changes have been introduced in the [i] Investment Services Act ("ISA") as the principle act; [ii] Subsidiary Legislations ("SLs") emanating from the principle act; and [iii] to a lesser extent in the Rulebook.

Further to the above, the IFRD package outlines various legislative options for Member States and National Competent Authorities to consider and apply locally. In this respect, the Authority is empowered in choosing the manner in which these options should be applied. The Authority intends to adopt the following positions highlighted in Annex 1 below, which in turn refers to each Article considered under the options.

In summary, the Authority has decided that the only options to be applied *a priori* are Articles 6 and 43 of the IFR. It was agreed that the remainder of the options are left open and would be considered and applied on a case-by-case basis. Articles 6 and 43 will be referred to specifically in the Rulebook.

- Article 6: exempts firms which form part of a group from reporting individually to ensure proportionality. The MFSA intends to adopt the default position by exempting firms forming part of a group from reporting on an individual basis without such firms applying for an exemption. That said, the Authority will still have the discretion to withdraw such exemption in exceptional cases.

- Article 43: exempts Class 3 firms, the smallest firms, from holding liquid assets equivalent to at least one third of the fixed overhead requirement. In the interest of the industry's size, the lack of systemic importance of such firms and operational efficiency, the MFSA intends to apply this exemption straight away without Licence Holders having to apply specifically for such derogation.

In this respect, the above-mentioned two options would be considered as the only text, to be included within the Rulebook, whereby the Authority decided to apply the legislative options a priori. The remainder of the text included in the Rulebook is either transposing provisions which do not have any legislative options, that is, are directly applicable, or making reference to Articles of Regulations which are directly applicable.

In addition to the above, the remaining options present in the IFD will be transposed in the ISA, SLs and the Rulebook accordingly.

The MFSA is also working to re-structure the rulebook to enable Licence Holders to distinguish between the CRD framework and the IFRD. This exercise is being undertaken to ensure that clarity between the two frameworks is maintained. That said, the substance of the CRD framework will generally remain unchanged. To this extent, the Authority intends to structure the rulebook, although this may be subject to change, as follows:

Chapters - Applicability	Comments
Chapter A – All Classes	General requirements and obligations, including MiFIR and MiFID II requirements, applicable to all Investment Firms
Chapter B – Class 1 and Class 1minus	Prudential requirements under the CRD framework
Chapter C – Class 2 and Class 3	Prudential requirements under IFRD

3. Applicability

The IFR package applies to Investment Firms authorised and Supervised under Directive 2014/65/EU ("MiFID II"). In this regard, it is important to note that the IFR package **does not apply to Credit Institutions**, even when these offer MiFID II services, UCITS Management Companies and Alternative Investment Fund Managers. Conversely, it applies to *deminimis* fund managers providing MiFID II services.

4. Conclusion

The Rulebook will be amended to ensure all relevant cross references are included, under the respective sections, as required by the IFRD Package. Should the industry not agree with the above-mentioned approach in relation to the two options to be implemented a priori, they are kindly asked to write to the Authority.

The Authority reiterates the importance for firms to familiarise themselves with the IFRD Package and its relevant Technical Standards, to ensure that licence holders are well prepared for the implementation. The Rulebook will be issued later this month. As explained above, the majority of the changes are transposed directly.

The Authority will soon publish further guidance in relation to reporting requirements as well as the new classification and licence certificates following the implementation of the IFRD package.

We will continue to keep the industry updated accordingly. Should you have any queries in relation to the IFR Package do not hesitate to contact the Investment Firms Team within the Securities and Markets Supervision function on investmentfirms@mfsa.mt.

