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AMENDMENTS 001-001
by the Committee on Economic and Monetary Affairs

Report
Markus Ferber **A8-0296/2018**
Prudential requirements of investment firms

Proposal for a regulation (COM(2017)0790 – C8-0453/2017 – 2017/0359(COD))

Amendment 1

AMENDMENTS BY THE EUROPEAN PARLIAMENT*

to the Commission proposal

2017/0359 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the prudential requirements of investment firms and amending Regulations (EU) No 575/2013, (EU) No 600/2014 and (EU) No 1093/2010

(Text with EEA relevance)

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol ▌.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank,[1]

Having regard to the opinion of the European Economic and Social Committee,[2]

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Robust prudential requirements are an integral part of the regulatory conditions in which financial institutions may provide services within the Union. Investment firms are, together with credit institutions, subject to Directive 2013/36/EU[3] and to Regulation (EU) No 575/2013[4]as regards their prudential treatment and supervision, while their authorisation and other organisational and conduct requirements are set out in Directive 2004/39/EC[5].

(2) The existing prudential regimes under Regulation (EU) No 575/2013 and Directive 2013/36/EU are largely based on successive iterations of the international regulatory standards set for large banking groups by the Basel Committee on Banking Supervision and only partially address the specific risks inherent to the diverse activities of investment firms. The specific vulnerabilities and risks inherent to investment firms should therefore be specifically addressed by means of appropriate and proportionate prudential arrangements at Union level.

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1 OJ C […], […], p. […].

2 OJ C […], […], p. […].

3 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338–436)

4 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1–337)

5 Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1–44)

(3) The risks which investment firms themselves incur and pose for their clients and the wider markets in which they operate depend on the nature and volume of their activities, including whether investment firms act as agents for their clients and are not party to the resulting transactions themselves, or whether they act as principals to the trades.

(4) Sound prudential requirements should ensure that investment firms are managed in an orderly way and in the best interests of their clients. They should take into account the potential for investment firms and their clients to engage in excessive risk-taking and the different degrees of risk assumed and posed by investment firms. Equally, such prudential requirements should aim to avoid undue administrative burden on investment firms.

(5) Many of the requirements that stem from Regulation (EU) No 575/2013 and Directive 2013/36/EU framework are designed to address common risks faced by credit institutions. Accordingly, the existing requirements are largely calibrated to preserve the lending capacity of credit institutions through economic cycles and to protect depositors and taxpayers from possible failure, and are not designed to address the different risk-profiles of investment firms. Investment firms do not have large portfolios of retail and corporate loans and do not take deposits. The likelihood that their failure can have detrimental impacts for overall financial stability is lower than in the case of credit institutions. The risks faced and posed by investment firms are thus substantially different to the risks faced and posed by credit institutions and such difference should be clearly reflected in the prudential framework of the Union.

(6) The prudential requirements under Directive 2013/36/EU and the Regulation (EU) No 575/2013 which investment firms are subject to are based on those of credit institutions. Investment firms whose scope of authorisation is limited to specific investment services which are not targeted by the current prudential framework are subject to numerous exemptions from these requirements. This recognises that in this capacity these firms do not incur risks of the same nature as credit institutions. Investment firms which carry out activities which are targeted by the current framework involving trading in financial instruments but on a limited basis, are subject to the corresponding requirements of the framework in terms of capital, but

can have exemptions in other areas such as liquidity, large exposures and leverage. Investment firms whose scope of authorisation is not subject to these limitations are subject to the full framework together with credit institutions.

(7) Trading financial instruments, whether for the purposes of risk-management, hedging and liquidity-management or for taking directional positions on the value of the instruments over time, is an activity in which both credit institutions and investment firms authorised for dealing on own account may engage and which is already addressed by the Directive 2013/36/EU and Regulation (EU) No 575/2013 prudential framework. In order to avoid an unlevel playing field which could lead to regulatory arbitrage between credit institutions and investment firms in this area, the capital requirements resulting from these rules to cover this risk should therefore continue to apply to these investment firms. The exposures of these investment firms to their trading counterparties in specific transactions and corresponding capital requirements are also covered by the rules and should therefore also continue to apply in a simplified way. Finally, the large exposures rules of the current framework are also relevant when the trading exposures of these investment firms to specific counterparties are particularly large and thereby generate an excessively concentrated source of risk for an investment firm from the default of the counterparty. These provisions should therefore also continue to apply to investment firms in a simplified way.

(8) Differences in the application of the existing framework in different Member States threaten the level playing-field for investment firms within the Union. These differences stem from the overall complexity of the application of the framework to different investment firms based on the services they provide, where some national authorities adjust or streamline such application in national law or practice. Given that the existing prudential framework does not address all the risks faced and posed by some types of investment firms, large capital add-ons have been applied to certain investment firms in some Member States. Uniform provisions addressing those risks should be established in order to ensure harmonised prudential supervision of investment firms across the Union.

(9) A specific prudential regime is therefore required for investment firms which are not systemic by virtue of their size and interconnectedness with other financial and economic actors. Systemic investment firms should, however, remain subject to the existing prudential framework under Directive 2013/36/EU and Regulation (EU) No 575/2013. Those investment firms are a subset of investment firms to which the Directive 2013/36/EU/Regulation (EU) No 575/2013 framework currently applies and do not benefit from dedicated exemptions from any of its principle requirements. The largest and most interconnected investment firms have business models and risk profiles that are similar to those of significant credit institutions – they provide ''bank-like'' services and underwrite risks on a significant scale. Therefore it is appropriate that those investment firms remain subject to the provisions set out in the Directive 2013/36/EU and Regulation (EU) No 575/2013. Furthermore, systemic investment firms are large enough, and have business models and risk-profiles which represent a threat for the stable and orderly functioning of financial markets on par with large credit institutions.

(10) The specific prudential regime for investment firms which, by virtue of their size and interconnectedness with other financial and economic actors, are not considered systemic should address the specific business practices of different types of investment firms. Investment firms with the highest possibility of generating risks to clients, markets or the orderly functioning of the investment firms themselves should in particular be subject to clear and effective prudential requirements tailored to those specific risks. Those prudential requirements should be calibrated in a manner proportionate to the type of investment firm, the best interests of the clients of that type of investment firm and the promotion of the smooth and orderly functioning of the markets in which those types of investment firms operate. They should mitigate identified areas of risk and help ensure that, if an investment firm fails, it can be wound down in an orderly manner with minimal disruption to the stability of financial markets.

(10a) The regime provided for in this Regulation should not affect the obligation on designated market makers at trade venues pursuant to Directive 2014/65/EU to provide quotes and be present in the market on a continuous basis.

(11) The prudential regime for investment firms which, by virtue of their size and interconnectedness with other financial and economic actors, are not considered systemic should apply to each investment firm on an individual basis. However, since the risks incurred by small and non-interconnected investment firms are limited for the most part, they should be allowed to avail themselves of an exemption from the specific prudential requirements where they are part of a banking group headquartered and subject to consolidated supervision under Regulation (EU) No 575/2013/Directive 2013/36/EU in the same Member State, as in such cases the consolidated application of Regulation (EU) No 575/2013/ Directive 2013/36/EU to the group should adequately cover those risks. In order to mirror the possible existing treatment of groups of investment firms under the Regulation (EU) No 575/2013/ Directive 2013/36/EU, the parent undertaking in such groups should be required to have sufficient capital to support the book value of its holdings in the subsidiaries. Further, in order to account for cases where such investment firm groups carry a higher degree of risk or interconnectedness, they could be subject to capital requirements based on the consolidated situation of the group. ***Where they are a part of an insurance group, those small and non-interconnected investment firms should also be allowed to avail themselves of an exemption from concentration, disclosure and reporting requirements.***

(12) In order to allow investment firms to continue to rely on their existing own funds to meet their capital requirements under the prudential framework specific to investment firms, the definition and composition of own funds should be aligned with Regulation (EU) No 575/2013. This includes full deductions from balance-sheet items from own funds in accordance with Regulation (EU) No 575/2013, such as deferred tax assets and holdings of capital instruments of other financial sector entities. However, investment firms should be able to exempt non-significant holdings of capital instruments in financial sector entities from deductions if held for trading purposes in order to support market-making in these instruments. In order to align the composition of own funds with the Regulation (EU) No 575/2013, at least 56% of the capital requirement should be met by investment firms with Common Equity Tier 1 items, while Additional Tier 1 and Tier 2 items could be eligible up to 44% and 25% of regulatory capital, respectively.

(13) In order to ensure that investment firms always operate on the basis of the level of capital required for their authorisation, all investment firms should, at all times, meet a permanent minimum capital requirement equal to the initial capital required for authorisation to conduct the relevant investment services set in accordance with Directive (EU) ----/--/[IFD].

(14) In order to ensure a simple application of the minimum capital requirement for small and non-interconnected investment firms, they should have capital equal to the higher of their permanent minimum capital requirement or a quarter of their fixed overheads measured on the basis of their activity of the preceding year in accordance with Commission Delegated Regulation (EU) 2015/488[1]. ***Small and non-interconnected investment firms that prefer to exercise further regulatory caution and avoid reclassification should not be prevented from holding own funds in excess of, or applying measures stricter than, those required by this Regulation.***

(15) To account for the higher risks of investment firms which are not small and non-interconnected, the minimum capital requirement for them should be the higher of their permanent minimum requirement, a quarter of their fixed overheads for the preceding year, or the sum of their requirement under the set of risk factors tailored to investment firms (‘K-factors’) which sets capital in relation to the risks in specific business areas of investment firms.

(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, have ***limited*** client assets or money under their control, have assets under ▌ discretionary portfolio management ▌ of less than EUR 1.2 billion, handle fewer than EUR 100 million per day of client orders in cash trades or EUR 1

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1 Commission Delegated Regulation (EU) 2015/488 of 4 September 2014 amending Delegated Regulation (EU) No 241/2014 as regards own funds requirements for firms based on fixed overheads (OJ L 78, 24.3.2015, p. 1

billion per day in derivatives, and have a balance sheet smaller than EUR 100 million and total gross annual revenues from the performance of their investment services of less than EUR 30 million.

(17) In order to prevent regulatory arbitrage and reduce the incentive for investment firms to structure their operations in order to avoid exceeding the thresholds above which they do not qualify as small and non-interconnected firms, the thresholds for assets under management, client orders handled, balance sheet size and total gross revenues should be applied on a combined basis for all investment firms that are part of the same group. The other criteria, namely whether an investment firm holds client money, administers or safeguards client assets, or trades financial instruments and incurs market or counterparty risk, are binary and leave no scope for such restructuring and should therefore be assessed on an individual basis. In order to capture evolving business models and the risks they represent on an ongoing basis, these criteria and thresholds should be assessed on an end-of-day basis, with the exception of holding client money which should be assessed on an intra-day basis and balance sheet size and total gross revenues which should be assessed based on the situation of the investment firm at the end of the last financial year.

(18) An investment firm that exceeds the regulatory thresholds or fails to meet the other criteria should not be considered small and non-interconnected and should be subject the requirements for other investment firms, subject to the specific transitional provisions set out in this Regulation. This should incentivise investment firms to plan their business activities so as to clearly qualify as small and non-interconnected firms. For an investment firm which does not satisfy the requirements to be considered small and non-interconnected to qualify for such treatment, a monitoring phase should be provided where that firm meets the criteria and remains below the relevant thresholds for at least six consecutive months.

(19) All investment firms should calculate their capital requirement with reference to a set of K-factors which capture Risk-To-Customer (‘RtC’), Risk-to-Market (‘RtM’) and Risk-to-Firm (‘RtF’). The K-factors under RtC capture client assets under management ▌ (K-AUM), assets safeguarded and administered (K-ASA), client money held (K-CMH), and customer orders handled (K-COH).

(20) The K-factor under RtM captures net position risk (K-NPR) in accordance with the market risk provisions of CRR or, where permitted by the competent authority for ***positions which are centrally cleared***, based on margins posted with an investment firm's clearing member (K-CMG). ***An investment firm should have an option to apply K-NPR and K-CMG simultaneously to different positions.***

(21) The K-factors under RtF capture an investment firm's exposure to the default of their trading counterparties (K-TCD) in accordance with simplified provisions for counterparty credit risk based on CRR, concentration risk in an investment firm's large exposures to specific counterparties based on CRR-provisions for large exposures risk in the trading book (K-CON), and operational risks from an investment firm's daily trading flow (K-DTF).

(22) The overall capital requirement under the K-factors is the sum of the requirements of the K-factors under RtC, RtM and RtF. K-AUM, K-ASA, K-CMH, K-COH and K-DTF relate to the volume of activity referred to by each K-factor. ***The volume for K-CMH is calculated on the basis of a rolling average from the previous 12 calendar months.*** The volumes for ▌ K-ASA, K-COH, and K-DTF are calculated on the basis of a rolling average from the previous three months, while for K-AUM it is based on the previous year. The volumes are multiplied by the corresponding coefficients set out in this Regulation in order to determine the capital requirement. The capital requirements for K-NPR is derived from CRR, while the capital requirements for K-CON and K-TCD use a simplified application of the corresponding requirements under CRR for, respectively, the treatment of large exposures in the trading book and of counterparty credit risk. The amount of a K-factor is zero if a firm does not undertake the relevant activity.

