

15 July 2016		

Instructions for EBA data collection exercise on the revision of prudential framework for MiFID investment firms

Templates for UCITS/AIFMD investment firms conducting MiFID activities or services



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# 1. Introduction

- 1. Several provisions of the Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms (CRR) require the Commission to submit reports on the prudential requirements applicable to investment firms.
- 2. In order to prepare these reports, the Commission issued a first Call for Advice to the EBA in December 2014 to assess whether the current prudential requirements applicable to investment firms laid down in the CRR and in the Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (CRD) are appropriate or whether they should be modified and if so, how.
- 3. A first report answering this Call for Advice was published by EBA in December 2015 (the 2015 report)<sup>1</sup>, in consultation with ESMA, proposing a review of the current framework, both in terms of categorisation investment firms and prudential requirements. It concluded that this legal framework, derived from the one developed for credit institutions, had become overly complex over the years and appeared not risk-sensitive enough for investment firms.
- 4. On 13 June 2016, the Commission issued a second Call for Advice to the EBA<sup>2</sup> to consider and provide technical advice on the first two recommendations of the 2015 report. It also urged the EBA to collect all data and information deemed necessary to support the calibration of the new prudential regime.
- 5. This data collection also addresses the European Commission request regarding the application of proportionality in the area of remuneration. Following the publication of the EBA Opinion (EBA/Op/2015/25), the EBA received a letter from the European Commission dated 21 April 2016 requesting information about the implementation of the remuneration provisions and the impact of waivers granted to small and less complex institutions and staff who receives only a low level of variable remuneration. The letter was published on the EBA website on 31 May 2016.
- 6. Within its letter the European Commission also requests information on the following three areas separately for credit institutions and MiFID investment firms: 1) information on current waiver practices for institutions and staff; 2) current application of CRD remuneration requirements and waivers to UCITS and AIF managers which are subsidiaries of CRD-groups; 3) information on the effect of different thresholds for possible exemptions. Data for credit institutions will be collected via a separate data collection.
- 7. In order to inform this part of the request by the European Commission for MiFID investment firms regarding the application of proportionality in the area of remuneration,

 $<sup>^{1}\,\</sup>underline{\text{http://www.eba.europa.eu/documents/10180/983359/EBA-Op-2015-20+Report+on+investment+firms.pdf}}$ 

<sup>&</sup>lt;sup>2</sup> https://www.eba.europa.eu/about-us/missions-and-tasks/calls-for-advice



but limited to the scope of this exercise (i.e. MiFID investment firms and UCITS/AIFMD firms authorised to do MiFID), firms are kindly asked to provide the data indicated in items A.8 and A.9 of part 1 "General information". Each investment firm should provide number of staff (preferably headcount). As regards the MiFID investment firms, UCITS and AIFMD firms doing MiFID the number of identified staff should be provided; this should be provided on a best effort basis. This should also include MiFID investment firms, UCITS and AIFMD firms doing MiFID where the requirements to identify staff have been waived; for such investment firms the number of identified staff should be provided on a best effort basis.

- 8. The EBA is also mindful of the burden for the institutions that participate in the data collection. Therefore the data collection, to be carried out on a best effort basis, has been designed in a way that reduces that burden by limiting the number of variables requested. In some instances, smaller investment firms are exempted to report data to apply the principle of proportionality. Those instances are flagged out in the variable header "(information required only for firms whose balance sheet exceeds EUR 1 bn)", and also mentioned in the instructions. It is expected that the necessary data should be relatively easily available for institutions.
- 9. The data collection is comprised of four parts: part 1 and part 2 (general information and financial information) are aimed at collecting information on thresholds and criteria to review categorisation, whereas parts 3 and 4 focus on prudential requirements and gather information on regulatory capital, and liquidity respectively.

