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September 25, 2020

Re: FCA Discussion Paper 20/2: "A new UK prudential regime for MiFID investment firms" Response on Remuneration Aspects

Dear Mr. Rich and Ms. Neale,

ICI Global[1] appreciates the opportunity to provide feedback on remuneration aspects of the Financial Conduct Authority's (FCA's) Discussion Paper 20/2 titled "A new UK prudential regime for MiFID investment firms" (DP20/2). Many of our member firms are part of regulated fund complexes with operations around the globe and will be subject to the United Kingdom's (UK's) investment firms prudential regime (IFPR), which reflects the EU Investment Firms Directive (IFD) and Regulation (IFR).

In this letter, we have responded thematically to remuneration aspects of DP20/2 and noted where such aspects address specific questions in DP20/2.

Compliance Date Should be First Performance Year After New Code Comes into Force

DP20/2 states at paragraph 13.19 that firms are expected to "continue to comply with the existing IFPRU or BIPRU Remuneration Code (to the extent either is applicable) until any new remuneration code for non-SNI investment firms[2] comes into force." Although it only references the IFPRU and BIPRU Remuneration Codes, we understand from this statement that the FCA expects all UK investment firms to continue to comply with their existing remuneration regime before any new IFPR remuneration code comes into force. This approach is helpful and has our full support.

We would, however, ask that the requirements contained in the new IFPR remuneration code apply no earlier than the start of a firm's first performance year to commence on or after the date

[1] ICI Global carries out the international work of the Investment Company Institute, the leading association representing regulated funds globally. ICI's membership includes regulated funds publicly offered to investors in jurisdictions worldwide, with total assets of US$33.9 trillion. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of regulated investment funds, their managers, and investors. ICI Global has offices in London, Hong Kong, and Washington, DC.

[2] The term "SNIs" refers to small and non-interconnected investment firms; "non-SNI investment firms" refers to firms that are not SNIs.

the new code comes into force. Under this proposal, if the IFPR came into force in 2021, for firms with a calendar year performance period, the firm would continue to apply its current approach to remuneration, reflective of whichever regulatory regime it was subject to prior to the IFPR coming into force, for the 2021 performance year (and including with respect to bonuses paid in early 2022 in respect of 2021) and would then first apply the IFPR requirements to its 2022 performance year.

We believe any earlier application would likely result in firms either:

(1) subjecting their staff to new remuneration terms part way through a performance year, which brings significant administrative complexity as well as employment law risks resulting from making potentially material changes to the remuneration structure of staff during a performance year; or
(2) attempting to apply the IFPR remuneration rules from the start of their performance year in which the introduction of the code falls to limit the employment law risks. This option would involve firms making amendments to their remuneration policies and practices before all the details of the IFPR remuneration rules are finalized.

We have appended to this letter our response to the European Banking Authority's (EBA's) consultations on the draft regulatory technical standards for (1) instruments/alternative arrangements that can be used for variable remuneration under the IFD and (2) the identification of material risk takers (MRTs) under the IFD, which discusses this point in more detail (EBA Response). We request that you review and give consideration to our views under the section of our EBA Response entitled "Timing of the IFD (Instruments RTS)," which explains our concerns in greater detail in relation to this point.

Definition of Material Risk Takers (MRTs) Should be Modified

The IFD remuneration requirements apply to categories of staff whose professional activities have a material impact on the risk profile of the investment firm or of the assets that it manages (Article 30). The EBA's consultation on its regulatory technical standards identifying staff that would be considered MRTs was released on June 4, shortly prior to the publication of DP20/2. In paragraph 13.57, the FCA states that it intends to consult in the future on the approach to identifying MRTs under the IFPR, noting that it would "look to base our draft rules on the EBA's draft technical standards, while making any adjustments that might be appropriate to the UK market."

We had specific recommendations to EBA's quantitative criteria for identifying MRTs, which, in our view, inappropriately exceeds the requirements under the IFD. We suggested that the criteria be adapted to:

(1) reduce the chance of individuals being caught who do not have a material impact on the risk profile of the firm or its managed assets; and
(2) make it less burdensome (in terms of both time and money) to disapply the criteria where necessary.

In the second section of our appended EBA Response, entitled "Appropriateness of the Qualitative and Quantitative Criteria Set out in the MRT RTS," we discuss our concerns and recommendations in greater detail and request that the FCA factor into the UK approach those proposals.