(23) The K-factors under RtC are proxies covering the business areas of investment firms from which harm to clients can conceivably be generated in case of problems. K-AUM captures the risk of harm to clients from an incorrect discretionary management of customer portfolios or poor execution and provides reassurance and customer benefits in terms of the continuity of service of ongoing portfolio management ▌. K-ASA captures the risk of safeguarding and administering customer assets, and ensures that investment firms hold capital in proportion to such balances,

regardless of whether they are on its own balance sheet or segregated in other accounts. K-CMH captures the risk of potential for harm where an investment firm holds the money of its customers, ***taking into account*** whether they are on its own balance sheet or segregated in other accounts. K-COH captures the potential risk to clients of a firm which executes its orders (in the name of the client, and not in the name of the firm itself), for example as part of execution-only services to clients or when a firm is part of a chain for client orders.

(24) The K-factor for RtM for investment firms which deal on own account is based on the rules for market risk for positions in financial instruments, in foreign exchange, and in commodities in accordance with Regulation (EU) No 575/2013 as amended[1]. This allows investment firms to choose to apply either the standardised approach under Regulation (EU) No 575/2013 (simplified standardised approach under Regulation (EU) No 575/2013 as amended) if their assets are below EUR 300 million or the revised standardised approach under Regulation (EU) No 575/2013 as amended as well as the option to use internal models. In the two last cases, the resulting capital requirement may be decreased to 65%, making permanent the possibility under Regulation (EU) No 575/2013 as amended to apply this on a temporary basis for three years, in order to take account of investment firms' overall lower prudential relevance. Alternatively, the capital requirement of ▌ centrally cleared ***positions*** should, subject to the approval of the competent authority, be equal to the margins posted with their clearing member.

(25) For investment firms which deal on own account, the K-factors for K-TCD and K-CON under RtF constitute a simplified application of CRR rules on counterparty credit risk and large exposure risk, respectively. K-TCD captures the risk to an investment firm of counterparties in over-the-counter (OTC) derivatives, repurchase transactions, securities and commodities lending or borrowing transactions, long-settlement transactions and margin lending transactions failing to fulfil their obligations by multiplying the value of the exposures, based on replacement cost and

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1 Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements and amending Regulation (EU) No 648/2012.

an add-on for potential future exposure, by risk factors based on Regulation (EU) No 575/2013, accounting for the mitigating effects of effective netting and the exchange of collateral. K-CON captures concentration risk in relation to individual or highly connected private sector counterparties with whom firms have exposures above 25% of their regulatory capital, or specific alternative thresholds in relation to credit institutions or other investment firms, by imposing a capital add-on in line with Regulation (EU) No 575/2013 for excess exposures above these limits. Finally, K-DTF captures the operational risks to an investment firm in large volumes of trades concluded for its own account or for clients in its own name in one day which could result from inadequate or failed internal processes, people and systems or from external events, based on the notional value of daily trades.

(26) All investment firms should monitor and control their concentration risk, including in respect of their customers. However, only investment firms which are subject to a minimum capital requirement under the K-factors should report to competent authorities on their concentration risks. For investment firms specialised in commodity derivatives or emission allowances or derivatives thereof with large concentrated exposures to the non-financial groups to which they belong, the limits for concentration risk may be exceeded without additional capital under K-CON as long as they serve group-wide liquidity or risk management purposes.

(27) All investment firms should have internal procedures to monitor and manage their liquidity requirements. These procedures should help ensure that they can function in an orderly way over time, without entailing a need to set aside liquidity specifically for times of stress. For this purpose, all investment firms should hold a minimum of one third of their fixed overheads requirement in liquid assets at all times. Those liquid assets should be of high quality and aligned with those listed in Commission Delegated Regulation (EU) 2015/61 on the Liquidity Coverage Ratio[1] together with the haircuts which apply to these assets under that Delegated Regulation. To account for the difference in liquidity-profiles of investment firms compared to credit institutions, the list of appropriate liquid assets should be supplemented by the

[1] Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions (OJ L 11, 17.1.2015, p. 1–36)

unencumbered own cash of the firm (which should not include any client money). Small and non-interconnected firms could further include items related to trade debtors and fees or commissions receivable within 30 days as liquid assets, provided these do not exceed one-third of the minimum liquidity requirement, do not count towards any additional liquidity requirements imposed by the competent authority, and that they are subject to a haircut of 50%. In exceptional circumstances, investment firms should be permitted to fall below the required threshold by monetising their liquid assets to cover liquidity requirements, provided they notify their competent authority immediately. All financial guarantees provided to customers which can give rise to increased liquidity needs if triggered, should reduce the amount of available liquid assets by at least 1.6% of the total value of such guarantees.

(28) A proportionate corresponding regulatory reporting framework should be developed in conjunction with the new prudential regime and should be carefully tailored to the business of investment firms and the requirements of the prudential framework. Reporting requirements for investment firms should concern the level and composition of their own funds, their capital requirements, the basis for the calculation of their capital requirements, their activity profile and size in relation to the parameters for considering investment firms as small and non-interconnected, their liquidity requirements and their adherence to the provisions on concentration risk. EBA should be charged with developing draft implementing technical standards to further specify the detailed templates and arrangements for that regulatory reporting and those standards should be proportionate to the scale and complexity of different investment firms and should notably take account of whether investment firms are considered to be small and non-interconnected.

(29) In order to provide transparency to their investors and the wider markets, investment firms which are not considered to be small and non-interconnected should publicly disclose their levels of capital, their capital requirements, their governance arrangements and remuneration policies and practices. The transparency regarding the remuneration of high earners serves the general interest of contributing to sound and stable financial markets, given the important role high earners play in directing the business and long term performance of the investment firms. For reasons of

confidentiality, disclosure of the remuneration of high earners should be required on an aggregated basis. Small and non-interconnected firms should not be subject to public disclosure requirements, except where they issue Additional Tier 1 instruments in order to provide transparency to the investors in these instruments.

(30) In order to facilitate a smooth transition for investment firms from the requirements of Regulation (EU) No 575/2013 and Directive 2013/36/EU to the requirements under this Regulation and Directive (EU) ----/--[IFD], it is appropriate to provide for appropriate transitional measures. Notably, for a period of five years from the date of application of this Regulation, investment firms for which capital requirements under this Regulation would more than double compared to their capital requirement under Regulation (EU) No 575/2013/Directive 2013/36/EU should be able to mitigate the effects of potential increases by limiting the capital requirement to twice their relevant capital requirement under Regulation (EU) No 575/2013/Directive 2013/36/EU.

In order not to disadvantage new investment firms with similar profiles to existing firms, investment firms which were never subject to capital requirements under Regulation (EU) No 575/2013/Directive 2013/36/EU should be able to limit their capital requirements under this Regulation to twice their fixed overheads requirement for a period of five years from the date of application of this Regulation.

Equally, investment firms which were only subject to a requirement for initial capital under Regulation (EU) No 575/2013/Directive 2013/36/EU and for which capital requirements under this Regulation would more than double compared to their situation under Regulation (EU) No 575/2013/Directive 2013/36/EU should be able to limit their capital requirement under this Regulation to twice their initial capital requirement under Regulation (EU) No 575/2013/Directive 2013/36/EU for a period of five years from the date of application of this Regulation.

These transitional measures should, where applicable, be available also to investment firms referred to in Article 498 of Regulation (EU) No 575/2013 which exempts these firms from own funds requirements under that Regulation, whereas the requirements for initial capital <u>with respect to those investment firms</u> depend on the investment services or activities they provide. For a period of five years from the date of application of this Regulation, their capital requirements under the transitional provisions of this Regulation should be calculated in view of these applicable levels.

For a period of five years from the date of application of this Regulation, or until the date of application of the changes adopted to Regulation (EU) No 575/2013/Directive 2013/36/EU as regards capital requirements for market risk pursuant to Article 1(84) of the Commission Proposal for a Regulation amending Regulation (EU) No 575/2013, whichever is earlier, investment firms subject to the corresponding provisions of this Regulation should continue to calculate their capital requirement for the trading book in accordance with Regulation (EU) No 575/2013.

(31) The largest investment firms providing key wholesale market and investment banking services (dealing on own account in financial instruments or underwriting financial instruments or placing financial instruments on a firm commitment basis) have business models and risk profiles that are similar to those of significant credit institutions. Their activities expose the firms to credit risk, mainly in the form of counterparty credit risk, as well as market risk for positions they take on own account, client related or not. As such, they present a risk to financial stability, given their size and systemic importance.

(32) Those large firms present an additional challenge for their effective prudential supervision by national competent authorities. Even though the largest investment firms provide cross-border investment banking services on a significant scale, as investment firms they are subject to prudential supervision by authorities designated under Directive 2004/39/EU, which are not necessarily the same competent authorities as those designated under Directive 2013/36/EU, which may result in an un-level playing field in the application of Regulation (EU) No 575/2013/Directive 2013/36/EU provisions within the Union. This prevents supervisors from obtaining an overall prudential perspective which is essential for effectively addressing the risks associated with large cross-border firms. As a consequence, prudential supervision may become less effective and may also distort competition within the Union. The largest investment firms should therefore be given the status of credit institutions so as to create synergies from supervising cross-border wholesale market

activities in a peer group, promoting a level playing field, and allowing for consistent supervision across groups.

(33) Those firms, by virtue of becoming credit institutions, should therefore continue applying Regulation (EU) No 575/2013 and Directive 2013/36/EU be subject to supervision by competent authorities, including the ECB in the framework of the Single Supervisory Mechanism, in charge of credit institutions. This would ensure that the prudential supervision of credit institutions is implemented in a coherent and effective manner, that the single rulebook for financial services is applied in the same manner to all credit institutions in light of their systemic importance. In order to prevent regulatory arbitrage and reduce the risks of circumvention, competent authorities should endeavour to avoid situations where potentially systemic groups would structure their operations in such a way as to not exceed the thresholds set out in Article 4(1)(1)(b) and circumvent the obligation to seek authorization as credit institutions pursuant to Article 8a of Directive 2013/36/EU.

(33a) Undertakings should take deposits or other repayable funds from the public and grant credits for their own account only once they have obtained the authorisation for those activities in accordance with Directive 2013/36/EU.

(34) In addition, supervision of credit institutions on a consolidated basis aims to ensure, inter alia, the stability of the financial system and, in order to be effective, should be applied to all groups, including those the parent undertakings of which are not credit institutions or investment firms.. Therefore, all credit institutions, including those that previously had the status of investment firms, should be subject to the rules on individual and consolidated supervision of the parent undertaking by the competent authorities pursuant to Section I of Chapter 3 of Title VII of Directive 2013/36/EU.

(35) Regulation (EU) No 600/2014 introduced a Union harmonised regime for granting access for third country firms providing investment services or activities to eligible counterparties and professional clients that are established in the Union. Access to the internal market is conditional on the Commission adopting an equivalence decision and ESMA registering the third country firm. It is important that the assessment of equivalence is done on the basis of the relevant applicable Union law and that effective tools to monitor that the conditions under which equivalence is

granted are in place. For those reasons, third-country registered firms should be required to report annually to ESMA information concerning the scale and scope of services provided and activities carried out in the Union. Supervisory cooperation in relation to monitoring, enforcement and the fulfilment of the equivalence conditions should also be improved.

(35a) ***With the aim of guaranteeing a level playing field and promoting the transparency of the Union market, Regulation (EU) No 600/2014 should be amended to subject systemic internalisers' quotes, price improvements and executions prices to the tick size regime when dealing in all sizes. Consequently, the currently applicable regulatory technical standards dealing with the tick size regime should also apply to its extended scope.***

(36) To ensure investor protection as well as the integrity and the stability of financial markets in the Union, the Commission, when adopting an equivalence decision, should take into account the potential risks posed by the services and the activities that firms from that third-country could carry out in the Union following that decision. Their systemic importance should be considered based on criteria such as the likely scale and scope of service provision and performance of activities by firms from the third country concerned. For the same purpose, the Commission may consider appropriate to take into account whether the third county is identified as a non-cooperative jurisdiction for tax purposes under the relevant Union policy or as a high-risk third country pursuant to Article 9(2) of Directive (EU) 2015/849[1].

(37) Since the objectives of this Regulation, namely to set up an effective and proportionate prudential framework to ensure that investment firms, which are authorised to operate within the Union operate on a sound financial basis and are managed in an orderly way including, where relevant, in the best interests of their clients, cannot be sufficiently achieved by the Member States but by reason of their scale and effects would be better achieved at Union level, the Union may adopt

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1 Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(38) The European Banking Authority (EBA), with the participation of the European Securities and Markets Authority (ESMA), has issued a report based on thorough background analysis, data collection and consultation for a bespoke prudential regime for all non-systemic investment firms which serves as the basis for the revised prudential framework for investment firms.