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4th Briefing - Annex 1

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ARTICLE	TITLE	CONTENT
		INVESTMENT FIRMS DIRECTIVE (2019/2034)
5	Discretion of Competent Authorities to subject certain investment firms to the requirements of Regulation (EU) No 575/2013.	1. Competent authorities may decide to apply the requirements of Regulation (EU) No 575/2013 pursuant to point (c) of the first subparagraph of Article 1(2) of Regulation (EU) 2019/2033 to an investment firm that carries out any of the activities listed in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU, where the total value of the consolidated assets of the investment firm is equal to or exceeds EUR 5 billion, calculated as an average of the previous 12 months, and one or more of the following criteria apply: (a) the investment firm carries out those activities on such a scale that the failure or the distress of the investment firm could lead to systemic risk; (b) the investment firm is a clearing member as defined in point (3) of Article 4 (1) of Regulation (EU)2019/2033; (c) the competent authority considers it to be justified in light of the size, nature, scale and complexity of the activities of the investment firm concerned, taking into account the principle of proportionality and having regard to one or more of the following factors: (i) the importance of the investment firm for the economy of the Union or of the relevant Member State; (ii) the significance of the investment firm's cross-border activities; (iii) the interconnectedness of the investment firm with the financial system. 2. Paragraph 1 shall not apply to commodity and emission allowance dealers, collective investment undertakings or insurance undertakings. 3. Where a competent authority decides to apply the requirements of Regulation (EU) No 575/2013 to an investment firm in accordance with paragraph 1, that investment firm shall be supervised for compliance with prudential requirements under Titles VII and VIII of Directive 2013/36/EU. 4. Where a competent authority decides to revoke a decision taken in accordance with paragraph 1, it shall inform the investment firm without delay.

		Any decision taken by a competent authority under paragraph 1 shall cease to apply where an investment firm no longer meets the threshold referred to in that paragraph, calculated over a period of 12 consecutive months. 5. Competent authorities shall inform EBA without delay of any decision taken pursuant to paragraphs 1, 3 and 4. 6. EBA, in consultation with ESMA, shall develop draft regulatory technical standards to further specify the criteria set out in points (a) and (b) of paragraph 1, and shall ensure their consistent application. EBA shall submit those draft regulatory technical standards to the Commission by 26 December 2020. Power is delegated to the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the second subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.
24	Internal Capital and Liquid Assets	1. Investment firms which do not meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) of Regulation (EU) 2019/2033 shall have in place sound, effective and comprehensive arrangements, strategies and processes to assess and maintain on an ongoing basis the amounts, types and distribution of internal capital and liquid assets that they consider adequate to cover the nature and level of risks which they may pose to others and to which the investment firms themselves are or might be exposed. 2. The arrangements, strategies and processes referred to in paragraph 1 shall be appropriate and proportionate to the nature, scale and complexity of the activities of the investment firm concerned. They shall be subject to regular internal review. Competent authorities may request investment firms which meet the conditions for qualifying as small and non - interconnected investment firms set out in Article 12(1) of Regulation (EU) 2019/2033 to apply the requirements provided for in this Article to the extent that the competent authorities deem it to be appropriate.
32	Variable Remuneration	1. Member States shall ensure that any variable remuneration awarded and paid by an investment firm to categories of staff referred to in Article 30(1) complies with all of the following requirements under the same conditions as those set out in Article 30(3): (a) where variable remuneration is performance related, the total amount of variable remuneration is based on a combination of the assessment of the performance of the individual, of the business unit concerned and of the overall results of the investment firm;

		(b) when assessing the performance of the individual, both financial and non-financial criteria are taken into account; (c) the assessment of the performance referred to in point (a) is based on a multi-year period, taking into account the business cycle of the investment firm and its business risks; (d) the variable remuneration does not affect the investment firm's ability to ensure a sound capital base; (e) there is no guaranteed variable remuneration other than for new staff only for the first year of employment of new staff and where the investment firm has a strong capital base; (f) payments relating to the early termination of an employment contract reflect performance achieved over time by the individual and shall not reward failure or misconduct; (g) remuneration packages relating to compensation or buy out from contracts in previous employment are aligned with the long-term interests of the investment firm; (h) the measurement of performance used as a basis to calculate pools of variable remuneration takes into account all types of current and future risks and the cost of the capital and liquidity required in accordance with Regulation (EU) 2019/2033; (i) the allocation of the variable remuneration components within the investment firm takes into account all types of current and future risks; (j) at least 50 % of the variable remuneration consists of any of the following instruments: (i) shares or equivalent ownership interests, subject to the legal structure of the investment firm concerned; (ii) share-linked instruments or equivalent non-cash instruments, subject to the legal structure of the investment firm concerned; (iii) Additional Tier 1 instruments or Tier 2 instruments or other instruments which can be fully converted to Common Equity Tier 1 instruments or written down and that adequately reflect the credit quality of the investment firm as a going concern; (iv) non-cash instruments which reflect the instruments of the portfolios managed;