Additionally, we are concerned by the FCA's statement regarding taking a broader interpretation of who should be considered an MRT. In paragraph 13.54, the FCA states its intention to adopt a definition of MRT that includes not only those who have a material impact on the investment firm,

but also those who have a material impact on the assets that the firm manages, as is specified in the IFD. The FCA then suggests that it may broaden this even further by interpreting activities relevant to the risk profile of assets managed as including "all aspects of the MiFID activities carried out by the firm, and not solely limited to the regulated activity of managing investments."

The approach taken in the EBA draft technical standard is to focus on staff responsible for ensuring that investment decision making and associated risks are appropriately managed, in particular through the identification of members of staff responsible for management of relevant risks, rather than focusing on the identification of investment staff taking investment decisions in line with the relevant mandate or investment parameters on the basis of which clients decided to invest. In our view, the EBA's approach on this issue is appropriate to achieve the objective of identifying staff with a material impact on the firm's risk profile and managed assets, particularly taking into account the intention for the IFD to implement a proportionate regime.

Scope and Application of a New Remuneration Code

Below we provide a response to Q20: What are your views on the scope and application of a new remuneration code? (See paragraphs 13.7 to 13.18)

Regulatory Consolidation Group

DP 20/2 states "The IFD remuneration requirements would apply on an individual basis to the non-SNI investment firm, and to the investment firm group on a consolidated basis (*i.e., including the AIFM and UCITS firms*)" (emphasis added).

This appears to result in:

(1) applying the IFPR remuneration policy rules to all staff of AIFM and UCITS firms within an IFPR regulatory consolidation group irrespective of whether such staff work for an IFPR (non-SNI) firm; and
(2) applying the IFPR remuneration structure rules to staff of AIFM and UCITS firms within an IFPR regulatory consolidation group who satisfy the IFD MRT quantitative criteria, even if such staff do not work for an IFPR (non-SNI) firm.

We do not think such outcome is appropriate for the reasons set out below.

Staff should be subject to the remuneration regime specific to the sector in which they work. This is prudentially sound and ensures staff's pay and incentives are aligned with the performance and risk management of the firm for which they work. Subjecting staff who work only for UCITS/AIFM firms to the IFPR remuneration regime, in particular to the IFPR remuneration structure rules in the case of highly paid UCITS/AIFM staff, seems to be contrary to this fundamental principle.

Such approach would seemingly diverge from the position under Capital Requirements Directive V (CRD V). Article 109(4) of CRD V states that its remuneration requirements do "not apply on a consolidated basis to… subsidiary undertakings… subject to specific remuneration requirements in accordance with other instruments of Union law." Article 109(5) of CRD V indicates that only staff of asset management/investment firms within a group who "have been mandated to perform professional activities that have a direct material impact on the risk profile or the business of the institutions in the group" are subject to the CRD V remuneration regime. Consequently, the position under CRD V is that staff of UCITS/AIFM firms will not be considered CRD V MRTs unless they have a separate, specific role at the group level. In other words, staff of UCITS/AIFM

firms within a group will not be required to be identified as CRD MRTs, and subjected to the CRD V remuneration rules, only by reference to their level of pay. Given the similarity in approach between the IFPR and CRD V remuneration regimes, we would suggest they should be aligned on this key point.

The FCA's proposed approach would create uncertainty as to which remuneration structure rules apply if staff were both AIFMD/UCITS identified staff (based on their role and responsibilities) and IFPR MRTs (by virtue of satisfying the quantitative criteria). For example, it is not clear which rules would apply with respect to the types of non-cash instruments that should be used for such staff's variable pay, the length of the retention period for these instruments, the criteria for assessing performance, the application of proportionality, and malus/clawback triggers. This approach could result in misalignment between staff's pay structures and the best interests of the UCITS/AIFM firm for which they work, as well as inconsistency in market practice. Instead, mirroring the CRD V position, we would suggest that the IFPR remuneration rules should not apply to staff of UCITS and AIFM firms within an IFPR regulatory consolidation group, but rather that the sectoral specific remuneration rules take precedence.

