

European Banking Authority
20 Avenue André Prothin
92400 Courbevoie
Paris
France

Submitted via online portal

18 February 2022

Dear Sir/Madam,

AIMA's response to EBA/CP/2021/34 – Draft Regulatory Technical Standards on Pillar 2 add-ons for investment firms under Article 40(6) of Directive (EU) 2019/2034

The Alternative Investment Management Association Limited (AIMA)¹ appreciates the opportunity to provide comments to the European Banking Authority (EBA) in relation to its consultation on the draft Regulatory Technical Standards on the Pillar 2 add-ons for investment firms (the 'draft RTS') under Directive (EU) 2019/2034 (IFD).

While we support most of the draft RTS in principle and its objective to ensure that an orderly wind down of an investment firm's business is attainable, we note our concern with the proposed determination of additional own funds requirements to cover risks or elements of risk not covered by Pillar 1 requirements. The draft RTS' proposed methodology to calculate the additional own funds will result in a materially higher overall regulatory capital requirement for investment firms that is overly burdensome.

In particular, we note that the EBA's calculation comprises of two steps:

1. Competent authorities will need to assess the additional capital needed by the investment firm to cover an unorderly wind down – floored at the level of the fixed overheads

¹ AIMA, the Alternative Investment Management Association, is the global representative of the alternative investment industry, with more than 2,000 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than \$2 trillion in assets. AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programs and sound practice guides. AIMA works to raise media and public awareness of the value of the industry. AIMA set up the Alternative Credit Council (ACC) to help firms focused in the private credit and direct lending space. The ACC currently represents over 170 members that manage \$400 billion of private credit assets globally. AIMA is committed to developing skills and education standards and is a co-founder of the Chartered Alternative Investment Analyst designation (CAIA) – the first and only specialised educational standard for alternative investment specialists. AIMA is governed by its Council (Board of Directors). For further information, please visit AIMA's website, www.aima.org.



requirement (FOR) – versus the Pillar 1 requirements. This assessment is made for each risk category (i.e., risk-to-clients, risk-to-firm and risk-to-market); and

2. Class 2 investment firms must then assess the capital to cover the risks that are not covered by the own funds requirements which is added to the capital as assessed under step 1.

In effect, this would mean that an investment firm’s own funds threshold requirement is the sum of the wind down cost, plus the risks not covered by the own funds requirement. As mentioned above, this would lead to a materially higher overall regulatory capital requirement for investment firms that is overly burdensome as many investment firms are capitalised towards their wind down or FOR. One of the core objectives of the IFD and the Investment Firm Regulation (IFR) is to ensure firms can wind down in an orderly manner, but this approach would set capital requirements significantly above this threshold which risks reducing competition in the market.

We believe that an investment firm’s capital floor should be the wind down cost, which in turn, should be compared against the Pillar 1 requirement, plus any Pillar 2 add-ons. We note that this was contemplated by the EBA as one of the possible options in Part 4 of the draft RTS. Indeed, option 2a and option 2b presented two policy options to determine the additional own funds requirements to cover the risks or elements of risk not covered by Pillar 1 requirements. While the EBA has chosen to adopt option 2b, we are supportive of option 2a which we believe is the more desirable, proportionate and equitable approach, but with the key distinction that the “capital considered adequate” should be the higher of wind-down cost or the investment firm’s Pillar 2 assessment. We note that this would then align with how wind down costs interacted with the Pillar 2 regime under the Internal Capital Adequacy Assessment Process which we believe demonstrates a better alignment of capital versus risk within investment firms.

Therefore, we ask the EBA to consider adopting option 2a as initially discussed in the draft RTS but with the express consideration and understanding that the “capital considered adequate” for purposes of determining the additional own funds requirements to cover risks or elements of risks not covered by Pillar 1 requirements is the higher of the wind down cost, or the investment firm’s Pillar 2 assessment.

We would be happy to elaborate further on any of the points raised in this letter. If you have any questions about these comments, or if we can provide further information, please do not hesitate to contact Remmert Keijzer, Associate Director, Asset Management Regulation, at rkeijzer@aima.org.

Yours sincerely,

A handwritten signature in black ink that reads "Jennifer Wood". The signature is written in a cursive, flowing style.

Jennifer Wood
Managing Director,
Global Head of Asset Management & Sound Practices
AIMA