		(k) by way of derogation from point (j), where an investment firm does not issue any of the instruments referred to in that point, competent authorities may approve the use of alternative arrangements fulfilling the same objectives; (l) at least 40 % of the variable remuneration is 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 variable remuneration of a particularly high amount where the proportion of the variable remuneration deferred is at least 60 %; (m) up to 100 % of the variable remuneration is contracted where the financial performance of the investment firm is subdued or negative, including through *malus* or clawback arrangements subject to criteria set by investment firms which in particular cover situations where the individual in question: (i) participated in or was responsible for conduct which resulted in significant losses for the investment firm; (ii) is no longer considered fit and proper; (n) discretionary pension benefits are in line with the business strategy, objectives, values and long-term interests of the investment firm. 3. For the purposes of point (j) of paragraph 1, the instruments referred to therein shall be subject to an appropriate retention policy designed to align the incentives of the individual with the longer-term interests of the investment firm, its creditors and clients. Member States or their competent authorities may place restrictions on the types and designs of those instruments or prohibit the use of certain instruments for variable remuneration. For the purposes of point (l) of paragraph 1, the deferral of the variable remuneration shall vest no faster than on a pro-rata basis. For the purposes of point (n) of paragraph 1, where an employee leaves the investment firm before retirement age, discretionary pension benefits shall be held by the investment firm for a period of five years in the form of instruments referred to in point (j). Where an employee reaches retirement

		age and retires, discretionary pension benefits shall be paid to the employee in the form of instruments referred to in point (j), subject to a five-year retention period. 4. Points (j) and (l) of paragraph 1 and the third subparagraph of paragraph 3 shall not apply to: (a) an investment firm, where the value of its on and off-balance sheet assets is on average equal to or less than EUR 100 million over the four-year period immediately preceding the given financial year; (b) an individual whose annual variable remuneration does not exceed EUR 50 000 and does not represent more than one fourth of that individual's total annual remuneration. 5. By way of derogation from point (a) of paragraph 4, a Member State may increase the threshold referred to in that point, provided that the investment firm meets the following criteria: (a) the investment firm is not, in the Member State in which it is established, one of the three largest investment firms in terms of total value of assets; (b) the investment firm is not subject to obligations or is subject to simplified obligations in relation to recovery and resolution planning in accordance with Article 4 of Directive 2014/59/EU; (c) the size of the investment firm's on and off-balance sheet trading-book business is equal to or less than EUR 150 million; (d) the size of the investment firm's on and off-balance sheet derivative business is equal to or less than EUR 100 million; (e) the threshold does not exceed EUR 300 million; and (f) it is appropriate to increase the threshold, taking into account the nature and scope of the investment firm's activities, its internal organisation, and, where applicable, the characteristics of the group to which it belongs.

		6. By way of derogation from point (a) of paragraph 4, a Member State may lower the threshold referred to in that point, provided that it is appropriate to do so, taking into account the nature and scope of the investment firm's activities, its internal organisation, and, where applicable, the characteristics of the group to which it belongs. 7. By way of derogation from point (b) of paragraph 4, a Member State may decide that staff members who are entitled to annual variable remuneration below the threshold and share referred to in that point shall not be subject to the exemption set out therein because of national market specificities in terms of remuneration practices or because of the nature of the responsibilities and job profile of those staff members.
40	Additional Own Funds Requirement	7. Competent authorities may impose an additional own funds requirement in accordance with paragraphs 1 to 6 on investment firms that meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) of Regulation (EU) 2019/2033 on the basis of a case-by-case assessment and where the competent authority deems it to be justified.
41	Guidance on Additional Own Funds	1. Taking into account the principle of proportionality and commensurate with the size, systemic importance, nature, scale and complexity of activities of investment firms that do not meet the conditions for qualifying as small and non- interconnected investment firms set out in Article 12(1) of Regulation (EU) 2019/2033, competent authorities may require such investment firms to have levels of own funds which, based on Article 24, are sufficiently above the requirements set out in Part Three of Regulation (EU) 2019/2033 and in this Directive, including the additional own funds requirements referred to in point (a) of Article 39(2), to ensure that cyclical economic fluctuations do not lead to a breach of those requirements or threaten the ability of the investment firm to wind down and cease activities in an orderly manner;
55	Assessment of Third-Country Supervision and other Supervisory Techniques	3. The competent authority which would be the group supervisor had the parent undertaking been established in the Union may, in particular, require the establishment of an investment holding company or mixed financial holding company in the Union and apply Article 7 or 8 of Regulation (EU) 2019/2033 to that investment holding company or mixed financial holding company.
		INVESTMENT FIRMS REGULATION (2019/2033)