Further, in the event staff work for both an UCITS/AIFM firm and IFPR (non-SNI) firm within an IFPR regulatory consolidation group, we would suggest that their pay is apportioned based either on time spent or assets under management, with the relevant remuneration regime applying to each portion of pay. This approach would be consistent with current practice under the UCITS and AIFM remuneration regimes.

CPMI Firms

It is unclear if UCITS and AIFM firms with MiFID top-up permissions (referred to as CPMI firms) will be subject to the IFPR remuneration regime. In our view, it would be appropriate for CPMI firms to be only subject to the UCITS and AIFM remuneration regimes (as applicable). We suggest that a rule be included in the IFPR remuneration code that compliance with SYSC 19B and/or SYSC 19E of the FCA Handbook, respectively, is deemed to be compliance with the IFPR remuneration code. This is similar to the current approach for BIPRU firms which are also full-scope UK AIFMs set out at SYSC 19C.1.1A R of the FCA Handbook.

We believe such approach would be prudentially sound as the remuneration rules most suited to CPMI firms would apply (given that the MiFID activities of CPMI firms are limited in scope), and therefore best promote the long-term interests of the firms and prudent risk management. It would also avoid the administrative burden, potential conflict (noted above), and international disadvantage of a CPMI firm having to comply with two different remuneration regimes (i.e., the UCITS/AIFM regime and the IFPR regime).

Waiver

The IFD in Article 25 provides that section 2 (on internal governance, transparency, treatment of risks and remuneration) should be applied to investment firms on an individual and consolidated basis. It further provides that subsidiaries (but not branches) of investment firms that are established in third countries may be exempted from applying the IFD remuneration requirements on an individual basis if the parent entity is able to demonstrate that it would be unlawful under the laws of the third country where those subsidiaries are established to apply those remuneration requirements. In paragraph 13.17, the FCA states: "we could require UK parent entities to apply to us for a waiver if they consider that the remuneration requirements should not apply to their subsidiaries established in third countries for this reason [i.e., it would be unlawful]."

Requiring a waiver, in our view, is neither necessary nor appropriate. Applying for and processing such waivers would be an administrative burden, both for the investment firm and the FCA itself. More importantly, it seems unnecessary to operate a waiver process in a case where the IFPR remuneration rules are not enforceable under the laws of such third country. Indeed, it is unclear what would be the effect of the FCA declining to grant a waiver, given that it would remain illegal for the firm to apply the IFPR remuneration rules in the relevant third country irrespective of the FCA's response to the waiver request. We therefore ask that this requirement to seek a waiver in this circumstance is removed. The FCA could, alternatively, require firms to maintain documentation of a determination that applying certain IFPR remuneration requirements is unlawful in a third country, and to provide such documentation to the FCA upon request.

Proportionality

Below we provide a response to Q21: Do you think it would be appropriate for us to include in a new remuneration code a general proportionality rule similar to that contained in the IFD? (See paragraphs 13.44 to 13.50).

We agree with the FCA's proposal to increase the four-year average on-and-off balance sheet assets threshold from EUR100 million to EUR300 million for the application of proportionality. We believe this is appropriate for the UK market, especially given that EUR300 million will still be significantly lower than the current thresholds of £15 billion for proportionality level 2 IFPRU investment firms and £50 billion for proportionality level 1 IFPRU investment firms (which have been in place for several years and demonstrated to be effective).

In no circumstances do we believe the threshold for applying proportionality should be lower than EUR100 million. This would place small UK investment firms at a significant disadvantage when recruiting and retaining talent vis-a-vis their international counterparts, and there would be little prudential justification for doing so (noting that firms above the EUR300 million threshold will not be able to apply proportionality).

Further, we support a more general approach to the application of proportionality. We encourage the FCA to ensure the proportionality regime remains as flexible as possible and appropriate for the wide range of firms that will be subject to the IFPR, each with different characteristics, both in terms of their nature and scope of activities, and organisational structure. This will help ensure the IFPR achieves its purpose of creating a new prudential regime tailored for investment firms.