(39) In order to ensure the harmonised application of this Regulation, EBA should be charged with drafting technical standards to specify the calculation of fixed overheads, the calculation for setting capital requirements equal to the initial margin posted with clearing members, and the templates for the public disclosures and regulatory reporting required under this Regulation.

(40) In order to ensure the uniform application of this Regulation and to take account of developments in financial markets, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the further specification of the definitions in this Regulation and of technical adjustment to the non-essential elements of the capital requirements in this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(41) To ensure uniform conditions for the implementation of this Regulation, and in particular with regard to the adoption the draft implementing technical standards of

EBA regarding disclosure and reporting templates, implementing powers should be conferred on the Commission.

(42) In order to ensure legal certainty and avoid overlaps between the current prudential framework applicable to both credit institutions and investment firms and this Regulation, Regulation (EU) No 575/2013 and Directive 2013/36/EU are amended in order to remove investment firms from their scope. However, investment firms which are part of a banking group should remain subject to those provisions in Regulation (EU) No 575/2013 and Directive 2013/36/EU which are relevant for the banking group, such as the provisions on the intermediate EU parent undertaking referred to in [Article 21b] of Directive 2013/36/EU and to the rules on prudential consolidation set out in Chapter 2 of Title 2 of Part One of Regulation (EU) No 575/2013.

HAVE ADOPTED THIS REGULATION:

PART ONE
GENERAL PROVISIONS

TITLE I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

This Regulation lays down uniform prudential requirements which apply to investment firms authorised and supervised under Directive 2014/65/EU and supervised for compliance with prudential requirements under Directive (EU) ----/--[IFD] in relation to the following:

(a) capital requirements relating to quantifiable, uniform and standardised elements of risk-to-firm, risk-to-customers and risk-to-market;

(b) requirements limiting concentration risk;

(c) liquidity requirements relating to quantifiable, uniform and standardised elements of liquidity risk;

(d) reporting requirements related to points (a), (b) and (c);

(e) public disclosure requirements.

Article 2

Supervisory powers

For the purposes of ensuring compliance with this Regulation, competent authorities shall have the powers and shall follow the procedures set out in Directive (EU) ----/--[IFD].

Article 3
Application of stricter requirements by investment firms

This Regulation shall not prevent investment firms from holding own funds and their components in excess of, or applying measures that are stricter than, those required by this Regulation.

Article 4
Definitions

1. For the purpose of this Regulation, the following definitions shall apply:

(1) ‘ancillary services undertaking’ means ancillary services undertaking as defined in Article 4(1)(18) of Regulation (EU) No 575/2013;

(2) ‘client’ means client as defined in Article 4(1)(9) of Directive 2014/65/EU;

(3) ‘commodity dealers’ means commodity dealers as defined in Article 4(1)(145) of Regulation (EU) No 575/2013;

(4) ‘commodity derivatives’ means commodity derivatives as defined in Article 2 (1)(30) of Regulation (EU) No 600/2014;

(5) ‘competent authority’ means competent authority as defined in Article 3(5) of Directive (EU) ----/--[IFD] ;

(6) ‘credit institution’ means credit institution as defined in Article 4(1)(1) of Regulation (EU) No 575/2013;

(7) ‘daily trading flow’ means the value of transactions in the trading book where the firm is dealing on own account, whether for itself or on behalf of a client;

(8) ‘dealing on own account’ means dealing on own account as defined in Article 4(1)(6) of Directive 2014/65/EU;

(9) ‘derivatives’ means derivatives as defined in Article 2(1)(29) of Regulation (EU) No 600/2014;

(10) ‘K-factor consolidated situation’ means the situation that results from applying the requirements of this Regulation in accordance with K-factors to an investment firm as if that investment firm formed, together with one or more other entities in the same group, a single investment firm;

(11) ‘execution of orders on behalf of clients’ means execution of orders on behalf of clients as defined in Article 4(1)(5) of Directive 2014/65/EU;

(12) ‘exposure’ means the following:

(a) for the purposes of concentration risk limits, any asset or off-balance sheet item held in the trading book and not explicitly exempt under Article 40;

(b) for the purposes of reporting concentration risk, any asset or off-balance sheet item;

(13) ‘financial institution’ means an undertaking other than a credit institution or investment firm, the principal activity of which is to acquire holdings or to pursue one or more of the activities listed in points (2) to (12) and point (15) of Annex I to Directive 2013/36/EU, including a financial holding company, a mixed financial holding company, an investment holding company, a payment institution within the meaning of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market, and an asset management company, but excluding insurance holding companies and mixed-activity insurance holding companies as defined in point (g) of Article 212(1) of Directive 2009/138/EU;

(14) ‘financial instrument’ means financial instrument as defined in Article 4(1)(50) of Regulation (EU) No 575/2013;

(15) ‘financial holding company’ means financial holding company as defined in point of Article 4(1)(20) of Regulation (EU) No 575/2013;

(16) ‘financial sector entity’ means financial sector entity as defined in Article 4(1)(27) of Regulation (EU) No 575/2013;

(17) ‘initial capital’ means initial capital as defined in Article 3(17) of Directive (EU) ----/--[IFD];

(18) ‘group of connected clients’ means group of connected clients as defined in Article 4(1)(39) of Regulation (EU) No 575/2013;

(19) ‘investment advice’ means investment advice as defined in Article 4(1)(4) of 2014/65/EU;

(20) ‘investment firm’ means investment firm as defined in Article 4(1)(1) of Directive 2014/65/EU;

(21) ‘investment holding company’ means a financial institution, the subsidiaries of which are exclusively or mainly investment firms or financial institutions, at least one of such subsidiaries being an investment firm, and which is not a financial holding company as defined in Article 4(1)(20) of Regulation (EU) No 575/2013;

(22) ‘investment services and activities’ means investment services and activities as defined in Article 4(1)(2) of 2014/65/EU;

(23) ‘investment firm group’ means a group of undertakings which does not include a credit institution, where the parent undertaking is either an investment firm, an investment holding company or a mixed financial holding company and which may include other financial institutions and tied agents owned by the investment firm. The investment firm group may consist either of a parent undertaking and its subsidiaries, or of undertakings which meet the conditions set out in Article 22 of Directive 2013/34/EU;

(24) ‘K-factors’ means capital requirements set out in Title II of Part Three for risks that an investment firm poses to customers, markets and to itself;

(25) ‘K-AUM’ or ‘K-factor in relation to assets under management (AUM)’ means the capital requirement relative to the value of assets that an investment firm manages for its clients under ▌discretionary portfolio management ▌, including assets

delegated to another undertaking and excluding assets that another undertaking has delegated to the investment firm***. The calculation shall exclude assets that are already accounted for under K-ASA***;

(26) ‘K-CMH’ or ‘K-factor in relation to client money held (CMH)’ means the capital requirement relative to the amount of client money that an investment firm holds or controls, ***taking into account the*** legal arrangements in relation to asset segregation and irrespective of the national accounting regime applicable to client money held by the investment firm;

(27) ‘K-ASA’ or ‘K-factor in relation to assets safeguarded and administered (ASA)’ means the capital requirement relative to the value of assets that an investment firm safeguards and administers for clients, including assets delegated to another undertaking and assets that another undertaking has delegated to the investment firm, ***when those*** assets appear on the investment firm's own balance sheet or are segregated in other accounts;

(28) ‘K-COH’ or ‘K-factor in relation to client orders handled (COH)’ means the capital requirement relative to the value of orders that an investment firm handles for clients, through the reception and transmission of client orders and through the execution of orders on behalf of clients;

(29) ‘K-CON’ or ‘K-factor in relation to concentration risk (CON)’ means the capital requirement relative to the exposures in the trading book of an investment firm to a client or a group of connected clients the value of which exceeds the limits in Article 36(1);

(30) ‘K-CMG’ or ‘K-factor in relation to clearing member guarantee (CMG)’ means the capital requirement equal to the amount of initial margins posted with a clearing member, where the execution and settlement of transactions of an investment firm dealing on own account take place under the responsibility of a general clearing member;

(31) ‘K-DTF’ or ‘K-factor in relation to daily trading flow (DTF)’ means the capital requirement relative to the daily value of transactions that an investment firm enters through dealing on own account or the execution of orders on behalf of clients in its

own name***, excluding the value of orders that an investment firm handles for clients through the reception and transmission of client orders and through the execution of orders on behalf of clients as already reflected in COH***;

(32) 'K-NPR' or 'K-factor in relation to net position risk (NPR)' means the capital requirement relative to the value of transactions recorded in the trading book of an investment firm;

(33) 'K-TCD' or 'K-factor in relation to trading counterparty default risk (TCD)' means the capital requirement relative to the exposures in the trading book of an investment firm in instruments and transactions referred to in Article 25 giving rise to the risk of trading counterparty default;

(34) 'long settlement transactions' means long settlement transactions as defined in Article 272(2) of Regulation (EU) No 575/2013;

(35) 'margin lending transaction' means margin lending transactions as defined in Article 272(3) of Regulation (EU) No 575/2013;

(36) 'management body' means management body as defined in Article 4(1)(36) of Directive 2014/65/EU;

(37) 'parent undertaking' means parent undertaking within the meaning of Articles 2(9) and 22 of Directive 2013/34/EU;

(38) 'participation' means participation as defined in Article 4(1)(35) of Regulation (EU) No 575/2013;

(39) 'profit' means profit as defined in Article 4(1)(121)of Regulation (EU) No 575/2013;

(40) 'qualifying central counterparty' or 'QCCP' means qualifying central counterparty as defined in Article 4(1)(88) of Regulation (EU) No 575/2013;

(41) 'portfolio management' means portfolio management as defined in Article 4(1)(8) of Directive 2014/65/EU;

(42) 'regulatory capital' means the capital requirement specified in Article 11;

(43) ‘repurchase transaction’ means repurchase transaction as defined in Article 4(1)(83) of Regulation (EU) No 575/2013;

(44) ‘subsidiary’ means subsidiary within the meaning of Article 2(10) and 22 of Directive 2013/34/EU, including any subsidiary of a subsidiary undertaking of an ultimate parent undertaking;

(45) ‘tied agent’ means tied agent as defined in Article 4(1)(29) of Directive 2014/65/EU;

(46) ‘total gross revenue’ means the annual operating income of an investment firm, in connection with the firm's investment services and activities it is authorised to perform, including income stemming from interest receivable, from shares and other securities whether fixed yield or variable, from commission and fees, any gain and losses that the investment firms incurs on its trading assets, assets held at fair value, or from hedging activities, but excluding any income which is not linked to the investment services and activities performed;

(47) ‘trade exposure’ means trade exposure as defined in point (91) of Article 4(1) of Regulation (EU) No 575/2013;

(48) ‘trading book’ means trading book as defined in point (86) of Article 4(1) of Regulation (EU) No 575/2013;

(49) ‘Union parent investment firm’ means an investment firm in a Member State which is not itself a subsidiary of another investment firm authorised in any Member State, or of an investment holding company or mixed financial holding company set up in any Member State;

(50) ‘Union parent investment holding company’ means an investment holding company in a Member State which is not itself a subsidiary of an investment firm authorised in any Member State or of another investment holding company in any Member State;

(51) ‘Union parent mixed financial holding company’ means a parent undertaking of an investment firm group which is a mixed financial holding company as defined in Article 2(15) of Directive 2002/87/EC.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 54 in order to clarify:

(a) the definitions set out in paragraph 1 to ensure uniform application of this Regulation;

(b) the definitions set out in paragraph 1 to take account, in the application of this Regulation, of developments on financial markets.

TITLE II

LEVEL OF APPLICATION OF REQUIREMENTS

CHAPTER 1

Application of requirements on an individual basis

Article 5

General principle

An investment firm shall comply with the requirements laid down in Parts Two to Seven on an individual basis.

Article 6

Exemptions

1. Competent authorities may exempt an investment firm from the application of Article 5 in respect of Parts Two to Four, Six and Seven, where all of the following apply:

(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 by the same Member State;

(c) the authorities competent for the supervision on consolidated basis in accordance with Regulation (EU) No 575/2013 agree to such an exemption;

(d) own funds are distributed adequately between the parent undertaking and the investment firm and all of the following conditions are satisfied:

(i) the investment firm meets the conditions set out in Article 12(1);

(ii) there is no current or foreseen material practical or legal impediment to the prompt transfer of capital or repayment of liabilities by the parent undertaking;

(iii) upon prior approval by the competent authority, the parent undertaking declares that it guarantees the commitments entered into by the investment firm or that the risks in the investment firm are of negligible interest;

(iv) the risk evaluation, measurement and control procedures of the parent undertaking include the investment firm; and

(v) the parent undertaking holds more than 50% of the voting rights attached to shares in the capital of the investment firm or has the right to appoint or remove a majority of the members of the investment firm's management body.

