### **JANUARY 2021**

# CENTRAL BANK CONSULTS ON THE NEW PRUDENTIAL REGIME FOR MIFID FIRMS

On 14 January, the Central Bank of Ireland (**Central Bank**) published the paper 'Consultation on Competent Authority Discretions in the Investment Firms Directive and the Investment Firms Regulation' (**CP135**). CP135 sets outs the Central Bank's proposed approach in relation to the competent authority discretions provided for in the Investment Firms Directive (EU) 2019/2034 (**IFD**) and the Investment Firms Regulation (EU) 2019/2033 (**IFR**) and includes proposed changes to the general reporting requirements for investment firms to align them with the IFD and IFR.

We have published previous articles on the new prudential regime for investment firms (the **Regime**) (which will become applicable in Ireland on 26 June 2021) which may be helpful in providing a fuller background on the incoming Regime (see links to our January 2019 article here and December 2019 article here).

Importantly, the Central Bank have stated in CP135 that it expects that investment firms have begun to consider the impact of the Regime before its implementation into Irish law.

### **Competent Authority Discretions**

CP135 sets outs the various competent authority discretions that are available to the Central Bank under the IFD and the IFR. Though the IFR will become directly applicable and will not require transposition, nonetheless, a number of discretions are also contained in the IFR.

The discretions discussed in CP135 relate to:

- (a) the prudential regime that will apply to larger investment firms;
- (b) the application of the new liquidity risk requirements;
- (c) requirements relating to the assessment of internal capital of smaller investment firms; and

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(d) the practical implementation of the new prudential regime for investment firms (in relation to the adjustment of K-Factors).

It should be noted that the application of remuneration related discretions is not included in CP135. Those discretions were consulted on by the Department of Finance during 2020 and decisions are still awaited (a link to our previous article on that consultation is <a href="here">here</a>).

The Central Bank's proposals in relation to the relevant discretions are set out in Sections I – IV of CP135. In all bar one instance, the Central Bank is proposing to exercise its discretions on a case-by-case basis. The exception is the requirement to carry out an assessment of internal capital and liquid assets, where the Central Bank is proposing that all Class 3 firms (i.e. the smallest firms) will be required to perform such assessments.

Appendix 3 of CP135 sets out the Central Bank's proposed amendments to Regulation 8 and Parts 3 – 7 of the Schedule of Reporting Requirements set out in the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2017 (S.I. No. 604 of 2017) to bring it in line with the Regime.

Implementation of the discretions will, in most instances, be subject to binding technical standards developed by the European Banking Authority and the European Securities and Markets Authority, which will further specify or calibrate requirements stipulated under the IFD and IFR.

Importantly, firms should be aware that the onus is on the firm to apply for a particular discretion and to reapply for the continued application of discretions on a case-by-case basis where the relevant conditions relevant to the exercise of them have changed.

The Central Bank will carry out another consultation process this year in relation to the national competent authority discretions and options set out in their publication 'Implementation of Competent Authority Options and Discretions. Competent Authority Options and Discretions in the European Capital (Capital Requirements) Regulations 2014 and Regulation (EU) No 575/2013 December 2018'. This is happening due to the legislative changes that have been brought about by the CRD V Directive (EU) 2019/878 and CRR II Regulation (EU) 2019/876. This upcoming consultation will be relevant to those firms classified as Class 1 and Class 1 minus under the Regime.

### **Next Steps**

When the consultation process is complete, the Central Bank intends to publish an 'Implementation of NCA Discretions in IFD/IFR Regulatory Notice' by the end of June 2021. The Central Bank's approach towards the exercise of the discretions will be confirmed in this notice.

Any stakeholders wishing to submit a response have until the 26 March 2021. A link to CP135 can be found <u>here</u>.

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