Interaction of Regulatory Requirements and Commercial Decisions on Remuneration Policies

Firms' approaches to designing remuneration policies, including on aspects such as the level of variable remuneration that is delivered on deferred terms and the form in which deferred remuneration is delivered, are influenced by a range of factors. Ensuring compliance with all applicable regulatory rules is a key driver, as is ensuring that remuneration policies support effective risk management and support the capital position of the firm. Additionally, firms may impose certain aspects of their remuneration policy for a range commercial reasons – whether that is to reflect a wider approach in a global corporate group or in the market, to retain staff or otherwise. With this is in mind, we request that the FCA confirm that if, under the IFPR, a firm decides to impose additional arrangements as part of its remuneration policy in excess of the level which is required by the regulatory rules and the firm's assessment of the need to ensure effective risk management and prudent capital management, then those additional arrangements may be implemented without being required to comply with the regulatory remuneration rules.

For example, if a firm determines that the regulatory remuneration rules require it to deliver between 40% and 60% of deferred remuneration in the form of non-cash instruments, and that there is no regulatory or capital driver that would require any other approach, but nonetheless decides for commercial reasons that it wants to deliver 100% of deferred remuneration in the form of non-cash instruments, it would be helpful for the FCA to clarify that this additional level of payment in non-cash instruments does not have to be structured in compliance with the regulatory remuneration rules. Meaning, for example, the payment could be in an alternative form of instrument or applied without being subject to a post-vesting retention period. A similar position should also apply in the event that a firm decides, for commercial reasons, to apply a deferral requirement in excess of that required by the regulatory remuneration rules and its assessment of its approach to risk and capital management.

In our view, there is no risk in this leading to any circumvention of the rule, as in any case firms are still required to ensure full compliance with the regulatory requirements. Indeed, the contrary approach would seem likely to dissuade firms from taking actions such as imposing additional deferral requirements, and so could be counterproductive in practice. Although we believe this would be an appropriate approach and interpretation under any of the regulatory regimes, it would be helpful for the FCA to confirm this position in drafting and implementing the remuneration requirements of the new UK regime.

Disclosure

Section 15 of DP 20/2 does not address the application of the disclosure requirements (and in particular for this purpose, the remuneration disclosure requirements) in a group context, and simply discusses these disclosure requirements by reference to "the investment firm." Under the current remuneration disclosure requirements of the UK BIPRU regime, and the CRD IV (UK IFPRU) regime, the remuneration disclosure requirements are required to be complied with only on a consolidation group basis. There are clear policy drivers in favour of that approach, in ensuring that remuneration disclosures accurately reflect the relevant group's approach to remuneration, provide the most useful information to the public and to regulators, and avoid the disproportionate impact of firms having to address what would otherwise be complex separate remuneration disclosures (given, for example, staff often have roles for multiple entities within a group). We therefore request that the FCA ensure that this requirement – for remuneration disclosures to be required to be made only at the highest level of consolidation within a consolidation group – remains the case under the IFPR where there is consolidation under the IFPR or, indeed, where one or more investment firms fall within a CRR (banking) consolidation group.

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We appreciate your consideration of our views and concerns on DP20/2. Please contact Jennifer Choi, Chief Counsel, at +1 (202) 326-5876 or jennifer.choi@ici.org; or Eva Mykolenko, Associate Chief Counsel, ICI Global, at +1 (202) 326-5837 or emykolenko@ici.org, with any questions.

Yours sincerely,

/s/ Patrice Bergé-Vincent

Patrice Bergé-Vincent
Managing Director

Appendix A

Response to the European Banking Authority's Consultations on the Investment Firms Directive's Remuneration Requirements

ICI Global[1] appreciates the opportunity to provide feedback on the European Banking Authority's (EBA's) consultation papers on the draft Regulatory Technical Standards for (1) instruments/ alternative arrangements that can be used for variable remuneration under the Investment Firms Directive (Instruments RTS)[2] and (2) the identification of material risk takers (MRTs) under the Investment Firms Directive (MRT RTS).[3] Many of our member firms are part of regulated fund complexes with operations around the globe, which include UCITS that receive portfolio management services from MiFID-licensed firms subject to the Investment Firms Directive (IFD).

In the first section below we express our concerns with the assumption in the Instruments RTS regarding the timing of the IFD remuneration rules. We follow that, in the second section below, with our response to the appropriateness of the qualitative and quantitative criteria used to identify MRTs.

