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COVER NOTE

From:	Mr José Manuel CAMPA, Chair of the European Banking Authority (EBA)
date of receipt:	1 July 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

Subject:	Opinion of the European Banking Authority on appropriate supervisory and enforcement practices for the process of authorising investment firms as credit institutions under Article 8a of Directive 2013/36/EU
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Delegations are informed that the EBA's opinion on the topic mentioned above was published on 1 July 2021.

The opinion can be consulted and/or downloaded from the EBA's website:

https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Opinions/2021/1016473/EBA%20OP%202021%2008%20-%20EBA%20Opinion%20on%20no%20action%20regarding%20prudential%20requirements%20for%20certain%20investment%20firms.pdf

Encl.

E-MAIL

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John Berrigan
Director-General
Directorate-General Financial Stability,
Financial Services and Capital Markets Union (FISMA)
European Commission
Rue de Spa 2
1000 Brussels
Belgium

01 July 2021

Subject: Opinion of the European Banking Authority on appropriate supervisory and enforcement practices for the process of authorising investment firms as credit institutions under Article 8a of Directive 2013/36/EU

Dear Mr Berrigan,

The EBA continues to respond with high commitment to the significant role attributed to the Authority in the implementation of the new prudential framework for investment firms.

With this letter, the EBA would like to inform the European Commission of its Opinion regarding the actions to be taken by competent authorities in the context of the process for authorisation as credit institutions of investment firms in line with Article 8a of Directive 2013/36/EU during the period between 26 June 2021 and the adoption by the European Commission of the delegated regulation on the methodology for calculating the EUR 30bn threshold. The EBA is currently in the process of developing this mandate, for which, also taking into account the legislation intent as highlighted by the Commission on the matter, required a second consultation.

In accordance with Article 9c of Regulation (EU) No 1093/2010, the EBA has the competence to deliver an opinion in the form of a non-action letter where the absence of delegated or implementing acts that would complement or specify the act within the scope of the EBA's action would raise legitimate doubts concerning the legal consequences flowing from the act or its proper application.

In the present context, the EBA considers that the absence of the delegated act raises legitimate doubts in the application of Article 8(a) of Directive 2013/36/EU, in the cases where the determination of whether the threshold has been reached, would depend on the detail of the final


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methodology adopted. Therefore, the EBA Opinion states that, in these cases, competent authorities referred to in Article 4 (2) (i) and (viii) of Regulation (EU) No 1093/2010 should not prioritise any supervisory or enforcement action in relation to the requirements in Article 8a of Directive 2013/36/EU, until six months after the Commission adoption of the regulatory technical standard.

The EBA remains fully committed to accomplish its pending mandates within the deadlines, while the utmost attention will continue to be given to the quality of the work on delivering on the Roadmap for investment firms.

The transparency and quality of exchanges with DG-FISMA staff remains most appreciated in this context and represents an essential ingredient in our achievements and considerations.

Yours sincerely,



José Manuel Campa

CC: Irene Tinagli, Chair of the Committee on Economic and Monetary Affairs European Parliament
Claudia Lindemann, Head of ECON Secretariat
João Leão, Portuguese Minister of State and Minister of Finance, Presidency of the Council of the EU
Tuomas Saarenheimo, Chair of Economic and Finance Committee, Council of the European Union
Jeppe Tranholm-Mikkelsen, Secretary-General, Council
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Dominique Thienpont, Legal Counsellor to Dir D, DG FISMA

Encl: EBA OP 2021 08 - Opinion of the European Banking Authority on appropriate supervisory and enforcement practices for the process of authorising investment firms as credit institutions under Article 8a of Directive 2013/36/EU