1a. Competent authorities may exempt investment firms from the application of Article 5 in respect of Parts Four, Six and Seven, where all of the following apply:

(a) the investment firm is a subsidiary and included in the supervision on a consolidated basis of an insurance or reinsurance undertaking in accordance with Article 228 of Directive 2009/138/EC of the European Parliament and of the Council[1];

(b) both the investment firm and its parent undertaking are subject to authorisation and supervision by the same Member State;

(c) the authorities competent for the supervision on consolidated basis in accordance with Directive 2009/138/EC agree to such an exemption;

(d) own funds are distributed adequately between the parent undertaking and the investment firm and all of the following conditions are satisfied:

(i) the investment firm meets the conditions set out in Article 12(1);

(ii) there is no current or foreseen material practical or legal impediment to the prompt transfer of capital or repayment of liabilities by the parent undertaking;

(iii) upon prior approval by the competent authority, the parent undertaking declares that it guarantees the commitments entered into by the investment firm or that the risks in the investment firm are of negligible interest;

(iv) the risk evaluation, measurement and control procedures of the parent undertaking include the investment firm; and

(v) the parent undertaking holds more than 50% of the voting rights attached to shares in the capital of the investment firm or has the right to appoint or remove a majority of the members of the investment firm's management body.

1 Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

2. Competent authorities may exempt investment firms from the application of Article 5 in respect of Part Five where all of the following conditions are satisfied:

(a) the investment firm is included in the supervision on a consolidated basis in accordance with Chapter 2, Title II of Part One of Regulation (EU) No 575/2013;

(b) the group has established centralised liquidity management functions; and

(c) the authorities competent for the supervision on consolidated basis in accordance with Regulation (EU) No 575/2013 agree to such an exemption.

CHAPTER 2

Application of requirements for compliance with the group capital test and exemptions

Article 7
The group capital test

1. A Union parent investment firm, a Union parent investment holding company, a Union parent mixed financial holding company shall hold at least enough own funds to cover the sum of the following:

(a) the sum of the full book value of any holdings, subordinated claims and instruments referred to in points (h) and (i) of Article 36(1), points (c) and (d) of Article 56, and points (c) and (d) of Article 66 of Regulation (EU) No 575/2013 in investment firms, financial institutions, ancillary services undertakings and tied agents in the investment firm group; and

(b) the total amount of any contingent liability in favour of investment firms, financial institutions, ancillary services undertakings and tied agents.

2. Competent authorities may allow a Union parent investment holding company or a Union parent mixed financial holding company to hold a lower amount of own funds than the amount calculated under paragraph 1, provided that this amount is no lower than the sum of the own funds requirements imposed on an individual basis on investment firms, financial institutions, ancillary services undertakings and tied agents in the group, and the total amount of any contingent liabilities in favour of these entities.

For the purposes of paragraph 1, where no Union or national prudential legislation applies for any of the entities referred to in paragraph 1, a notional own funds requirement shall apply.

3. A Union parent investment firm, a Union parent investment holding company, a Union parent mixed financial holding company shall have systems in place to monitor and control the sources of capital and funding of all investment firms, investment holding companies, mixed financial holding companies, financial institutions, ancillary services undertakings and tied agents within the investment firm group.

Article 8

K-factor consolidation

The competent authorities of a Union parent investment firm or the competent authorities determined in accordance with Article 42(2) of Directive (EU)----/--[IFD] may require a Union parent investment firm, a Union parent investment holding company or a Union parent mixed financial holding company to comply with the requirements set out in Article 15 on the basis of the K-factor consolidated situation where either of the following conditions applies:

(a) there are significant material risks to customers or to market, stemming from the group as a whole which are not fully captured by the capital requirements applicable to the investment firms in the group on an individual basis; or

(b) for investment firm groups with a high degree of inter-connectedness in terms of risk management, the application of requirements to the investment firm on an individual basis may lead to a duplication of the requirements for those firms.

PART TWO
OWN FUNDS

Article 9
Own funds requirements

1. An investment firm shall have own funds consisting of the sum of its Tier 1 capital and Tier 2 capital where:

   (a) at least 56 % of the sum shall consist of Common Equity Tier 1 capital in accordance with Chapter 2 of Title 1 of Part Two of Regulation (EU) No 575/2013;

   (b) up to 44 % of the sum may consist of additional Tier 1 capital in accordance with Chapter 3 of Title 1 of Part Two of Regulation (EU) No 575/2013;

   (c) up to 25% of the sum may consist of Tier 2 capital in accordance with Chapter 4 of Title 1 of Part Two of Regulation (EU) No 575/2013;

2. By way of derogation from paragraph 1, the following shall not apply to the determination of own funds:

   (a) the threshold exemptions referred to in Article 48 of Regulation (EU) No 575/2013;

   (b) the deductions referred to in Articles 46, 60 and 70 of Regulation (EU) No 575/2013;

   (c) the trigger event referred to in Article 54(1)(a) of Regulation (EU) No 575/2013. The trigger event shall instead be specified by the investment firm in the terms of the additional Tier 1 instrument referred to in paragraph 1;

(d) the aggregate amount referred to in Article 54(4)(a) of Regulation (EU) No 575/2013. The amount to be written down or converted shall be the full principal amount of the additional Tier 1 instrument referred to in paragraph 1.

3. An investment firms shall apply the provisions set out in Chapter 6 of Title 1 in Part Two of Regulation (EU) No 575/2013 where determining the own funds requirements pursuant to this Regulation.

3a. By way of derogation from paragraphs 1, 2 and 3 of this Article, competent authorities may allow investment firms that meet the conditions set out in Article 12(1) to fulfil own funds requirement with eligible instruments other than those listed in Regulation (EU) No 575/2013.

Article 10

Holdings outside the financial sector

1. For the purposes of this Part, an investment firm shall deduct amounts in excess of the limits specified in points (a) and (b) from the determination of Common Equity Tier 1 items referred to in Article 26 of Regulation (EU) No 575/2013:

(a) a holding, the amount of which exceeds 15 % of the regulatory capital of the investment firm, in an undertaking which is not a financial sector entity;

(b) the total amount of the holdings of an investment firm in undertakings other than financial sector entities that exceeds 60 % of its regulatory capital.

2. Competent authorities may prohibit an investment firm from having holdings referred to in paragraph 1 the amount of which exceeds the percentages of regulatory capital laid down in that paragraph. Competent authorities shall make public their decision exercising this power without delay.

3. Shares in undertakings other than financial sector entities shall not be included in the calculation specified in paragraph 1 where any of the following conditions is met:

(a) those shares are held temporarily during a financial assistance operation as referred to in Article 79 of Regulation (EU) No 575/2013;

(b) the holding of those shares is an underwriting position held for five working days or fewer;

(c) those shares are held in the own name of the investment firm and on behalf of others.

4. Shares which are not financial fixed assets as referred to in Article 35(2) of Directive 86/635/EEC shall not be included in the calculation specified in paragraph 1.

PART THREE
CAPITAL REQUIREMENTS

TITLE I
GENERAL REQUIREMENTS

Article 11
Capital requirement

1. An investment firm shall at all times have capital which amounts to the highest of the following:

   (a) its fixed overheads requirement calculated according to Article 13.

   (b) its permanent minimum requirement according to Article 14.

   (c) its K-factor requirement calculated according to Article 15.

2. ***By way of derogation from paragraph 1,*** an investment firm that meets the conditions set out in Article 12(1) shall at all times only have capital which amounts to the highest of the amounts specified in points (a) and (b) of paragraph 1.

3. Where competent authorities consider that there has been a material change in the business activities of an investment firm, they may require the investment firm to be subject to a different capital requirement referred to in this Article, in accordance with Title IV, Chapter 2, section IV of Directive (EU) ----/--[IFD].

Article 12
Small and non-interconnected investment firms

1. An investment firm shall be deemed a small and non-interconnected investment firm for the purposes of this Regulation where it meets all of the following conditions:

(a) AUM (or assets under management) calculated in accordance with Article 17 is less than EUR 1.2 billion;

(b) COH (or client orders handled) calculated in accordance with Article 20 is less than either:

i) EUR 100 million/day for cash trades or

ii) EUR 1 billion/day for derivatives.

(c) ASA (or assets safeguarded and administered) calculated in accordance with Article 19 is ***EUR 50 000 000***;

(d) CMH (or client money held) calculated in accordance with Article 18 is ***EUR 5 000 000***;

(e) DTF (daily trading flow) calculated in accordance with Article 32 is zero;

(f) NPR (net position risk) or CMG (clearing member guarantee) calculated in accordance with Articles 22 and 23 is zero;

(g) TCD (trading counterparty default) calculated in accordance with Article 26 is zero;

(h) the balance sheet total of the investment firm is less than EUR 100 million;

(i) the total annual gross revenue from investment services and activities of by the investment firm is less than EUR 30 million.

For the purposes of points (a), (b), (c), (e), (f), and (g), end-of day levels shall apply.

For the purposes of point (d), intra-day levels shall apply.

For the purposes of points (h) and (i), the levels applicable at the end of the last financial year shall apply.

2. The conditions set out in points (a), (b), (h) and (i) of paragraph 1 shall apply on a combined basis for all investment firms that are part of a group.

The conditions set out in points (c), (d), (e), (f) and (g) shall apply to each investment firm on an individual basis.

2a. For the purposes of points (a) to (d) of paragraph 1, an investment firm shall not be considered to be a small and non-interconnected investment firm in the event that the investment firm exceeds, on an average rolling basis, the applicable threshold during the preceding six-month period.

2b. For the purposes of points (e), (f) and (g) of paragraph 1, an investment firm shall not be considered to be a small and non-interconnected investment firm after a period of three months from the date on which the applicable threshold was not met.

3. ***For the purposes of points (h) and (i) of paragraph 1, an investment firm shall not be considered to be a small and non-interconnected investment firm in the event that the applicable threshold was exceeded at the end of the previous financial year.***

4. Where an investment firm which has not met all of the conditions set out in paragraph 1 subsequently meets those conditions, it shall be considered, subject to approval by the competent authority, a small and non-interconnected investment firm after a period of ***three*** months from the date when those conditions are met.

Article 13

Fixed overheads requirement

1. For the purposes of Article 11(1)(a), the fixed overheads requirement shall amount to at least one quarter of the fixed overheads of the preceding year.

2. Where the competent authority considers that there has been a material change in the activity of an investment firm, the competent authority may adjust the amount of capital referred to in paragraph 1.

3. Subject to approval by the competent authorities, where an investment firm has no fixed overheads from the previous year, it shall have capital amounting to at least one quarter of the fixed overheads which have been projected in its business plan for the year following the year of commencement of its activities.

4. EBA, in consultation with ESMA, and taking into account Commission Delegated Regulation (EU) 2015/488 shall develop draft regulatory technical standards to***:***

   (a)further specify the calculation of the requirement referred to in paragraph 1 ***and***

   (b)define for the purpose of this Regulation the notion of a material change, referred to in paragraph 2.

   EBA shall submit those draft regulatory technical standards to the Commission by [nine month from the date of entry into force of this Regulation].

   Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 14

Permanent minimum requirement

For the purposes of Article 11(1)(b), the permanent minimum requirement shall amount to at least the levels of initial capital specified in Article 8 of Directive (EU) ----/--[IFD].

TITLE II

K-FACTOR CAPITAL REQUIREMENT

CHAPTER 1

General principles

Article 15

K-factor requirement and applicable coefficients

1. For the purposes of Article 11(1)(c), the K-factor requirement shall amount to at least the sum of the following:

   (a) Risk-to-Customer (RtC) K-factors calculated in accordance with Chapter 2;

   (b) Risk-to-Market (RtM) K-factors calculated in accordance with Chapter 3;

   (c) Risk-to-Firm (RtF) K-factors calculated in accordance with Chapter 4.

2. The following coefficients shall apply to the corresponding K-Factors:

Table 1

K-FACTORS		COEFFICIENT
Assets under management under ▌ discretionary portfolio management ▌	K-AUM	0.02%
Client money held	K-CMH ***(on segregated accounts)***	0.***3***%

	K-CMH (on non-segregated accounts)	***0.5%***
Assets under safekeeping and administration	K-ASA	0.04%
Client orders handled	K-COH cash trades	0.1%
	K-COH derivatives	0.01%
Daily trading flow	K-DTF cash trades	0.1%
	K-DTF derivatives	0.01%

3. An investment firm shall monitor the value of its K-factors for any trends that could leave it with a materially different capital requirement for the next reporting period and shall notify its competent authority of that materially different capital requirement.

4. Where competent authorities consider that there has been a material change in the business activities of an investment firm that impacts the amount of a relevant K-factor, they may adjust the corresponding amount in accordance with Article 36(2)(a) of Directive (EU) ----/--[IFD].