Timing of the IFD (Instruments RTS)

The consultation on the Instruments RTS assumes that "institutions will have to comply with the RTS with regard to the remuneration awarded for the performance year 2021."[4] We acknowledge that Article 67 of the IFD requires European Union Member States to have transposed the IFD into domestic law by June 26, 2021. However, we do not believe that this necessarily requires that investment firms comply with the IFD remuneration rules with respect to the performance year in effect as of the date of transposition. We also disagree that firms should be required to comply with the IFD remuneration rules from that date because the RTS will not likely be published until June/July 2021 at the earliest, and it would be impractical and difficult to introduce the rules in the middle of a performance year. Timing the application of the rules appropriately will help ensure that when they are applied, they are applied correctly and do not create unnecessary employment

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[2] The consultation is available at https://eba.europa.eu/sites/default/documents/files/document_library/Publications/Consultations/2020/%20CP%20on%20RTS%20on%20instruments%20for%20IF%20remuneration/884630/EBA-CP-2020-08%20CP%20on%20RTS%20on%20instruments%20for%20IF%20remuneration.pdf.

[3] The consultation is available at https://eba.europa.eu/sites/default/documents/files/document_library/Publications/Consultations/2020/CP%20on%20RTS%20on%20IS%20under%20IFD/884631/EBA-CP-2020-09%20CP%20on%20RTS%20on%20IS%20under%20IFD.pdf.

[4] The assumption can be found on page 5, under "Next Steps."

law risk. Firms need to have enough time to make the requisite changes to their policies, practices and procedures to ensure compliance in the long term.

To illustrate, if the rules were to take effect from June 26, 2021, firms with a calendar year performance year would be subjecting their employees to new rules in the middle of the year, when they had been working towards annual bonuses on a different basis for the first six months of the year. To limit employment law risk, such firms would in effect be forced to apply the IFD rules from January 1, 2021 – six months before they are required to do so (and before the RTS is finalized). Such early application would mean making changes to policies, practices and procedures in the next few months, prior to the adoption of the final RTS and the finalization of details of the IFD remuneration provisions. In particular, we understand that the EBA's guidelines on sound remuneration policies under the IFD may not be published prior to January 1, 2021. We therefore urge the EBA to remind the European Commission of the timeline for the finalization of the guidelines and RTS and the necessity for the Commission to ensure that the "appropriate course of action" (as it was recognized to be by the EBA in its public hearing on June 30, 2020) is taken, which is to make the IFD remuneration provisions applicable to firms from the next full performance year after it has been transposed into local law.

If it is determined that, as we recommend, this is the correct course of action, a further matter needs to be addressed: what rules should soon-to-be IFD firms that fall within the scope of CRD V apply between December 28, 2020, when the CRD V regime becomes applicable, and when the IFD rules become applicable (a period we will refer to as the "timing gap"). In our view, the appropriate approach is not to apply CRD V, including the CRD V MRT RTS, to such soon-to-be IFD firms during the interim period. First, it would be disproportionately time consuming and expensive to update remuneration policies, practices and procedures to comply with CRD V when such rules would apply to an IFD firm only during the timing gap. Second, the CRD V rules will not officially apply to IFD firms at the point bonuses for the 2021 performance year are awarded and paid out. There is, therefore, no basis for applying the CRD V rules for any part of performance year 2021, given they will not be enforceable against the relevant firm by the end of that performance year.

In our view, the better option would be to apply transitional provisions to cover the timing gap for those firms that will become subject to IFD. Those provisions could provide that the existing remuneration rules to which such firms are currently subject continue to apply until the date upon which the IFD requirements become applicable to the firm. For many firms this will mean continuing to apply the CRD IV regime during the timing gap. Under this proposal, the IFD would then first apply to the 2022 performance year for calendar year firms.

In summary, therefore, our proposals are:

Current position	**Our analysis**	**Proposed amendments**
MRT RTS (and, by association, remuneration rules under the IFD generally) apply from June 26, 2021.	Likely to result in firms not having time to review, implement and apply the RTS adequately considering the RTS will not likely be published until June/July 2021.	Apply to first full performance year commencing on or after June 26, 2021.

Current position	Our analysis	Proposed amendments
Unclear what rules should apply during the timing gap to firms that will be subject to the IFD.	There is no basis for applying CRD V to soon-to-be IFD firms during the timing gap given it will not apply when bonuses are awarded/paid out.	Roll-out transitional provisions, most efficient of which will be to require firms to continue applying their existing regimes until the first full performance year commencing on or after June 26, 2021.