# 2. General information

# 2.1 Scope of the exercise

- 10. The data collection exercise addresses MiFID investment firms, including those that are expected to fall under the scope of MiFID II, and UCITS/AIFMD firms conducting MiFID investment activities or services. It excludes commodity dealers, for which a tailored exercise will be launched later this year.
- 11. The data collection provides two different sets of data templates: one specific for MiFID investment firms and another designed for UCITS/AIFMD firms conducting MiFID investment activities or services. They can be found on the EBA website (http://www.eba.europa.eu/regulation-and-policy/investment-firms).
- 12. This document provides instructions for UCITS/AIFMD firms conducting MiFID investment activities or services. Guidance for the MiFID investment firms can be found in a separate document on the EBA website.
- 13. UCITS/AIFMD firms that are not authorised to provide MiFID investment services or activities are out of the scope of the exercise.



14. The exercise covers firms authorised by competent authorities in their jurisdiction, i.e. excluding firms operating in a Member State through an outward MiFID passport.

## 2.2 Consolidation level

15. Data shall be submitted on a solo basis. If a firm wishes to report consolidated data, it should submit two sets of templates: one for solo and another for consolidated data.

## 2.3 Reporting date

- 16. The reference date should be **31 December 2015**, unless otherwise stated. If deemed more appropriate, accounting year-end data may be reported. In that case please indicate the relevant reference date in the data collection template ("General\_Information" sheet).
- 17. Foreign exchange reference rates should be used from ECB website, which can be accessed via this link: http://sdw.ecb.europa.eu/browse.do?node=2018794. For reference, the exchange rates to convert data into EUR for 31 December 2015 are tabulated below:

Currency	Exchange rate as of
ISO code	31-Dec-15
BGN	1.9558
CZK	27.023
DKK	7.4626
GBP	0.73395
HRK	7.638
HUF	315.98
JPY	131.07
PLN	4.2639
RON	4.524
SEK	9.1895
USD	1.0887

The same approach should be applied in case data is not available for that reference period and another period is used.

# 2.4 Filling in the data

18. This data collection exercise should be completed on a best efforts basis. Where a participating institution is unable to answer a question, the corresponding cells should be filled in indicating data is not available ('not available'). No other symbols should be used in these cases, in particular zeros should not be confused with 'not available'. Please use a dot (.) as the decimal separator. This should not be confused with a comma (,).



- 19. Answers to the questions should only be provided in the dedicated orange cells. Additional information or comments, where necessary, should be provided in the dedicated cells for comments (highlighted in green).
- 20. The reporting currency, unit and scope of consolidation should be filled in Part 1: General Information, section D (sheet "General\_Information"). They should be consistently used throughout the data collection, i.e. the same units, currency and scope of consolidation apply to all the monetary amounts.

## 2.5 Process

- 21. The data collection templates and these Instructions will be published on the EBA website, and circulated to competent authorities.
- 22. Any comment or questions regarding the data collection should be sent to the competent authority.
- 23. Institutions should submit the completed templates to the respective national competent authority, which will forward them to the EBA.
- 24. After receiving the completed templates the national competent authorities together with the EBA will carry out data quality checks. If necessary, institutions might be asked for additional clarifications or adjustments, which will be channelled to firms via their respective national competent authorities.

## 2.6 Timeline

25. The timeline for the data collection is the following:

15 July 2016	Publication and distribution of the final QIS templates and instructions
7 October 2016	Deadline for investment firms to submit the completed templates to relevant national competent authorities
14 October 2016	Competent authorities perform quality checks and forward templates to EBA



# 3. Specific instructions

Information on how to fill in the different sheets of the data collection templates can be found below.