5. In order to ensure the uniform application of this Regulation and to take account of developments in financial markets, ***EBA*** shall***, in consultation with ESMA, develop draft regulatory technical standards to***:

   (a) specify the methods for measuring the K-factors in Title II of Part Three;

   (b) adjust the coefficients specified in paragraph 2 of this Article***;***

   (c) define the notion of segregated account for the purpose of this Regulation by specifying the conditions that ensure the protection of client money in the event of the failure of an investment firm;

(d) assess whether advice activities should be included in K-AUM and specify the methods for their potential inclusion.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.

6. ESMA shall adjust the K-DTF coefficients referred to in Table 1 of paragraph 2 in the event that, in situations of market stress as referred to in Commission Delegated Regulation (EU) 2017/578, the K-DTF requirements seem overly restrictive and detrimental to financial stability.

CHAPTER 2
RtC K-factors

Article 16
RtC K-factor requirement

The RtC K-factor requirement is determined by the following formula:

K-AUM + K-CMH + K-ASA + K-COH

where

(a) K-AUM is equal to AUM measured in accordance with Article 17, multiplied by the corresponding coefficient in Article 15(2);

(b) K-CMH is equal to CMH measured in accordance with Article 18, multiplied by the corresponding coefficient in Article 15(2);

(c) K-ASA is equal to ASA measured in accordance with Article 19, multiplied by the corresponding coefficient in Article 15(2);

(d) K-COH is equal to COH measured in accordance with Article 20, multiplied by the corresponding coefficient in Article 15(2);

Article 17

Measuring AUM for the purposes of calculating K-AUM

1. For the purposes of calculating K-AUM, AUM shall be the rolling average of the value of the total monthly assets under management, measured on the last business day of each of the previous 15 calendar months ***converted into the entities' functional currency at that time***, excluding the 3 most recent monthly values.

AUM shall be the average or simple arithmetic mean of the remaining 12 monthly measurements.

K-AUM shall be calculated within the first 14 days of each calendar month.

2. Where the investment firm has formally delegated the assets under management to another financial entity, those delegated assets shall be included in the total amount of AUM measured in accordance with paragraph 1.

Where another financial entity has formally delegated the assets under management to the investment firm, those delegated assets shall not be included in the total amount of assets under management measured in accordance with paragraph 1.

3. Where an investment firm has been managing assets for less than 15 months, it may use business projections of AUM to calculate K-AUM, subject to the following cumulative requirements:

(a) historical data is used as soon as it becomes available;

(b) the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU have been positively assessed by the competent authority.

Article 18

Measuring CMH for the purposes of calculating K-CMH

1. For the purposes of calculating K-CMH, CMH shall be the rolling average of the value of total daily client money held, measured at the end of each business day for the previous ***12*** calendar months.

   CMH shall be the average or simple arithmetic mean of the daily measurements in the ***12*** calendar months.

   K-CMH shall be calculated by the end of business day following the measurement referred to in the first subparagraph.

2. Where an investment firm has been holding client money for less than ***12*** months, it may use business projections to calculate K-CMH, subject to the following cumulative requirements:

   (a) historical data is used as soon as it becomes available;

   (b) the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU have been positively assessed by the competent authority.

Article 19

Measuring ASA for the purposes of calculating K-ASA

1. For the purposes of calculating K-ASA, ASA shall be the rolling average of the value of the total daily assets safeguarded and administered, measured at the end of each business day for the previous **15** calendar months, excluding the 3 most recent calendar months.

   ASA shall be the average or simple arithmetic mean of the daily measurements from the remaining ***12*** calendar months.

   K-ASA shall be calculated within the first 14 days of each calendar month.

2. Where an investment firm has been in operation for less than ***15*** months, it may use business projections to calculate K-ASA, subject to the following cumulative requirements:

(a) historical data is used as soon as it becomes available;

(b) the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU have been positively assessed by the competent authority.

Article 20

Measuring COH for the purposes of calculating K-COH

1. For the purposes of calculating K-COH, COH shall be the rolling average of the value of the total daily client orders handled, measured at the end of each business day over the previous 6 calendar months, excluding the 3 most recent calendar months.

COH shall be the average or simple arithmetic mean of the daily measurements for the remaining 3 calendar months.

K-COH shall be calculated within the first 14 days of each quarter.

2. COH shall be measured as the sum of the absolute value of buys and the absolute value of sells for both cash trades and derivatives in accordance with the following:

(a) for cash trades, the value is the amount paid or received on each trade.

(b) for derivatives, the value of the trade is the notional amount of the contract.

▌***COH shall exclude transactions handled by the investment firm that arise from the servicing of a client's investment portfolio where the investment firm already calculates K-AUM in respect of that client's investments.***

▌

Investment firms may exclude from the calculation of COH any orders which have not been executed, where such non-execution is due to the timely cancellation of the order by the client.

3. Where an investment firm has been in operation for less than 3 months, it may use business projections to calculate K-COH, subject to the following cumulative requirements:

(a) historical data is used as soon as it becomes available;

(b) the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU have been positively assessed by the competent authority.

CHAPTER 3
RtM K-Factors

Article 21
RtM K-factor requirement

1. The RtM K-factor requirement for the trading book positions of an investment firm dealing on own account, whether for itself or on behalf of a client shall be ▌ K-NPR calculated in accordance with Article 22***.***

1a. ***By way of derogation from paragraph 1, a competent authority shall allow an investment firm to determine the RtM K-factor requirement by using*** K-CMG calculated in accordance with Article 23***, for positions that are centrally cleared where the following conditions are fulfilled:***

(a) the investment firm is not part of a group containing a credit institution;

(b) the execution and settlement of the transactions of the investment firm that are centrally cleared take place under the responsibility of a clearing member and

are either guaranteed by that clearing member or otherwise settled on a delivery-versus-payment basis;

(c) the calculation of the initial margin posted by the investment firm to the clearing member is based on an internal model of the clearing member that complies with the requirements set out in Article 41 of Regulation (EU) No 648/2012 of the European Parliament and of the Council[1].

Article 22

Calculating K-NPR

1. For the purposes of K-NPR, the capital requirement for the trading book positions of an investment firm dealing on own account, whether for itself or on behalf of a client shall be calculated using one of the following approaches:

(a) the [simplified standardised] approach set out in Chapters 2 to 4 of Title IV of Part Three of Regulation (EU) No 575/2013▌;

(b) the standardised approach set out in [Chapter 1(a) of Title IV of Part Three of the Regulation No (EU) No 575/2013, in accordance with Article 1(84) of the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements and amending Regulation (EU) No 648/2012];

(c) the internal model approach set out in [Chapter 1(b) of Title IV of Part Three of the Regulation No (EU) No 575/2013 in accordance with Article 1(84) of the Proposal for a Regulation of the European

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[1] ***Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1.).***

Parliament and of the Council amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements and amending Regulation (EU) No 648/2012].

K-NPR calculated under the approaches specified under points (b) and (c) shall be multiplied by a factor of 65%.

2. For the purposes of the second sentence of point (a) of paragraph 1, an investment firm shall calculate the size of on- and off- balance sheet business in accordance with [paragraphs 2 to 7 of Article 325a of Regulation No (EU) No 575/2013].

Article 23

Calculating K-CMG

1. ▌K-CMG shall be the highest total amount of initial margin posted to the clearing member by the investment firm over the preceding 3 months.

2. EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify the calculation of the amount of the initial margin referred to in paragraph 1(c).

The EBA shall submit those draft regulatory technical standards to the Commission by [nine months from the date of entry into force of this Regulation].

Power is delegated to the Commission to adopt the revised regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

CHAPTER 4
Rtf K-Factors

Article 24
RtF K-factor requirement

1. The RtF K-factor requirement is determined by the following formula:

K-TCD +K-DTF + K-CON

where

K-TCD is equal to the amount calculated in accordance with Article 26;

K-DTF is equal to DTF measured in accordance with Article 32, multiplied by the corresponding coefficient established in Article 15(2) and

K-CON is equal to the amount calculated in accordance with Article 38.

K-TCD and K-CON shall be based on the transactions recorded in the trading book of an investment firm dealing on own account, whether for itself or on behalf of a client.

K-DTF shall be based on the transactions recorded in the trading book of an investment firm dealing on own account, whether for itself or on behalf of a client, and the transactions that an investment firm enters into through the execution of orders on behalf of clients in its own name.

SECTION I

TRADING COUNTER PARTY DEFAULT

Article 25
Scope

1. The following transactions shall be subject to this Section:

(a) derivative instruments listed in Annex II of Regulation (EU) No 575/2013, with the exception of the following:

(i) OTC derivatives traded with central governments and central banks of Member States;

(ii) OTC derivatives ***directly or indirectly*** cleared through a qualifying central counterparty (QCCP);

(iii) OTC derivatives cleared through a clearing member, where transactions are subject to a clearing obligation pursuant to Article 4 of Regulation (EU) No 648/2012 or to an equivalent requirement to clear that contract in a third country, or where all of the following conditions are met:

aa. the positions and assets of the investment firm related to those transactions are distinguished and segregated, at the level of both the clearing member and the QCCP, from the positions and assets of both the clearing member and the other clients of that clearing member and, as a result of that distinction and segregation, those positions and assets are bankruptcy remote under national law in the event of the default or insolvency of the clearing member or one or more of its other clients;

bb. laws, regulations and contractual arrangements applicable to or binding the clearing member facilitate the transfer of the client's positions relating to those contracts and transactions and of the corresponding collateral to another clearing member within the applicable margin period of risk in the event of default or insolvency of the original clearing member;

cc. the investment firm has obtained an independent, written and reasoned legal opinion which concludes that, in the event of legal challenge, the investment firm would bear no losses on account of the insolvency of its clearing member or of any of its clearing member's clients.

(iv) exchange-traded derivatives;

(v) derivatives held for hedging a position of the firm resulting from a non-trading book activity;

(b) long settlement transactions;

(c) repurchase transactions;

(d) securities or commodities lending or borrowing transactions;

(e) margin lending transactions.

2. By way of derogation from this Section, an investment firm may calculate its capital requirement for the transactions referred to in paragraph 1 by applying one of the methods set out in [Sections 3, 4 or 5, Title II, Part 3 of Regulation (EU) No 575/2013] and shall immediately inform the competent authority thereof.

Article 26

Calculating K-TCD

For the purposes of K-TCD, the capital requirement shall be determined by the following formula:

$$\text{Capital requirement} = \text{Exposure value} * \text{RF}$$

where RF is the risk factor defined per counterparty type according to Table 2.

Table 2

Counterparty type	Risk factor
Credit institutions and investment firms	1.6%
Other counterparties	8%

Article 27

Calculation of exposure value

The calculation of the exposure value shall be determined in accordance with the following formula:

$$\text{Exposure value} = \text{Max}\ (0; \text{RC} + \text{PFE} - \text{C})$$

where:

RC = replacement cost as determined in Article 28.

PFE = potential future exposure as determined in Article 29; and

C = collateral as determined in Article 30.

The replacement cost (RC) and collateral (C) shall apply to all transactions referred to in Article 25.

The potential future exposure (PFE) applies only to derivative contracts and long settlement transactions.

Article 28

Replacement cost (RC)

The replacement cost referred to in Article 27 shall be determined as follows:

(a) for derivative contracts, RC is determined as the current market value (CMV);

(b) for long settlement transactions, RC is determined as the settlement amount;

(c) for repurchase transactions and securities or commodities lending or borrowing transactions, RC is determined as the net amount of cash borrowed and received.

Article 29

Potential future exposure

1. The potential future exposure (PFE) referred to in Article 28 shall be calculated for each derivative and long-settlement transaction as the product of:

(a) the effective notional (EN) amount of the transaction set in accordance with paragraphs 2 to 6 of this Article;

(b) the supervisory factor (SF) set according to paragraph 7 of this Article; and

(c) a maturity factor (MF) set according to paragraph 8 of this Article.

2. The effective notional (EN) amount shall be the product of the notional amount calculated in accordance with paragraph 3 of this Article, its duration for interest rate and credit derivative contracts calculated in accordance with paragraph 4 of this Article, and its delta for option contracts calculated in accordance with paragraph 6 of this Article.

3. The notional amount, unless clearly stated and fixed until maturity, shall be determined as follows:

(a) for foreign exchange derivatives, the notional amount is defined as the notional of the foreign currency leg of the contract, converted to the domestic currency. If both legs of a foreign exchange derivative are denominated in currencies other than the domestic currency, the notional amount of each leg is converted to the domestic currency and the leg with the larger domestic currency value is the notional amount;

(b) for equity and commodity derivatives and emission allowances and derivatives thereof, the notional amount is defined as the product of the current (future) price of one unit of the stock or and the number of units referenced by the trade;

(c) for transactions with multiple payoffs that are state contingent including digital options or target redemption forwards, an investment firm shall calculate the notional amount for each state and use the largest resulting calculation;

(d) where the notional is a formula of market values, the investment firm shall enter the current market values to determine the trade notional amount;

(e) for variable notional swaps such as amortising and accreting swaps, investment firms shall use the average notional over the remaining life of the swap as the trade notional amount;

(f) leveraged swaps shall be converted to the notional amount of the equivalent unleveraged swap so that where all rates in a swap are multiplied by a factor, the stated notional amount is multiplied by the factor on the interest rates to determine the notional amount;

(g) for a derivative contract with multiple exchanges of principal, the notional amount shall be multiplied by the number of exchanges of principal in the derivative contract to determine the notional amount.