Appropriateness of the Qualitative and Quantitative Criteria Set Out in the MRT RTS

The purpose of the MRT RTS is, in accordance with Article 30(4) of the IFD, to "specify appropriate criteria to identify the categories of individuals whose professional activities have a material impact on the investment firm's risk profile or that of the assets that it manages," i.e. to identify those commonly referred to as "Material Risk Takers" or "MRTs."[5] It seeks to do this through the application of qualitative and quantitative criteria, as is the approach under CRD IV. In our view, these criteria have not been adequately adapted to suit investment firms for the reasons set out in this section.

CRD IV as Basis for MRT RTS

The MRT RTS is based on the criteria applied under CRD IV. Using the same criteria for investment firms that were designed for credit institutions ignores the differences between the two, which the EBA itself recognizes in the MRT RTS as being the reason for introducing a new prudential regime for investment firms.[6] It stands to reason that unique quantitative and qualitative criteria, reflective of the heterogeneous characteristics of the investment management (of which asset management is a large part) industry and its business model, should be used to identify MRTs.

Not only is the CRD IV RTS used as a template for the MRT RTS, but it is also used in the cost-benefit analysis/impact assessment as the baseline to assess the impact of the proposed requirements. This ignores the reality that many investment firms will never have had to identify MRTs in this way before and that, as a result, the impact will be much greater than the baseline scenario suggests. Given its impact, it is important the MRT RTS applies criteria that will truly target those who have a material impact on the risk profile of the firm and managed funds and not others.

Quantitative Criteria

Quantitative thresholds. Under proposed Article 6(1), members of staff are deemed to have a material impact on an investment firm's risk profile or assets it manages if one or more of the following criteria are met:

[5] Page 7 MRT RTS.

[6] Paragraph 4 of section 3.2 of the MRT RTS.

(a) the staff member has been awarded total remuneration which is equal to or greater than EUR 500,000 and equal to or greater than the average of the remuneration of members of the management body and senior management in or for the preceding financial year;

(b) the staff member has been awarded total remuneration which is equal to or greater than EUR 750,000 or more in or for the preceding financial year;

(c) in case the investment firm has over 1,000 members of staff, the staff member is within 0.3% of staff, rounded to the next higher integral figure, who have been awarded the highest total remuneration in or for the preceding financial year;

(d) the staff member was in or for the preceding financial year awarded total remuneration that is equal to or greater than the lowest total remuneration awarded in that financial year to a member of staff who meets one or more of the criteria in points 1, 3, 4, 7, 8 or 9 of Article 5 (which contain certain qualitative criteria).[7]

Except for that set out in Article 6(1)(d), none of the quantitative thresholds in the MRT RTS are stipulated in the IFD. Instead they are, as mentioned above, based on the CRD IV approach and include some requirements that are specific to CRD V. Not only does the CRD IV/ V premise result in a gold plating of the requirements of the IFD, it also fails to take account of the differences in the asset management sector. The scale of pay reflects the business models for these firms rather than the risk the individuals concerned pose to the firm and/or the assets under management. It is important that this fact is factored into any consideration of the application and appropriateness of quantitative thresholds. Unlike with credit institutions, for example, it is not always the case with investment firms and specifically asset managers that "the staff with a high level of total remuneration ha[ve] a higher impact on the risk profile or assets it manages compared to staff with significantly lower remuneration levels," and we caution the EBA against relying too heavily on this presumption.[8] Indeed, as explained below, MRTs in investment firms may fall within a broad range of remuneration levels at the firm, and remuneration is often not a "proxy for risk taking" in the asset management sector.

Although the MRT RTS goes some way to addressing this different pay model by allowing firms, at Article 6(2)-(6), to apply for individuals to be excluded as MRTs, the proposed process will be costly, both in terms of time and money. This is so much the case that even the EBA recognized the burden, stating that "[t]he cost of implementing the exclusion is significant, as the burden of proving to the competent authority that the staff member has no material impact on the investment firm's risk profile or assets that it manages will be on the investment firm."[9] In our view a less expensive and more efficient solution needs to be found.