# 3.1 Part 1: "General Information"

## **A: Identification and Organization**

Row	Heading	Description
A.1	Firm name	Please provide the name of the firm.
A.2	Country Code	Please select the country from the drop-down menu. The exercise addresses the firms authorised by competent authorities in their jurisdiction, i.e. excluding firms operating in a Member State through outward MiFID passport.
A.3	Firm is a single legal entity	Please indicate (Yes/No) if the firm is a single legal entity, i.e. without a holding company, regulated parent and/or subsidiaries.
A.4	Firm is part of a banking group	Please indicate (Yes/No) if the firm is part, as parent or subsidiary, of a group that includes a credit institution and is subject to consolidated supervision under the CRR.
A.4.1	-If so, total assets of the group	Please indicate the total assets of the banking group at the highest level of consolidation in the Member State.
A.4.2	<ul><li>If so, is it the parent (at the highest level consolidation)?</li></ul>	Please indicate if the firm is the parent of a banking group, at the highest level of consolidation in the Member State.
A.5	Firm is part of an investment firm group	Please indicate (Yes/No) if the firm is part, as parent or subsidiary, of a group composed of investment firms and/or financial institutions.
A.5.1	If so, total assets of the group	Please indicate the total assets of the investment firm group at the highest level of consolidation in the Member State.
A.5.2	<ul><li>If so, is it the parent (at the highest level consolidation)?</li></ul>	Please indicate if the firm is the parent of an investment firm group, at the highest level of consolidation in the Member State.
A.6	Firm is part of a G-SII or O-SII group	Please indicate (Yes/No) if the firm is part of a global systemically important institution (G-SII) group in accordance with the EBA RTS for the identification of global systemically important institutions or an other-systemically important institution (O-SII) in accordance with EBA Guidelines EBA/GL/2014/10 on the criteria to determine the conditions of application of Article



Row	Heading	Description
		131(3) of Directive 2013/36/EU
A.7	Firm benefits from outward passport in other EU jurisdictions	Please indicate (Yes/No) if the firm exercises its passporting rights for activities in Member States other than its home jurisdiction.
A.8	Staff headcount	Information covers the entire UCITS/AIFMD firm (regardless of the staff involved in MiFID activities).  Please indicate the number of natural persons; year-end.
A.9	ldentified staff	Identified staff refers to staff whose professional activities have a material impact on the institutions risk profile according to Article 92(2) of Directive 2013/36/EU (identified staff).  Applicable to UCITS and AIFMD firms doing MiFID services or activities on a best-effort basis. This should include UCITS and AIFMD firms where the requirements to identify staff have been waived.  Information covers the entire UCITS/AIFMD firm (regardless of the staff involved in MiFID activities).  Please indicate the number of natural persons; year-end.

## B: MiFID services and activities and business model

Row	Heading	Description
B.1	Is the firm authorised by its home competent authority for: (1), (4) and/or (5)	Please indicate (Yes/No) if the firm is authorised by its home competent authority to provide the investment services and activities listed in rows B.1.1 to B.1.3, which correspond to the list in annex 1 section A of Directive 2004/39/EC (MiFID).
	Is the firm is subject to	Please indicate (Yes/No) if the firm holds client money or financial instruments belonging to clients in respect of conducting any of the MiFID investment services and activities identified under row B.1 above.
B.2	safeguarding (segregation) arrangements for holding client money or financial instruments belonging to clients?	As part of their business model, certain investment firms hold client assets. These client assets are generally deposited in bank accounts set up by the firm. These are sometimes accounts set up by the firm for individual clients, and they are sometimes pooled bank accounts. The account should be identifiable as



Row	Heading	Description
		holding client assets rather than the firm's own assets, and therefore segregated in the event of insolvency of the investment firm.
B.3.1	Is the firm conducting ancillary service: safekeeping and administration of financial instruments?	Please indicate (Yes/No) if the firm conducts ancillary service 1 of section B of Annex 1 of Directive 2004/39/EC (MiFID).
B.4	Is the firm intending to be authorised for operating an OTF under MiFID II?	Please indicate (Yes/No) if the firm is intending to ask for authorisation for operating an OTF when MiFID II will enter into force.
B.5	Is the firm acting as a market- maker as part of its activities?	Please indicate (Yes/No). According to MiFID art 4(1)(8), 'Market maker' means a person who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against his proprietary capital at prices defined by him.  Please indicates 'Yes' if the firm falls under MiFID II article 17(3).
B.6	Is the firm acting as a clearing member as part of its activities?	Please indicate (Yes/No); 'Clearing member' means an undertaking which participates in a CCP and which is responsible for discharging the financial obligations arising from that participation. Please see EMIR art 2 (14).