4. The notional amount of interest rate and credit derivatives for the time to maturity (in years) of these contracts shall be adjusted according to the duration set out in the following formula:

$$\text{Duration} = (1 - \exp(-0.05 * \text{time to maturity})) / 0.05;$$

5. The maturity of a contract shall be the latest date when the contract may still be executed.

   If the derivative references the value of another interest rate or credit instrument, the time period shall be determined on the basis of the underlying instrument.

   For options, the maturity shall be the latest contractual exercise date as specified by the contract.

   For a derivative contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the fair value of the contract is zero, the remaining maturity shall equal the time until the next reset date.

6. The delta of options and swaptions may be calculated by the investment firm itself, using an appropriate model. The model shall estimate the rate of change of the option's value with respect to small changes in the market value of the underlying. For transactions other than options and swaptions, the delta shall be 1 for long positions and -1 for short positions.

7. The supervisory factor (SF) for each asset class shall be set according to the following table:

Table 3

Asset class	Supervisory factor
Interest rate	0.5%
Foreign exchange	4%
Credit	1%
Equity single name	32%
Equity index	20%

Commodity and emission allowance	18%

8. The maturity factor (MF) for each transaction shall be determined by the following formula:

$$MF = (\min (M;1 \text{ year}) / 1 \text{ year})^{\wedge 0.5}$$

For unmargined trades, maturity (M) shall be the shorter of one year and remaining maturity of the derivative contract, as determined in the second subparagraph of paragraph 5, but no less than ten business days.

For margined trades, maturity (M) shall be the margin period of risk. The minimum margin period of risk shall be at least ten business days for non-centrally cleared derivative transactions subject to daily margin agreements and five business days for centrally cleared derivative transactions subject to daily margin agreements.

Article 30

Collateral

1. All non-cash collateral posted and received by an investment firm, both in bilateral and cleared transactions referred to in Article 23, shall be subject to haircuts in accordance with the following table:

Table 4

Asset class		Haircut repurchase transactions	Haircut other transactions
Debt securities issued by central governments or central banks	≤ 1 year	0.707%	1%
	> 1 year ≤ 5 years	2.121%	3%
	> 5 years	4.243%	6%
Debt	≤ 1 year	1.414%	2%

securities issued by other entities	> 1 year ≤ 5 years	4.243%	6%
	> 5 years	8.485%	12%
Securitisation positions	≤ 1 year	2.828%	4%
	> 1 year ≤ 5 years	8.485%	12%
	> 5 years	16.970%	24%
Listed equities and convertibles		14.143%	20%
Gold		10.607%	15%
Cash		0%	0%

For the purposes of Table 4, securitisation positions shall not include re-securitisation positions.

2. The value of non-cash collateral posted by the investment firm to its counterparty shall be increased and the value of the non-cash collateral received by the investment firm from its counterparty shall be decreased according to Table 4.

3. Where there is a currency mismatch between the transaction and the collateral received or posted, an additional currency mismatch haircut of 8% shall apply.

Article 31

Netting

For the purposes of this Section, an investment firm may treat perfectly matching contracts included in a netting agreement as if they were a single contract with a notional principal equivalent to the net receipts, may net other transactions subject to novation under which all obligations between the investment firm and its counterparty are automatically amalgamated in such a way that the novation legally substitutes one single net amount for the previous gross obligations, and other transactions where the investment firm ensures to the satisfaction of the competent authority that the following conditions have been met:

(a) a netting contract with the counterparty or other agreement which creates a single legal obligation, covering all included transactions, such that the investment firm would have either a claim to receive or obligation to pay only the net sum of the positive and negative mark-to-market values of included individual transactions in the event a counterparty fails to perform due to any of the following:

(i) default;

(ii) bankruptcy;

(iii) liquidation;

(iv) similar circumstances.

(b) the netting contract does not contain any clause which, in the event of default of a counterparty, permits a non-defaulting counterparty to make limited payments only, or no payments at all, to the estate of the defaulting party, even if the defaulting party is a net creditor;

(c) the investment firm has obtained an independent, written and reasoned legal opinion that, in the event of a legal challenge of the netting agreement, the investment firm's claims and obligations would be equivalent to those referred to in point (a) under the following legal regime:

– the law of the jurisdiction in which the counterparty is incorporated;

– if a foreign branch of a counterparty is involved, the law of jurisdiction in which the branch is located;

– the law that governs the individual transactions in the netting agreement; or

– the law that governs any contract or agreement necessary to effect the netting.

SECTION II

DAILY TRADING FLOW

Article 32

Measuring DTF for the purposes of calculating K-DTF

1. For the purposes of calculating K-DTF, DTF shall be the rolling average of the value of the total daily trading flow, measured at the end of each business day over the previous ***15*** calendar months, excluding the 3 most recent calendar months.

   DTF shall be the average or simple arithmetic mean of the daily measurements for the remaining ***12*** calendar months**.**

   K-DTF shall be calculated within the first 14 days of each ***year***.

2. DTF shall be measured as the sum of the absolute value of buys and the absolute value sells for both cash trades and derivatives in accordance with the following:

   (a) for cash trades, the value is the amount paid or received on each trade.

   (b) for derivatives, the value of the trade is the notional amount of the contract.

3. DTF shall exclude transactions executed by an investment firm providing portfolio management services on behalf of ***collective*** investment ***undertakings***.

   DTF shall include transactions executed by an investment firm in its own name either for itself or on behalf of a client.

4. Where an investment firm has been in operation for less than ***15*** months, it may use business projections to calculate K-DTF subject to the following cumulative requirements:

   (a) historical data is used as soon as it becomes available;

(b) the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU have been positively assessed by the competent authority.

CHAPTER 4a

Article 32a

Prudential treatment of assets exposed to activities associated with environmental or social objectives

1. EBA, after consulting the ESRB, shall assess on the basis of available data and the findings of the Commission's High-Level Expert Group on Sustainable Finance, whether a dedicated prudential treatment of assets exposed to activities associated substantially with environmental or social objectives, in the form of adjusted k-factors or adjusted k-factor coefficients, would be justified from a prudential perspective. In particular, EBA shall investigate the following:

(a) methodological options for assessing exposures of asset classes to activities associated substantially with environmental or social objectives;
(b) specific risk profiles of assets exposed to activities which are associated substantially with environmental or social objectives;
(c) risks related to the depreciation of assets due to regulatory changes such as climate change mitigation;
(d) the potential effects of a dedicated prudential treatment of assets exposed to activities which are associated substantially with environmental or social objectives on financial stability.

2. EBA shall submit a report on its findings to the Commission, the European Parliament and the Council by ... [two years after the date of entry into force of this Regulation].

3. On the basis of the report referred to in paragraph 2, the Commission shall, if appropriate, submit to the European Parliament and the Council a legislative proposal.

PART FOUR

CONCENTRATION RISK

Article 33

Monitoring obligation

1. An investment firm shall monitor and control its concentration risk in accordance with this Part, by means of sound administrative and accounting procedures and robust internal control mechanisms.

2. For the purposes of this Part, the terms credit institution and investment firm shall include private or public undertakings, including their branches, which, were they established in the Union, would be a credit institution or an investment firm as defined in this Regulation and have been authorised in a third country that applies prudential supervisory and regulatory requirements at least equivalent to those applied in the Union.

Article 34

Reporting requirements

An investment firm that does not meet the conditions set out in Article 12(1) shall report the following levels of risk to the competent authorities on at least an annual basis:

(a) level of concentration risk associated with the default of counterparties for trading book exposures, both on an individual counterparty and aggregate basis;

(b) level of concentration risk towards the credit institutions, investment firms and other entities where client money is held;

(c) level of concentration risk towards the credit institutions, investment firms and other entities where client securities are deposited;

(d) level of concentration risk towards the credit institutions where the firm's own cash is deposited; and

(e) level of concentration risk from earnings.

Article 35

Calculation of the exposure value

1. An investment firm that does not meet the conditions set out in Article 12(1) shall calculate the following exposures for the purposes of this Part:

(a) exposures to individual clients which arise on the trading book, by adding those exposures to the net exposures in all financial instruments issued by that individual client.

The net exposure shall be calculated by deducting those underwriting positions which are subscribed or sub-underwritten by third parties based on a formal agreement, reduced by the following factors:

Table 5

working day 0:	100 %
working day 1:	90 %
working days 2 to 3:	75 %
working day 4:	50 %
working day 5:	25 %

after working day 5:	0 %.

An investment firm shall set up systems to monitor and control its underwriting exposures between the time of the initial commitment and the next business day, in the light of the nature of the risks incurred in the markets in question.

(b) exposures to groups of connected clients, by adding all the exposures to the individual clients within the group, which shall be treated as a single exposure.

2. In calculating the exposure to a client or a group of connected clients, an investment firm shall take all reasonable steps to identify underlying assets in relevant transactions and the counterparty of the underlying exposures.

Article 36

Limits to concentration risks

1. An investment firm dealing on own account, whether for itself or on behalf of a client, shall not incur an exposure to an individual client or group of connected clients the value of which exceeds 25% of its regulatory capital, unless it meets the obligation to notify set out in Article 37 and the K-CON capital requirement set out in Article 38.

Where that individual client is a credit institution or an investment firm, or where a group of connected clients includes one or more credit institutions or investment firms, that value shall not exceed 25% of the investment firm's regulatory capital calculated in accordance with Article 11 or EUR 150 million, whichever is higher, provided that the sum of exposure values, to all connected clients that are not credit institutions or investment firms does not exceed 25 % of the investment firms' regulatory capital.

Where the amount of EUR 150 million is higher than 25% of the investment firm's regulatory capital, the value of the exposure shall not exceed 100% of the investment firm's regulatory capital.

2. The limits referred to in paragraph 1 may be exceeded where the following conditions are met:

(a) the investment firm meets the K-CON capital requirement on the excess in respect of the limit laid down in paragraph 1, calculated in accordance with Article 38;

(b) where 10 days or less have elapsed since the excess occurred, the trading-book exposure to the individual client or group of connected clients in question shall not exceed 500% of the investment firm's regulatory capital;

(c) any excesses that have persisted for more than 10 days do not, in aggregate, exceed 600 % of the investment firm's regulatory capital.

Article 37

Obligation to notify

1. Where the limits referred to in Article 36(1) are exceeded, an investment firm shall notify the amount of the excess, the name of the individual client concerned and, where applicable, the name of the group of connected clients concerned, without delay to the competent authorities.

2. Competent authorities may grant the investment firm a limited period to comply with the limit referred to in Article 36(1).

Where the amount of EUR 150 million referred to in Article 36(1) is applicable, the competent authorities may allow the 100% limit of the investment firm's regulatory capital to be exceeded.

Article 38

Calculating K-CON

1. For the purposes of calculating K-CON, the excess referred to in Article 36(2) shall be the exposure to the individual client or group of connected clients in question that arises in the trading book.

2. Where the excess has not persisted for more than 10 days, the K-CON capital requirement shall be 200% of the requirements referred to in paragraph 1.

3. After the period of 10 days calculated from the date on which the excess has occurred, the excess shall be allocated to the appropriate line in Column 1 of Table 6.

4. The K-CON capital requirement shall be the product of the excess multiplied by the corresponding factor in Column 2 of Table 6.

Table 6

Column 1: Excess over the limits (based on a percentage of regulatory capital)	Column 2: Factors
Up to 40 %	200 %
From 40 % to 60 %	300 %
From 60 % to 80 %	400 %
From 80 % to 100 %	500 %
From 100 % to 250 %	600 %
Over 250 %	900 %

5. In order to ensure the uniform application of this Regulation and to take account of developments in financial markets, the Commission shall be empowered to adopt

delegated acts in accordance with Article 54 in order to specify the method for measuring the K-factor in this Article.

Article 39

Procedures to prevent investment firms from avoiding the K-CON capital requirement

1. Investment firms shall not temporarily transfer the exposures exceeding the limit laid down in Article 36(1) to another company, whether within the same group or not, or by undertaking artificial transactions to close out the exposure during the 10-day period referred to in Article 38 and creating a new exposure.

2. Investment firms shall maintain systems which ensure that any transfer referred to in the paragraph 1 is immediately reported to the competent authorities.