1	Subject Matter and Scope	5. By way of derogation from paragraph 1, competent authorities may allow an investment firm authorised and supervised under Directive 2014/65/EU that carries out any of the activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU to apply the requirements of Regulation (EU) No 575/2013 where all of the following conditions are fulfilled: (a) the investment firm is a subsidiary and is included in the supervision on a consolidated basis of a credit institution, a financial holding company or a mixed financial holding company, in accordance with the provisions of Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013; (b) the investment firm notifies the competent authority under this Regulation and the consolidating supervisor, if applicable; (c) the competent authority is satisfied that the application of the own funds requirements of Regulation (EU) No 575/2013 on an individual basis to the investment firm and on a consolidated basis to the group, as applicable, is prudentially sound, does not result in a reduction of the own funds requirements of the investment firm under this Regulation, and is not undertaken for the purposes of regulatory arbitrage.
6	Exemptions	1. Competent authorities may exempt an investment firm from the application of Article 5 in respect of Parts Two, Three, Four, Six and Seven, where all of the following conditions apply: (a) the investment firm meets the conditions for qualifying as a small and non-interconnected investment firm set out in Article 12(1); (b) one of the following conditions is satisfied: (i) the investment firm is a subsidiary and is included in the supervision on a consolidated basis of a credit institution, a financial holding company or a mixed financial holding company, in accordance with the provisions of Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013; (ii) the investment firm is a subsidiary and is included in an investment firm group supervised on a consolidated basis in accordance with Article 7; (c) both the investment firm and its parent undertaking are subject to authorisation and supervision by the same Member State; (d) the authorities competent for the supervision on a consolidated basis in accordance with Regulation (EU) No 575/2013 or in accordance with Article 7 of this Regulation agree to such an exemption; (e) own funds are distributed adequately between the parent undertaking and the investment firm, 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 in to by the investment firm or that the risks in the investment firm are of negligible interest; (iii) the risk evaluation, measurement and control procedures of the parent undertaking include the investment firm; and (iv) the parent undertaking holds more than 50 % of the voting rights attached to shares in the capital of the investment firm or has the right to appoint or remove a majority of the members of the investment firm's management body. 2. Competent authorities may exempt investment firms from the application of Article 5 in respect of Part Six where all of the following conditions apply: (a) the investment firm meets the conditions for qualifying as a small and non-interconnected investment firm set ou tin Article 12(1); (b) the investment firm is a subsidiary and is included in the supervision on a consolidated basis of an insurance or reinsurance undertaking in accordance with Article 228 of Directive 2009/138/EC; (c) both the investment firm and its parent undertaking are subject to authorisation and supervision by the same Member State; (d) the authorities competent for the supervision on a consolidated basis in accordance with Directive 2009/138/EC agree to such an exemption; (e) Own funds are distributed adequately between the parent undertaking and the investment firm 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 firm or that the risks in the investment firm are of negligible interest; (iii) the risk evaluation, measurement and control procedures of the parent undertaking include the investment firm; and