## **C:** Data collection reporting specifications

Row	Heading	Description
C.1	Reporting currency	Please select from the drop-down menu the currency in which the figures for the data collection are provided. It shall apply to all the monetary amounts of the template.
C.2	Reporting unit	Please indicate whether the data submitted is in ones, thousands or millions. For instance, the amount one million two hundred thousand should be expressed as 1.2 if the unit chosen is "millions", 1200 if the unit chosen is "thousands" or 1200000 if the unit is "one". It shall apply to all the monetary amounts of the template.
C.3	Reference date	All data should be reported as of 31 December 2015. However, if a different date is used due to the availability of data, this different date should be entered here. Please follow the convention dd/mm/yyyy, as in 31/12/2015.
C.4	Scope of consolidation	Data shall be submitted on a solo basis. If firms



Row	Heading	Description
		wish to report consolidated data as well, they should submit two sets of templates: one for solo and another for consolidated data (and
		clearly identify the latter e.g. with "Consolidated" after the firm name in Row A1).

# 3.2 Part 2: "Financial Information"

Firms may report either audited financial statements or regulatory reporting files.

## **A: Balance Sheet Aggregates**

Information should be provided for the firm as a whole, i.e. including business other than MiFID.

Row	Heading	Description
A.1	Total assets	Total assets recorded in the balance sheet, including client money and financial instrument instruments belonging to clients, if on-balance sheet, but excluding Assets under Management.
A.2	Liabilities towards customers	Please provide the value of the liabilities held towards customers, besides the firm's asset management activities. For example, securities lending.
A.2.1	Retail	Please provide the value of the liabilities held towards retail customers.
A.2.2	Prudentially regulated credit institutions	Please provide the value of the liabilities held towards credit institutions which are subject to prudential requirements (EU or national).
A.2.3	Other institutions	Please provide the value of the liabilities held towards any other institutions.

## B: Assets Under Management/Advice/Safekeeping and Administration

Row	Heading	Description
B.1	Total assets under management (i.e. including business other than MiFID)	A discretionary service. The value of assets under management should come from the application of the rules on valuation of the assets in accordance with national law and, when applicable, from the investment fund rules.
B.1.1	- Individual	Discretionary portfolio management for individual clients.
B.1.2	- Collective	Collective Investment Schemes managed by managers. Management of products under the Institutions for Occupational Retirement Provision directive (pension funds) should be



Row	Heading	Description
		included.
B.1.2.1	- of which managed directly	Please provide assets under management for which the firm is directly responsible for, including AUM that are not managed by the firm itself but for which it has delegated the management function to a third party being either a MiFID or a UCITS/AIFMD firm (outsourcer).
B.1.2.1	<ul> <li>of which under delegation</li> </ul>	Please provide assets that the firm actually has under its management (as an insourcer).
B.2	Assets under advice	The firm has an on-going relationship, where it gives advice (no discretion) which the customer accepts or rejects. Please fill in the amount of financial instruments for which advice was given. When no link to specific financial instrument can be made, please fill in the total value of funds belonging to the client receiving advice. This should exclude one-off advice on a transaction.
B.3	Assets under safekeeping and administration	Ancillary service 1 in section B of Annex 1 of MiFID.

#### **C: Client Money or Financial Instruments**

Holding client money or financial instruments is allowed for UCITS/AIFMD firms in some Member States.

As part of their business model, certain investment firms hold client money. This client money is generally deposited in bank accounts set up by the firm. These are sometimes accounts set up by the firm for individual clients, and they are sometimes pooled bank accounts. The account should be identifiable as holding client money rather than the firm's own money, and therefore segregated in the event of insolvency of the investment firm.

Information should be broken down by:

- Individual: services provided for a single client.
- Collective: services provided for collectives via delegation arrangements. Products under the Institutions for Occupational Retirement Provision directive (pension funds) should be included.

Accounting rules are not prescriptive in relation to how firms should account for client money. Certain investment firms do not record client money on their balance sheet, whereas other firms recognise an asset for client money—reflecting the cash the firm has deposited in a bank account—and simultaneously record a corresponding liability to reflect their obligation to the client for the amount concerned.



For items under C.1 and C.3 please indicate the amounts held, while for items under C.2 and C.4 please indicate if you hold on- or off-balance sheet exposures by selecting "Yes/No" from the drop-down menu.

#### D: Profit/Loss Aggregates

Information should be provided exclusively with respect to MiFID investment services and activities (e.g. discretionary portfolio management) and not other elements (i.e. UCITS/AIFMD collective portfolio management).

