

Bundesverband der Wertpapierfirmen e.V.  
Friedrichstraße 52, 60323 Frankfurt/Main

## European Banking Authority (EBA)

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*Transmitted via internet upload:*

<https://eba.europa.eu/consultation-paper-draft-implementing-technical-standards-reporting-requirements-investment-firms>

your reference  
EBA/CP/2020/07

your message of  
4 June 2020

city\_date  
**Frankfurt/Main, 04.09.2020**

Consultation Paper (EBA/CP/2020/07) of 4 June 2020  
Draft Implementing Technical Standards  
on reporting requirements for investment firms under Article 54(3) and on disclosures requirements under Article 49(2) of Regulation (EU) 2019/2033

**Dear Sir, dear Madam,**

the Bundesverband der Wertpapierfirmen e.V.(bwf) is a trade association representing the common professional interests of securities trading firms and market specialists (market makers) at the securities exchanges throughout Germany.<sup>1</sup> In this capacity, we expressly welcome the possibility to comment on EBA's Consultation Paper (EBA/CP/2020/07) of 4 June 2020 on Draft Implementing Technical Standards on reporting requirements for investment firms under Article 54(3) and on disclosures requirements under Article 49(2) of Regulation (EU) 2019/2033.

However, because of limited resources and numerous parallel consultations on a European and national level, we would like to restrict our comments to one point which we think is of particular importance:

**Question 5: Do the respondents identify any discrepancies between templates IF 07.00 – IF 08.00 and instructions and the calculation of the requirements set out in the underlying regulation?**

### Reporting on concentration risk

EBA has correctly ascertained that the reporting items on concentration risk stipulated by paragraph 2 of Article 54 IFR are not compatible with the legal definition of Article 4(1)(31) IFR and with the limits set out in Article 37(1) IFR. We agree with this analysis and think that the proposed reporting of the highest five highest values of the reporting items AS defined in paragraph 19 (i) to (vi) of Annex II of

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<sup>1</sup> bwf is listed on the EU register of interest representatives under the ID 258694016925-01.

the draft ITS for reporting of investment firms in principle is in principle a practical way forward.

However, it remains unclear whether the establishment of two parallel approaches for managing and reporting concentration risk reflects the legislative intent.

In this context, it must be further noted that the scope of concentration risk arising from “trading book positions” for the purpose of Article 54 is fundamentally different from the definition in Article 4(1)(31) IFR, which measures only exposures to “a client or a group of connected clients”, where Article 54 refers to “counterparties and trading book positions”.

Furthermore the calculation of exposure values in accordance with Article 36 IFR is restricted to trading book financial instruments issued by clients. While this restriction might be in line with the definition in Article 4(1) (31) IFR, the single focus on exposure to clients is inconsistent with the intention of managing the overall concentration risk, a firm might be exposed to.

We do not know whether EBA has noticed this contradiction. However, the headers in the IFO7.00 form of Annex I Draft ITS reporting for investment firms read “Counterparty ID” and “Trading Book Exposures exceeding the limits set in Article 37(1) of IFR”. We therefore assume that EBA is of the opinion that it can apply the limits set out set in Article 37 (1) IFR to concentration risk measured in accordance with Article 54 (2) (a) IFR, regretfully, this is not the case.

The limits set out in Article 37 (1) IFR, very clearly apply to exposures to “an individual client or group of connected clients” only<sup>2</sup> and not to counterparties, let alone trading book positions in general.<sup>3</sup> One might be of the opinion – and we would share this view – that this is one of the fundamental methodological misconceptions and flaws of the IFR/IFD framework, but for now, it is the binding Level I text. Accordingly, it would be *contra legem* to apply the limits set out in Article 37 (1) IFR to exposures against counterparts which are not a firm’s clients at the same time or with respect to trading book positions in general.

Yours sincerely,

Michael H. Sterzenbach  
Secretary General

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<sup>2</sup> As expressly acknowledged by EBA in paragraph 18 of Annex II on page 33 of the draft ITS – reporting for investment firms.

<sup>3</sup> Accordingly Article 37 (1) IFR cannot be applied to Article 37 (1) (a) IFR in a meaningful way. Consequently the first sentence of paragraph 20 of Annex II on page 33 of the draft ITS – reporting for investment firms should read: “Although the wording in paragraph 2 of Article 54 IFR also refers to ‘concentration risk’, the definition of this included in Article 4(1)(31) IFR and the limits set out Article 37(1) IFR are not compatible with the items described in points (a)(b) to (e) of paragraph 2 of Article 54 IFR.”