		(iv) the parent undertaking holds more than 50 % of the voting rights attached to shares in the capital of the investment firm or has the right to appoint or remove a majority of the members of the investment firm's management body. 3. Competent authorities may exempt investment firms from the application of Article 5 in respect of Part Five [1] where all of the following conditions are satisfied: (a) the investment firm is included in the supervision on a consolidated basis in accordance with Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013 or is included in an investment firm group for which Article 7(3) of this Regulation applies and the exemption provided for in Article 7(4) does not apply; (b) the parent undertaking, on a consolidated basis, monitors and has oversight at all times over the liquidity positions of all institutions and investment firms within the group or sub-group that are subject to a waiver and ensures a sufficient level of liquidity for all of those institutions and investment firms; (c) the parent undertaking and the investment firm have entered into contracts that, to the satisfaction of the competent authorities, provide for the free movement of funds between the parent undertaking and the investment firm to enable them to meet their individual obligations and joint obligations as they become due; (d) there is no current or foreseen material, practical or legal impediment to the fulfilment of the contracts referred to in point (c); (e) the authorities competent for the supervision on a consolidated basis in accordance with Regulation (EU)No575/2013 or in accordance with Article 7 of this Regulation agree to such an exemption.
7	Prudential Consolidation	3. Union parent investment firms, Union parent investment holding companies and Union parent mixed financial companies shall comply with the obligations laid down in Part Five on the basis of their consolidated situations. 4. By way of derogation from paragraph 3, competent authorities may exempt the parent undertaking from compliance with that paragraph, taking into account the nature, scale and complexity of the investment firm group.
8	The Group Capital Test	1. By way of derogation from Article 7, competent authorities may allow the application of this Article in the case of group structures which are deemed to be sufficiently simple, provided that there are no significant risks to clients or to market stemming from the investment firm group as a whole that would otherwise require supervision on a consolidated basis. Competent authorities shall notify EBA when they allow the application of this Article.

[1] Liquidity

		2. For the purposes of this Article, the following shall apply: (a) 'own funds instruments' means own funds as defined in Article 9 of this Regulation, without applying the deductions referred to in point (i) of Article 36(1), point (d) of Article 56, and point (d) of Article 66 of Regulation (EU) No 575/2013; (b) the terms 'investment firm', 'financial institution', 'ancillary services undertaking' and 'tied agent' shall also apply to undertakings established in third countries, which, were they established in the Union, would fulfil the definitions of those terms in Article 4. 3. Union parent investment firms, Union parent investment holding companies, Union parent mixed financial holding companies and any other parent undertakings that are investment firms, financial institutions, ancillary services undertakings or tied agents in the investment firm group shall hold at least enough own funds instruments to cover the sum of the following: (a) the sum of the full book value of all of their holdings, subordinated claims and instruments referred to in point (i) of Article 36(1), point (d) of Article 56, and point (d) of Article 66 of Regulation (EU) No 575/2013 in investment firms, financial institutions, ancillary services undertakings and tied agents in the investment firm group; and (b) the total amount of all of their contingent liabilities in favour of investment firms, financial institutions, ancillary services undertakings and tied agents in the investment firm group. 4. Competent authorities may allow a Union parent investment holding company or Union parent mixed financial holding company and any other parent undertaking that is an investment firm, a financial institution, an ancillary services undertaking or a tied agent in the investment firm group, to hold a lower amount of own funds than the amount calculated under paragraph 3, provided that this amount is no lower than the sum of the own funds requirements imposed on an individual basis on its subsidiary investment firms, financial institutions, ancillary services undertakings and tied agents, and the total amount of any contingent liabilities in favour of those entities. For the purposes of this paragraph, the own funds requirements for subsidiary undertakings as referred to in the first subparagraph which are located in third countries shall be notional own funds requirements that ensure a satisfactory level of prudence to cover for the risks arising from those subsidiary undertakings, as approved by the relevant competent authorities. 5. Union parent investment firms, Union parent investment holding companies, and Union parent mixed financial holding companies shall have systems in place to monitor and control the sources of capital and funding of all investment firms, investment holding companies, mixed financial holding companies, financial institutions, ancillary services undertakings and tied agents within the investment firm group.

