



David Howson
President
Cboe Europe

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Paul Rich/Hillary Neale
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

Re: Consultation Paper on a New UK Prudential Regime for MiFID Investment Firms

Mr. Rich/Ms. Neale:

Cboe Europe greatly appreciates the opportunity to respond to the Financial Conduct Authority's ("FCA's") consultation paper on a new UK prudential regime for MiFID investment firms (the "Consultation Paper"). As noted in our response to the FCA's Discussion Paper¹ we support the intent of the IFR/IFD regime to separate the prudential treatment of Investment Firms ("IFs") from credit institutions in recognition of their inherently different risk profiles. We also noted that if the IFR/D regime is not properly calibrated there is a real risk that UK markets will become more insular, less liquid, and less competitive. To prevent this outcome, we recommended that the IFR/D regime be implemented in a manner that, among other things, ensures K-CMG is available in all appropriate circumstances. While the Consultation Paper is largely encouraging in this regard, we offer the below recommendations to help ensure UK markets remain open, liquid, and globally competitive.

K-CMG

The IFR/D regime requires IFs dealing on own account to calculate risk to market (RtM) utilizing one of two K-factors: net position risk (K-NPR) or clearing margin given (K-CMG). As noted by the FCA in the Discussion Paper, K-NPR is the direct application to IFs of market risk provisions of CRR/CRR2 whereas K-CMG is an alternative to K-NPR "that builds upon the systemic resilience created by EMIR and use of a clearing member"² and is based on the total margins an IF is required to give to a clearing member for the relevant portfolio. As proposed, to obtain FCA permission to utilize K-CMG a UK IF must demonstrate that, among other things, its intended K-CMG portfolios are cleared by a clearing member of an authorised central counterparty ("CCP") and the clearing member is either the IF itself, a **UK credit institution or a designated investment firm**.³

¹ Letter from David Howson, President, Cboe Europe, in response to FCA Discussion Paper on a New UK Prudential Regime for MiFID Investment Firms (September 18, 2020), *available at*, https://cdn.cboe.com/resources/government_relations/comment_letters/Discussion-Paper-on-a-New-UK-Prudential-Regime-for-MiFID-Investment-Firms.pdf.

² FCA Discussion Paper on a New UK Prudential Regime for MiFID Investment Firms, *available at*, <https://www.fca.org.uk/publication/discussion/dp20-2.pdf>.

³ Proposed Prudential sourcebook for MiFID Investment Firms (MIFIDPRU) 4.13.9 R.

Recommendations

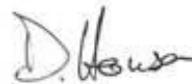
We support proposed rules that allow K-CMG to be utilised when portfolios are subject to indirect clearing arrangements (i.e., when an IF is not a direct client of a relevant clearing member). We also support the proposed flexible approach to K-CMG that allows K-CMG to be utilised with adjustment when a clearing member's margin model does not explicitly satisfy the criteria proposed in MIFIDPRU 4.13.14 (e.g., 99% confidence level and at least a two-business days' holding period).⁴ In support of this flexible approach we encourage the FCA to also provide that adjustments to K-CMG need not be made when margin models not explicitly satisfying the enumerated criteria nonetheless produce at least equivalent outcomes.

We note that the proposed rules would restrict K-CMG to portfolios cleared by a "UK credit institution" or a "designated investment firm". We believe there is merit in giving further consideration as to whether the rules should provide UK regulatory authorities with the ability to consider a potentially wider group of institutions to include clearing members who operate under similar or equivalent prudential standards to those applied to UK credit institutions and investment firms. We believe that if UK regulatory authorities had further flexibility in this area the availability of K-CMG could be usefully applied where the circumstances of the investment firm and the clearing member might otherwise prevent the use of K-CMG.

Lastly, we recommend amending proposed MIFIDPRU 4.13.9 (2)(b) to provide clarity that K-CMG is available when utilising a clearing member of an authorised *or recognised* central counterparty. Pursuant to the Temporary Recognition Regime ("TRR"), the Bank of England has released a list of third country CCPs that have been "recognised" pursuant to Art. 25 of EMIR.⁵ We understand that "authorised central counterparty" is defined in the FCA Handbook as "a CCP authorised or recognised under [the UK version of Regulation (EU) No 648/2012]"⁶ and that third country CCPs that have been recognised pursuant to TRR thus would be considered authorised for purposes of MIFIDPRU 4.13.9; however, to avoid any confusion on this matter we recommend 4.13.9 (2)(b) be amended to reference "authorised and recognised central counterparties".

The goal of these recommendations is to help foster a vibrant market ecosystem through enhanced capital efficiency and access to client clearing. We believe these principles will help ensure UK markets remain open, liquid, and globally competitive. Please do not hesitate to contact us if you have questions or wish to discuss these comments further.

Sincerely,



David Howson

⁴ See proposed MIFIDPRU 4.13.14.

⁵ For example, pursuant to the Temporary Recognition Regime the Bank of England has released a list of third country CCPs that have been "recognised" pursuant to Art. 25 of EMIR. <https://www.bankofengland.co.uk/-/media/boe/files/financial-stability/financial-market-infrastructure-supervision/list-of-third-country-ccps.pdf?la=en&hash=8C96A829A5F570A235A4944912AFA278A8728399>.

⁶ FCA Handbook, available at, <https://www.handbook.fca.org.uk/handbook>.