Article 40

Exclusions

1. The following exposures shall be excluded from the requirements set out in Article 38(1):

(a) exposures not arising in the trading book;

(b) exposures which are entirely deducted from an investment firm's own funds;

(c) certain exposures incurred in the ordinary course of settlement of payment services, foreign currency transactions, securities transactions and provision of money transmission;

(d) asset items constituting claims on central governments:

(i) exposures to central governments, central banks, public sector entities, international organisations or multilateral development banks (MDBs) and exposures guaranteed by or attributable to such persons;

(ii) exposures to central governments or central banks (other than those referred to under point (i) which are denominated and, where applicable, funded in the national currency of the borrower;

(iii) exposures to, or guaranteed by European Economic Area (EEA) states' regional governments and local authorities.

(e) exposures and default fund contributions to central counterparties.

2. Competent authorities may fully or partially exempt the following exposures from the application of Article 38(1):

(a) covered bonds;

(b) exposures to, or guaranteed by EEA states' regional governments and local authorities;

(c) liquidity requirements held in government securities, provided that, at the discretion of the competent authority they are assessed as investment grade;

(d) exposures to recognised exchanges as defined in Article 4(1)(72) of Regulation (EU) 575/2013.

Article 41

Exemption for commodity and emission allowance dealers

1. The provisions of this Part shall not apply to commodity and emission allowance dealers when all the following conditions are met for intra-group transactions:

(a) the other counterparty is a non-financial counterparty;

(b) both counterparties are included in the same consolidation;

(c) both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures;

(d) the transaction can be assessed as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty or of that group.

2. For the purposes of this Article, counterparties shall be considered to be included in the same consolidation under one of the following conditions:

(a) the counterparties are included in a consolidation in accordance with Article 22 of Directive 2013/34/EU;

(b) the counterparties are included in a consolidation in accordance with Article 4 of Regulation (EC) No 1606/2002;

(c) in relation to a group the parent undertaking of which has its head office in a third country, the counterparties are included in consolidation in accordance with generally accepted accounting principles of a third country determined to be equivalent to IFRS in accordance with Article 3 of Regulation (EC) No 1569/2007 or to accounting standards of a third country the use of which is permitted in accordance with Article 4 of that Regulation.

3. An investment firm shall notify the competent authority before using the exemption referred to in paragraph 1.

The competent authority shall permit the application of the exemption only if all the conditions set out in paragraph 1 are met.

PART FIVE
LIQUIDITY

Article 42
Liquidity requirement

1. An investment firm shall hold an amount of liquid assets equivalent to at least one third of the fixed overhead requirements calculated in accordance with Article 13(1).

   For the purposes of the first subparagraph, liquid assets shall be any of the following:

   (a) the assets referred to in Articles 10 to 13 ***and 15*** of Commission Delegated Regulation (EU) 2015/61;

   (b) unencumbered cash***;***

   (ba) unencumbered short term deposits at a credit institution giving the investment firm ready access to liquidity;

   (bb) shares, depositary receipts, ETFs, certificates and other similar financial instruments, for which there is a liquid market within the meaning of Article 14 of Regulation (EU) No 600/2014 on markets in financial instruments, subject to a haircut of 50%;

   (bc) other financial instruments, for which there is a liquid market within the meaning of Article 14 of Regulation (EU) No 600/2014 on markets in financial instruments, subject to a haircut of 50%.

2. For the purposes of paragraph 1, an investment firm that meets the conditions set out in Article 12(1) may also include receivables from trade debtors and fees or commissions receivable within 30 days in their liquid assets, where those receivables comply with the following conditions:

(a) they account for up to one third of the minimum liquidity requirements as referred to in paragraph 1;

(b) they are not to be counted towards any additional liquidity requirements required by the competent authority for firm-specific risks in accordance with Article 36(2)(k) of Directive (EU) ----/--[IFD];

(c) they are subject to a haircut of 50%.

Article 43

Temporary reduction of the liquidity requirement

1. An investment firm may, in exceptional circumstances, reduce the amount of liquid assets held. Where such reduction occurs, the investment firm shall notify the competent authority without delay.

2. Compliance with the liquidity requirement set out in Article 42(1) shall be restored within 30 days of the original reduction.

2a. EBA, in consultation with ESMA, shall issue guidelines to specify what constitutes exceptional circumstances for the purpose of paragraph 1.

Article 44

Customer guarantees

An investment firm shall increase their liquid assets by 1.6% of the total amount of guarantees provided to customers.

PART SIX

DISCLOSURE BY INVESTMENT FIRMS

Article 45

Scope

1. An investment firm that does not meet the conditions set out in Article 12(1) shall publicly disclose the information specified in this Part on the same day it publishes its annual financial statements.

2. An investment firm that meets the conditions set out in Article 12(1) which issues Additional Tier 1 instruments shall publicly disclose the information set out in Articles 46, 48, 49 and 50 on the same day it publishes its annual financial statements.

3. An investment firm shall publicly disclose the information set out in Articles 47 and 51 where it meets the requirements set out in Article 23 of Directive (EU) ----/--[IFD].

   The investment firm that meets the requirements set out in Art 23 of Directive (EU) ----/--[IFD] shall disclose the information as of the financial year following the financial year in which the assessment referred to in Article 23(1) of Directive (EU) ----/--[IFD] took place.

4. An investment firm may determine the appropriate medium and location to comply effectively with the disclosure requirements referred to in paragraphs 1 and 2. All disclosures shall be provided in one medium or location where possible. If the same or similar information is disclosed in two or more media, a reference to the synonymous information in the other media shall be included within each medium.

Article 46

Risk management objectives and policies

An investment firm shall disclose its risk management objectives and policies for each separate category of risk in Parts Three to Five in accordance with Article 45, including the strategies and processes to manage those risks and a risk statement approved by the management body succinctly describing the investment firm's overall risk profile associated with the business strategy.

Article 47

Governance

An investment firm shall disclose the following information regarding internal governance arrangements, in accordance with Article 45:

(a) the number of directorships held by members of the management body;

(b) the policy on diversity with regard to the selection of members of the management body, its objectives and any relevant targets set out in that policy, and the extent to which those objectives and targets have been achieved;

(c) whether or not the investment firm has set up a separate risk committee and the number of times the risk committee has met annually.

Article 48

Own funds

1. An investment firm shall disclose the following information regarding its own funds, in accordance with Article 45:

(a) a full reconciliation of Common Equity Tier 1 items, Additional Tier 1 items, Tier 2 items and applicable filters and deductions applied to own funds of the investment firm and the balance sheet in the audited financial statements of the investment firm;

(b) a description of the main features of the Common Equity Tier 1 and Additional Tier 1 instruments and Tier 2 instruments issued by the investment firm;

(c) the full terms and conditions of all Common Equity Tier 1, Additional Tier 1 and Tier 2 instruments;

(d) separate disclosure of the nature and amounts of the prudential filters and deductions applied as well as of items not deducted in relation to own funds;

(e) a description of all restrictions applied to the calculation of own funds in accordance with this Regulation and the instruments, prudential filters and deductions to which those restrictions apply;

2. EBA, in consultation with ESMA, shall develop draft implementing technical standards to specify templates for disclosure under points (a), (b), (d) and (e) of paragraph 1.

EBA shall submit those draft implementing technical standards to the Commission by [nine months from the date of entry into force of this Regulation].
Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

Article 49

Capital requirements

An investment firm shall disclose the following information regarding its compliance with the requirements laid down in Article 11(1) and in Article 22 of Directive (EU) ----/--[IFD], in accordance with Article 45:

(a) a summary of the investment firm's approach to assessing the adequacy of its internal capital to support current and future activities;

(b) upon demand from the competent authority, the result of the investment firm's internal capital adequacy assessment process, including the composition of the additional own funds based on the supervisory review process as referred to in Article 36(2)(a) of Directive (EU) ----/--[IFD] ;

(c) the capital requirements calculated separately, in accordance with each K-factor applicable to the investment firm as set out in Article 15, and in aggregate form, based on the sum of the applicable K-factors;

(d) the fixed overheads requirement determined in accordance with Article 13.

Article 50

Disclosure of return on assets

An investment firm shall disclose its return on assets calculated as its net profit divided by its total balance sheet in its annual report as referred to in Article 45.

Article 51

Remuneration policy and practices

Investment firms shall disclose the following information regarding their remuneration policy and practices***, including aspects related to gender neutrality,*** for those categories of staff whose professional activities have a material impact on investment firm's risk profile, in accordance with Article 45;

(a) the most important design characteristics of the remuneration system, including the level of variable remuneration and criteria for its award, pay out in instruments policy, deferral policy and vesting criteria;

(b) the ratios between fixed and variable remuneration set in accordance with Article 28(2) of Directive (EU) ----/--[IFD];

(c) aggregate quantitative information on remuneration, broken down by senior management and members of staff whose actions have a material impact on the risk profile of the investment firm, indicating the following:

i) the amounts of remuneration awarded in the financial year, split into fixed remuneration including a description of the fixed components, and variable remuneration, and the number of beneficiaries;

ii) the amounts and forms of awarded variable remuneration, split into cash, shares, share-linked instruments and other types separately for the part paid upfront and the deferred part;

iii) the amounts of deferred remuneration awarded for previous performance periods, split into the amount due to vest in the financial year and the amount due to vest in subsequent years***:***

a) the amount of deferred remuneration due to vest in the financial year, and that is reduced through performance adjustments;

b) the guaranteed variable remuneration awards during the financial year, and the number of beneficiaries of those awards;

c) the severance payments awarded in previous periods, that have been paid out during the financial year;

d) the amounts of severance payments awarded during the financial year, split into paid upfront and deferred, the number of beneficiaries of those payments and highest payment that has been awarded to a single person;

▌▌(f) information on whether the investment firm benefits from a derogation laid down in Article 30(4) of Directive (EU) ----/--[IFD].

For the purposes of point (f), investment firms that benefit from such a derogation shall indicate whether that derogation has been granted on the basis of point (a) or point (b) of Article 30(4) of Directive (EU) ----/--[IFD], or both. They shall also indicate for which of the remuneration principles they apply the derogation(s), the number of staff members that benefit from the derogation(s) and their total remuneration, split into fixed and variable remuneration.

This Article shall be without prejudice to the provisions set out in Regulation (EU) 2016/679.

Article 51a

Investment policy

1. ***Investment firms shall disclose, in accordance with Article 45, the following information regarding their investment policy:***

(a) the participation rate for all direct and indirect holdings where beneficial ownership exceeds 5% of any class of voting equity securities, broken down by Member State and sector;

(b) the complete voting behaviour at shareholders' meetings, in particular the percentage of approval of proposals put forward by the management of the entities held in accordance with point (a);

(c) the recurrence to proxy advisor firms;

(d) the voting guidelines regarding the entities held according to point (a).

The disclosure requirement referred to in point (b) shall not apply if the contractual arrangements of all shareholders represented by the investment firm at the shareholders' meeting do not authorise the investment firm to vote on their behalf unless express voting orders are given by the shareholders after receiving the meeting's agenda.

2. Paragraph 1 shall not apply to investment firms which meet the criteria referred to in paragraph 4 of Article 30 of Directive (EU) ----/--[IFD]/

3. EBA, in consultation with ESMA, shall develop draft implementing technical standards to specify templates for disclosure under paragraph 1. In order to avoid divergence of application between this Regulation and Directive (EU) 2017/828, EBA shall, when developing those technical standards, take into account Article 3g of that

Directive.

EBA shall submit those draft implementing technical standards to the Commission by ... [nine months from the date of entry into force of this Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

Article 51b

ESG-related risks

From ... [3 years after the date of entry into force of this Regulation], investment firms which do not meet the criteria referred to in paragraph 4 of Article 30 of Directive (EU) ----/--[IFD] shall disclose information on ESG-related risks, physical risks and transition risks as defined in the report referred to in [Article 32a (new) Directive (EU) ----/--[IFD] Article 98(7c) of Directive 2013/36/EU.

For the purpose of the first subparagraph, the information shall be disclosed annually the first year and biannually the second year and thereafter.

PART SEVEN

REPORTING BY INVESTMENT FIRMS

Article 52

Reporting requirements

1. An investment firm shall submit an annual report to the competent authorities including all of the following information:

   (a) level and composition of own funds;

   (b) capital requirements;

   (c) capital requirement calculations;

   (d) the level of activity in respect of the conditions set out in Article 12(1), including the balance sheet and revenue breakdown by investment service and applicable K-factor;

   (e) concentration risk;

   (f) liquidity requirements.

2. By way of derogation from paragraph 1, an investment firm that meets the conditions in Article 12(1) shall not be required to report the information specified in points (e) and (f).

2a. Upon request from the competent authority, an investment firm shall report to that competent authority the total remuneration for each member of its management body or senior management.

3. EBA, in consultation with ESMA, shall develop draft implementing technical standards to specify the formats, reporting dates, definitions and the IT solutions to be applied for the reporting referred to in paragraph 1, which take into account the

difference in granularity of information submitted by an investment firm that meets the conditions in Article 12(1).