10	Qualifying Holdings Outside the Financial Sector	1. For the purposes of this Part, investment firms shall deduct amounts in excess of the limits specified in points (a) and (b) from the determination of Common Equity Tier 1 items referred to in Article 26 of Regulation (EU) No 575/2013: (a) a qualifying holding, the amount of which exceeds 15 % of the own funds of the investment firm calculated in accordance with Article 9 of this Regulation but without applying the deduction referred to in point (k)(i) of Article 36 (1) of Regulation (EU) No 575/2013, in an undertaking which is not a financial sector entity; (b) the total amount of the qualifying holdings of an investment firm in undertakings other than financial sector entities that exceeds 60 % of its own funds calculated in accordance with Article 9 of this Regulation but without applying the deduction referred to in point (k)(i) of Article 36(1) of Regulation (EU) No 575/2013. 2. Competent authorities may prohibit an investment firm from having qualifying holdings as referred to in paragraph 1 where the amount of those holdings exceed the percentages of own funds laid down in that paragraph. Competent authorities shall make public their decision exercising this power without delay.
11	Own Funds Requirement	3. Where competent authorities consider that there has been a material change in the business activities of an investment firm, they may require the investment firm to be subject to a different own funds requirement referred to in this Article, in accordance with Title IV, Chapter 2, Section 4 of Directive (EU) 2019/2034.
13	Fixed Overheads Requirement	1. For the purposes of point (a) of Article 11(1), the fixed overheads requirement shall amount to at least one quarter of the fixed overheads of the preceding year. Investment firms shall use figures resulting from the applicable accounting framework. 2. Where the competent authority considers that there has been a material change in the activities of an investment firm, the competent authority may adjust the amount of capital referred to in paragraph 1.
18	Measuring CHM for the purposes of calculating K-CMH	2. Where an investment firm has been holding client money for less than nine months, it shall use historical data for CMH for the period specified under paragraph 1 as soon as such data becomes available to calculate K-CMH. The competent authority may replace missing historical data points by regulatory determinations based on the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU.
19	Measuring ASA for the purposes of	3. Where an investment firm has been safeguarding and administering assets for less than six months, it shall use historical data for ASA for the period specified under paragraph 1 as soon as such data becomes available to calculate K- ASA. The competent authority may replace missing historical data

	calculating K-ASA	points by regulatory determinations based on the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU.
20	Measuring COH for the purposes of calculating K-COH	3. Where an investment firm has been handling client orders for less than six months, or has done so for a longer period as a small and non-interconnected investment firm, it shall use historical data for COH for the period specified under paragraph 1 as soon as such data becomes available to calculate K-COH. The competent authority may replace missing historical data points by regulatory determinations based on the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU.
30	Collateral	1. All collateral for both bilateral and cleared transactions referred to in Article 25 shall be subject to volatility adjustments in accordance with the following table: For the purposes of Table 4, securitisation positions shall not include re-securitisation positions. Competent authorities may change the volatility adjustment for certain types of commodities for which there are different levels of volatility in prices. They shall notify EBA of such decisions together with the reasons for the changes.
33	Measuring DTF for the purposes of calculating K-DTF	4. Where an investment firm has had a daily trading flow for less than nine months, it shall use historical data for DTF for the period specified under paragraph 1 as soon as such data becomes available to calculate K-DTF. The competent authority may replace missing historical data points by regulatory determinations based on the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU.
38	Obligation to Notify	1. Where the limits referred to in Article 37 are exceeded, an investment firm shall notify the competent authorities of the amount of the excess, the name of the individual client concerned and, where applicable, the name of the group of connected clients concerned, without delay. 2. Competent authorities may grant the investment firm a limited period to comply with the limit referred to in Article 37.
41	Exclusions	2. Competent authorities may fully or partially exempt the following exposures from the application of Article 37: (a) covered bonds; (b) exposures incurred by an investment firm to its parent undertaking, to other subsidiaries of that parent undertaking or to its own subsidiaries, insofar as those undertakings are supervised on a consolidated basis in accordance with Article 7 of this Regulation or with Regulation (EU) No 575/2013, are supervised for compliance with the group capital test in accordance with Article 8 of this Regulation, or are supervised in accordance with equivalent standards in force in a third country, and provided that the following conditions are met:

		(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; and (ii) the risk evaluation, measurement and control procedures of the parent undertaking include the financial sector entity.
43	Liquidity Requirements	1. Investment firms shall hold an amount of liquid assets equivalent to at least one third of the fixed overhead requirement calculated in accordance with Article 13(1). By way of derogation from the first subparagraph of this paragraph, competent authorities may exempt investment firms that meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) from the application of the first subparagraph of this paragraph and shall duly inform EBA thereof.