We recommend that the quantitative thresholds at Article 6(1) be removed, except for the one set out at Article 6(1)(d), which alone is true to the requirement in the IFD to identify "any employee receiving overall remuneration equal to at least the lowest remuneration received by *senior management or risk takers*, and whose professional activities have a material impact on the risk profile of the investment firm or of the assets that it manages" (emphasis added). We see no legal basis for including the other quantitative thresholds, as they are not explicitly contained within the

[7] Article 6(2)-(6) specify the conditions for excluding staff that is within scope of these criteria.

[8] Page 4 MRT RTS.

[9] Page 28 MRT RTS.

IFD. Instead, they exceed the requirements in the IFD and incorporate CRD IV and V requirements. Credit institutions are not subject to criteria that are IFD-specific, and it is not, in our view, appropriate for IFD firms to be subject to a threshold intended specifically for credit institutions under a different prudential regime.

Should the EBA not agree with our proposal to remove the quantitative thresholds as described above, we urge the EBA to revise Article 6 so that the quantitative thresholds are only indicators that firms must consider but may rebut if they consider the individuals within scope do not have a material impact on the firm or the assets it manages, without having to seek prior approval from regulators for exclusions as envisaged in Article 6(3). Instead, we propose that firms could be required to record their reasoning for excluding such individuals as MRTs and provide that documented reasoning to the relevant authority on request. As noted above, because the proposed process for seeking approval for an exclusion will be burdensome and costly, both in terms of time and money, we urge a more efficient approach.

If the EBA declines to implement either of our prior recommendations, we at a minimum request that the conditions specified in Article 6(5) with respect to excluding a staff member earning EUR 1 million or more be revised. We recommend that, to obtain regulatory approval for exclusion, firms only be required to be able to demonstrate that such staff member has no material impact on the risk profile of the investment firm or the assets it manages, and that the requirement to demonstrate "exceptional circumstances" be eliminated. So long as it is demonstrated that the staff member has no material impact as described above, and provided that the competent authority will, as proposed in Article 6(5), inform the EBA prior to its approval of such staff members, there is no justification for imposing the additional requirement to demonstrate "exceptional circumstances," along with the associated increased burden of making such demonstration.

Remuneration Bracket – Article 6(1)(d). Article 6(1)(d) of the MRT RTS requires identification of those who, for the preceding financial year, were awarded total remuneration that is equal to or greater than the lowest total remuneration awarded in that financial year to a member of staff who meets one or more of the qualitative criteria set out in 1, 3, 4, 7, 8 or 9 of Article 5. Articles 5(7) and (9) include not only the staff member that meets the specified criteria, but also any individual who is a voting member of a committee responsible for such activity or decisions.[10] The EBA should recognize that some individuals may be caught by those qualitative criteria by virtue of being a member of the respective committee, which could include more junior and/or lower remunerated individuals within the firm. These individuals may be part of such a committee because they have a more technical, analytical and/or advisory role.

As a result, Article 6(1)(d), which looks to the lowest total remuneration of that group, could result in a large number of employees of an investment firm initially being considered as MRTs even if they are subsequently excluded as MRTs by virtue of Article 6(2). This process would impose a significant administrative burden for firms with little or no prudential justification. We therefore recommend that Article 6(1)(d) be amended by carving out those only caught because they are voting members of committees referred to in Articles 5(7) and 5(9).

In summary, therefore, our proposal is:

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[10] Article 5(7) broadly captures those responsible for managing, monitoring and mitigating a material risk to which the investment firm is exposed and Article 5(9) broadly captures those which have authority to take decisions for approving or vetoing the introduction of new products.

Current position	Our analysis	Proposed amendments
Quantitative thresholds replicate CRD IV/V thresholds.	Not appropriate for investment firms and will result in many individuals being inappropriately identified as MRTs.	Remove CRD IV/V quantitative thresholds that have no legal basis under the IFD. If the first recommendation is not taken, use quantitative thresholds as indicators only and do not require regulatory approval for exclusion. If the prior recommendations are declined, eliminate the requirement to demonstrate "exceptional circumstances" for staff members earning EUR 1 million or more as long as they have no material impact on the risk profile of the investment firm or the assets it manages.
Article 6(1)(d) pulls into scope those earning the same or more as staff meeting specified qualitative criteria.	Because the threshold is based on lowest total remuneration of that group and the group can include some more junior qualitative staff, may result in many individuals being wrongly considered as MRTs.	Carve out from the group those only caught because they are voting members of committees referred to in Articles 5(7) and 5(9).