Please note that the **breakdown by MiFID services is optional**, and should in any case be filled in by those investment firms where this information is readily available.

Net profit is derived by subtracting depreciation, administrative costs and taxes from revenues minus expenses. Partnerships that are not subject to taxes should set taxes to zero. The same applies to partnerships not subject to dividends,

#### **E: Securities Lending Activities**

This section refers to securities lending activities conducted on behalf of clients and not on behalf of the firm itself, (but should exclude where security lending activities (e.g. repos or reverse repos) are carried out by the manager on behalf of collective investment undertakings,.

Row	Heading	Description
E.1	Does the firm act as an agent lender for securities?	Please select "Yes"/"No".
E.1.1	Value of its securities lending	If the firm acts as an agent lender for securities, please indicate the value of the securities lending.
		An asset manager may provide indemnification against a borrower's failure to return lent securities. In that case, please fill in the value of the value of those indemnifications.
E.1.2	Value of securities lending transactions where indemnifications are provided	Indemnifications — also known as borrower or counterparty indemnifications — refer to insurance-like commitments offered by asset managers to their clients, notably their funds, to insure against potential losses when a counterparty defaults or does not return borrowed securities and the pledged collateral is not sufficient to cover the replacement cost of the loaned securities.

#### F: Transaction Data



The reference date for this section is **31 March 2016**. The number of transactions should be recorded as all and only the transactions conducted on that day, while the amounts should be recorded as close of business day. Amounts refer to gross mark-to-market.

Please note that transactions related to reception and transmission of orders should be excluded.

Transactions executed on behalf of clients should be registered as a single transaction, to avoid double counting.

Please consider exclusively MiFID services and activities.

If information is not available for 31 March 2016, please provide the most reliable data available.

# 3.3 Part 3: "Solvency"

Regarding UCITS/AIFMD doing MiFID investment services and activities, information should be provided for the firm as a whole, i.e. including business other than MiFID.

### A: Minimum Capital

Row	Heading	Description
A.1	Is the firm using professional indemnity insurance?	For AIFMD firms please refer to AIFMD article 9(7)(b) and select Yes/No from the drop-down menu. For UCITS firms, please disregard this question.
A.1.1	If so: maximum amount insured	If the firm uses professional indemnity insurance, please provide the maximum amount insured.
A.2	Initial capital	Please indicate minimum capital requested for authorisation from the drop-down menu (EUR 125 000, EUR 300 000). If national legislation sets different amounts, please select "Other" and use the Comments column to specify the amount.

#### **B: Regulatory Capital Held**

Please disregard items under B.1 if CRR or national own funds prudential requirements do not apply

Heading	Description
	According to Articles 4(1)(118) and 72 of the
Own funds capital	CRR, the own funds of an institution shall
	consist of the sum of its Tier 1 and Tier 2



Heading	Description
	capital.
CET1 capital	Common Equity Tier 1 capital under Article
	50 of the CRR
AT1 capital	Additional Tier 1 Capital under Article 61 of
	CRR
T2 capital	Tier 2 Capital under Article 71 of the CRR
Fixed Overheads Requirement	One quarter of the fixed overheads of the
	preceding year. For details on the
	calculation, please refer to amending
	Delegated Regulation (EU) No 241/2014.
If FOR is based on period	If the firm's FOR is based on a period
different from 3 months,	different from three months, please indicate
indicate number months	how many months.
Additional AIFMD/UCITS capital	Please fill in any additional AIFMD/UCITS
requirements	capital requirement.
	CET1 capital  AT1 capital  T2 capital  Fixed Overheads Requirement  If FOR is based on period different from 3 months, indicate number months  Additional AIFMD/UCITS capital

# 3.4 Part 4: "Liquidity"

Information should be provided:

- For the firm as a whole, i.e. including business other than MiFID
- At the firm level, i.e. not in relation to the funds it may manage.

## A: Liquidity and Assets Held

Please indicate the amount of the liquidity and assets held.

Cash balance refers to the total amount of cash including coins and banknotes/currency and immediately available bank account balances.

Readily marketable financial instruments are not limited to on-venue traded instruments.