

## **List of items already agreed**

**Scope** : Inclusion of branches for Class 1 threshold; Class 1 minus with 15 bn threshold ; NCAs discretion with 5 bn ; opt-in clause with further framing as per COM proposal, deleting « disproportionate » and adding « under this Regulation » (annex 1)

**Class 3** : inclusion of off-balance sheet items by means of reference to Annex 1 CRR (annex 2)

**K factors** : advice under AUM (annex 3); NPR discount factor deleted; TCD/DTF

**Initial capital** : content of Council recital on OTF/MTF to be mirrored in article

**Supervision/consolidation/exemptions** (as per compromise table)

**CBCR** (annex 4)

**Transitions for 5 years introduction of regulation** (Council approach as per 4CT)

**Tick size regime** (annex 5)

# Annex 1

## Article 1(5) IFR (Opt-In)

5. By way of derogation from paragraph 1, **competent authorities may allow** an investment firm authorized 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 1 of Directive 2014/65/EU ~~may to~~ apply the requirements of Regulation (EU) No 575/2013 ~~and Directive 2013/36/EU~~ where all of the following ~~apply~~ **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, Title II, Part One of Regulation (EU) No 575/2013;
  - (b) ~~both the investment firm and its parent undertaking are subject to authorisation and supervision in the same Member State;~~
  - (c) the investment firm notifies the competent authority under this Regulation and the consolidating supervisor, if applicable; ~~and these authorities do not oppose such a request within 30 working days from the date of the notification.~~
  - (x) **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 disproportionate reduction of the own funds requirements of the investment firm under this Regulation, and is not undertaken for the purpose of regulatory arbitrage.**

**Competent authorities shall inform the investment firm of a decision to allow the application of the requirements of Regulation (EU) No 575/2013 and Directive 2013/36/EU pursuant to the first subparagraph within [two months] from the receipt of a notification referred to in point b, and shall inform the EBA thereof. Where a competent authority refuses to allow the application of Regulation (EU) No 575/2013 and Directive 2013/36/EU, it shall provide full reasons.**

~~An investment firm which applies Regulation (EU) No 575/2013 pursuant to the first subparagraph shall remain subject to Regulation (EU) No 575/2013 for a period of at least 3 years following the notification referred to in point (c). Thereafter, an investment firm may notify the competent authorities referred to in point (c) to be subject to this Regulation taking effect 30 working days from the date of the notification.~~

Investment firms referred to in this paragraph shall be supervised for compliance with prudential requirements under Titles VII and VIII of Directive 2013/36/EU.

For the purposes of this paragraph, Article 7 of Regulation (EU) No 575/2013 shall not apply.

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## Annex 2

### New definition in Article 4(1) and amendment to recital (16):

- Definition in Article 4(1)  
(36c) 'off balance-sheet item' means any of the items referred to in Annex I to [CRR];
- Recital (16):  
(16) Investment firms should be considered small and non-interconnected for the purposes of the specific prudential requirements for investment firms where they do not conduct investment services which carry a high risk for clients, markets or themselves and whose size means they are less likely to cause widespread negative impacts for clients and markets in case risks inherent in their business materialise or in case they fail. Accordingly, small and non-interconnected investment firms should be defined as those that do not deal on own account or incur risk from trading financial instruments, **hold** ~~have~~ no client assets or money ~~under their control~~, have assets under both discretionary portfolio management and non-discretionary (advisory) arrangements of less than EUR 1.2 billion, handle fewer than EUR 100 million per day of client orders in cash trades or EUR 1 billion per day in derivatives, and have ~~a balance-sheet a total amount of on and off balance-sheet items smaller~~ **lower** than EUR 100 million and total gross annual revenues from the performance of their investment services of less than EUR 30 million.

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## Annex 3

### Article 4(1)(19a)

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'investment advice of an ongoing nature' means recurring provision of investment advice as well as continuous or periodic assessment and monitoring or review of a client portfolio of financial instruments including of the investments undertaken by the client on the basis of a contractual arrangement.”

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## Annex 4

### Country by country reporting

#### Article 25 IFD

1. Member States shall require investment firms having a branch or a subsidiary that is a financial institution as defined in Article 4(1)(26) of Regulation (EU) No 575/2013 in a Member State **or in a third country** other than that in which the authorisation of the investment firm was granted, to disclose, **by Member State and by third country**, the following information on an annual basis:

- (a) the name, nature of activities and location of any subsidiaries and branches;
- (b) the turnover;
- (c) the number of employees on a full time equivalent basis;

- (d) the profit or loss before tax;
- (e) the tax on profit or loss;
- (f) the public subsidies received.

2. The information referred to in paragraph 1 shall be audited in accordance with Directive 2006/43/EC and, where possible, shall be annexed to the annual financial statements or, where applicable, to the consolidated financial statements of that investment firm.

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## Annex 5

Article 17a on Tick sizes (lines 1042-1044, as per the EP proposed amendment) could be amended as follows (changes underlined/bold):

*Systematic internalisers' quotes, price improvements on those quotes and execution prices shall comply with tick sizes set in accordance with Article 49 of Directive 2014/65/EU. **Application of tick sizes shall not prevent systematic internalisers from matching large in scale orders at mid-point within the current bid and offer prices.***

Article 63(3)(1) on Entry into force and date of application (line 1142 as per EP proposed amendment) could be amended as follows:

*Notwithstanding paragraph 2, point (1a) of Article 61(1) shall apply **3 months** after the day of publication of this Regulation in the Official Journal of the European Union.*

Article 49(1) of MiFID II could be amended as follows:

*Member States shall require regulated markets to adopt tick size regimes in shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and in any other financial instrument for which regulatory technical standards are developed in accordance with paragraph 4. **Application of tick sizes shall not prevent regulated markets from matching orders large in scale at mid-point within the current bid and offer prices.***