EBA shall develop the implementing technical standards referred to in the first subparagraph by [nine months from the date of entry into force of this Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in this paragraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

Article 53

Reporting requirements for investment firms carrying out activities referred to in Article 4(1)(1)(b) of Regulation (EU) No 575/2013

1. Investment firms which do not meet the conditions of Article 12(1) and which carry out any of the activities referred to in Article 4(1)(1)(b) of Regulation (EU) No 575/2013, shall verify the size of their total assets on a monthly basis and report quarterly that information to the competent authority and to the EBA.

2. Where an investment firm referred to in paragraph 1 is part of a group in which one or more other undertakings is an investment firm which carries out any of the activities referred to in Article 4(1)(1)(b) of Regulation (EU) No 575/2013, such investment firms shall verify the size of their total assets on a monthly basis and inform each other. Those investment firms shall then report quarterly their combined total assets to the relevant competent authorities and to the EBA.

3. Where the average of monthly total assets of the investment firms referred to in paragraphs 1 and 2 reaches any of the thresholds set out in Article 4(1)(1)(b) of Regulation (EU) No 575/2013 calculated over a period of twelve consecutive months, EBA shall notify those investment firms and the authorities competent for granting authorisation in accordance with Article [8a] of Directive 2013/36/EU thereof.

4. EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify further the obligation to provide information to the relevant competent authorities referred to in paragraphs 1 and 2 in order to allow effective monitoring of the thresholds set out in paragraphs 1 (a) and (b) of Article [8a] of Directive 2013/36/EU.

EBA shall submit those draft technical standards to the Commission by [1st January 2019].

Power is conferred on the Commission to adopt the regulatory technical standards referred to in this paragraph, in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

PART EIGHT

DELEGATED AND IMPLEMENTING ACTS

Article 54

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 4(2), 12(5), 15(5) and 38(5) shall be conferred on the Commission for an indeterminate period of time from [date of entry into force of this Regulation].

3. The delegation of power referred to in Articles 4(2) and 15(5) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Articles 4(2) and 15(5) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of [two months] of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not

object. That period shall be extended by [two months] at the initiative of the European Parliament or of the Council.

Article 55

Implementing Acts

The specification of templates for disclosure prescribed in Article 48(2) and of formats, reporting dates, definitions and IT solutions to be applied to reporting as prescribed in Article 52(2) shall be adopted as implementing acts in accordance with the examination procedure referred to in Article 56(2).

Article 56

Committee procedure

1. The Commission shall be assisted by the European Banking Committee established by Commission Decision 2004/10/EC[1]. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council[2].

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

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[1] Commission Decision 2004/10/EC of 5 November 2003 establishing the European Banking Committee (OJ L 3, 7.1.2004, p. 36).

[2] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

PART NINE
TRANSITIONAL PROVISIONS, REPORTS, REVIEWS AND AMENDMENTS

TITLE I
TRANSITIONAL PROVISIONS

Article 57
Transitional provisions

1. Articles 42 to 44 and 45 to 51 shall apply to commodity and emission allowance dealers from [five years from the date of application of this Regulation].

2. Until five years from the date of application of this Regulation or the date of application of the provisions referred to in Article 22(1)(b) and (c) pursuant to [Chapters 1(a) and 1(b) of Title IV of Part Three of the Regulation No (EU) No 575/2013, in accordance with Article 1(84) of the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements and amending Regulation (EU) No 648/2012], whichever is the earlier, an investment firm shall apply the requirements set out in Title IV of Part Three of Regulation (EU) No 575/2013.

3. By way of derogation from Article 11, investment firms may limit their capital requirements for a period of five years from [the date of application of this Regulation] as follows:

(a) twice the relevant capital requirement pursuant to Chapter 1 of Title 1 of Part Three of Regulation (EU) No 575/2013 had it continued to be subject to that Regulation;

(b) twice the applicable fixed overhead requirement set out in Article 13 of this Regulation where an investment firm was not in existence on or before [date of application of this Regulation];

(c) twice the applicable initial capital requirement set out in Title IV of Directive 2013/36/EU on [date of application of this Regulation] where an undertaking was subject only to an initial capital requirement until that point in time.

Article 58

Derogation for undertakings referred to in Article 4(1)(1)(b) of Regulation (EU) 575/2013

Investment firms which on the date of entry into force of this Regulation meet the conditions of Article 4(1)(1)(b) of Regulation (EU) 575/2013 and have not yet obtained authorisation as credit institutions in accordance with Article 8 of Directive 2013/36/EU shall continue to be subject to Regulation (EU) 575/2013 and to Directive 2013/36/EU.

TITLE II
REPORTS AND REVIEWS

Article 59

Review clause

1. By [3 years from the date of entry into force of this Regulation], the Commission shall carry out a review ***and submit a report, together with a legislative proposal, if appropriate, on*** the following:

(a) the conditions for investment firms to qualify as small and non-interconnected firms in accordance with Article 12;

(b) the methods for measuring the K-factors in Title II of Part Three and in Article 38;

(c) the coefficients in Article 15(2);

(d) the provisions set out in Articles 42 to 44;

(e) the provisions set out in Section 1 of Chapter 4 of Title II of Part Three;

(f) the application of Part Three to commodity and emission allowance dealers***;***

(fa) the modification of the definition of credit institution in Regulation (EU) No 575/2013 as a result of point (a) of Article 60(2) of this Regulation and potential unintended negative consequences;

(fb) the provisions set out in Article 46 and 47 of Regulation (EU) No 600/2014 and their alignment with a consistent framework for equivalence in financial services;

(fc) the thresholds set out in Article 12(1) of this Regulation;

(fd) the application of the standards of the Fundamental Review of the Trading Book to investment firms;

(fe) the method of measuring the value of a derivative in point (b) of Article 32(2) and point (b) of Article 20(2), and the appropriateness of introducing an alternative metric and/or calibration;

(ff) the appropriateness of not applying restrictions to ancillary services undertakings as defined in point (18) of Article 4(1) of Regulation (EU) No 575/2013;

(fg) the need to develop macro-prudential tools to address specific risks that investment firms could pose to financial stability.

2. By [3 years from the date of ***application*** of this Regulation], the Commission shall submit ***a comprehensive*** report ***of application of this Regulation*** to the European Parliament and the Council▌.

TITLE III
AMENDMENTS

Article 60
Amendments of Regulation (EU) No 575/2013

Regulation (EU) No 575/2013 is amended as follows:

1. In the title, the words ‘and investment firms’ are deleted.

2. Article 4(1) is amended as follows:

(a) point (1) is replaced by the following:

‘‘(1) ‘credit institution’ means an undertaking the business of which consists of any of the following:

(a) to take deposits or other repayable funds from the public and to grant credits for its own account;

(b) to carry out any of the activities referred to in points (3) and (6) of Section A of Annex I of Directive 2014/65/EU, where one of the following applies, but the undertaking is not a commodity and emission allowance dealer, a collective investment undertaking or an insurance undertaking:

i) the total value of the assets of the undertaking exceeds EUR 30 billion, or

ii) the total value of the assets of the undertaking ***does not exceed*** EUR 30 billion, and the undertaking is part of a group in which the combined total value of the assets of all undertakings in the group that carry out any of the activities referred to in points (3) and (6) of Section A of Annex I of Directive 2014/65/EU and have total assets ***that do not exceed*** EUR 30 billion exceeds EUR 30 billion, or

iii) the total value of the assets of the undertaking ***does not exceed*** EUR 30 billion, and the undertaking is part of a group in which the combined total value of the assets of all undertakings in the group that carry out any of the activities referred to in points (3) and (6) of Section A of Annex I of Directive 2014/65/EU exceed EUR 30 billion, where ***the supervisors that would be responsible for the authorisation under Article 8a of Directive 2013/36/EU and*** the consolidating supervisor in consultation with the supervisory college so decides in order to address potential risks of circumvention and potential risks for the financial stability of the Union.

For the purpose of points (ii) and (iii), when the undertaking is part of a third country group, the total assets of each branch of the third country group authorised in the Union are included in the combined total value of the assets of all undertakings in the group.

For the purposes of this Article, all thresholds are calculated at the highest level of consolidation.

(b) point (2) is replaced by the following:

''(2) 'investment firm' means a person as defined in Article 4(1)(1) of Directive 2014/65/EU, which is authorised under that Directive, excluding a credit institution;''.

(c) point (3) is replaced by the following:

(3) ‘institution’ means a credit institution authorised under Article 8 of Directive 2013/36/EU or an undertaking referred to in Article 8a(3) of Directive 2013/36/EU;’’.

(d) point (4) is deleted;

(e) point (26) is replaced by the following:

‘‘(26) ‘financial institution’ means an undertaking other than an institution, the principal activity of which is to acquire holdings or to pursue one or more of the activities listed in points 2 to 12 and point 15 of Annex I to Directive 2013/36/EU, including an investment firm, a financial holding company, a mixed financial holding company, an investment holding company, a payment institution within the meaning of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market, and an asset management company, but excluding insurance holding companies and mixed-activity insurance holding companies as defined in point (g) of Article 212(1) of Directive 2009/138/EU;’’.

(f) point (51) is replaced by the following:

‘‘(51) ‘initial capital’ means the amount and types of own funds specified in Article 12 of Directive 2013/36/EU;’’;

(g) point (145) is added:

‘‘(145) ‘commodity and emission allowance dealers’ mean undertakings the main business of which consists exclusively of the provision of investment services or activities in relation to commodity derivatives or commodity derivatives contracts referred to in points 5, 6, 7, 9 and 10, derivatives of emission allowances referred to in point 4, or emission allowances referred to in point 11 of Section C of Annex I to Directive 2014/65/EU;’’.

3. Article 6 is amended as follows:

(a) paragraph 4 is replaced by the following:

‘‘(4) Credit institutions shall comply with the requirements laid down in Parts Six and Seven on an individual basis.’’.

(b) paragraph 5 is deleted.

4. In Part I, Title II, Chapter 2 on Prudential consolidation, a new Article 10a is inserted:

‘‘For the purposes of application of this Chapter, parent financial holding companies in a Member State and Union parent financial holding companies shall include investment firms where such investment firms are parent undertakings of an institution.’’.

5. In Article 11, paragraph 3 is replaced by the following:

‘‘3. EU parent institutions, institutions controlled by an EU parent financial holding company and institutions controlled by an EU parent mixed financial holding company shall comply with the obligations laid down in Part Six on the basis of the consolidated situation of that parent institution, financial holding company or mixed financial holding company, if the group comprises one or more credit institutions or investment firms that are authorised to provide the investment services and activities listed in points (3) and (6) of Section A of Annex I to Directive 2004/39/EC’’.

6. Article 15 is deleted.

7. Article 16 is deleted.

8. Article 17 is deleted.

9. In Article 81, point (a) of paragraph 1 is replaced by the following:

‘‘(a) the subsidiary is one of the following:

(i) an institution;

(ii) an undertaking that is subject by virtue of applicable national law to the requirements of this Regulation and Directive 2013/36/EU;

(iii) an investment firm;''.

10. In Article 82, point (a) of paragraph 1 is replaced by the following:

''(a) the subsidiary is one of the following:

(i) an institution;

(ii) an undertaking that is subject by virtue of applicable national law to the requirements of this Regulation and Directive 2013/36/EU;

(iii) an investment firm;''.

11. Article 93 is amended as follows:

(a) paragraph 3 is deleted.

(b) paragraphs 4, 5 and 6 are replaced by the following:

''4. Where control of an institution falling within the category referred to in paragraph 2 is taken by a natural or legal person other than the person who controlled the institution previously, the amount of own funds of that institution shall attain the amount of initial capital required.

5. Where there is a merger of two or more institutions falling within the category referred to in paragraph 2, the amount of own funds of the institution resulting from the merger shall not fall below the total own funds of the merged institutions at the time of the merger, as long as the amount of initial capital required has not been attained.

6. Where competent authorities consider it necessary to ensure the solvency of an institution that the requirement laid down in paragraph 1 is met, the provisions laid down in paragraphs 2 to 4 shall not apply.''.

12. Section 2 of Chapter I, Title I, Part Three is deleted on [5 years from the date of application of Regulation (EU) ____/___IFR].

12a. ***In Article 119, paragraph 5 is replaced by the following:***

"5.Exposures to financial institutions authorised and supervised by the competent authorities and subject to prudential requirements comparable to those applied to institutions in terms of robustness shall be treated as exposures to institutions. ***For the purpose of this paragraph, the prudential requirements defined in Regulation (EU) ---/--- [IFR] shall be considered comparable to those applied to institutions in terms of robustness.***"

13. In Article 197, point (c) of paragraph 1 replaced by the following:

‘‘(c) debt securities issued by institutions and investment firms, which securities have a credit assessment by an ECAI which has been determined by EBA to be associated with credit quality step 3 or above under the rules for the risk weighting of exposures to institutions under Chapter 2;’’.

14. In Article 202, the introductory phrase is replaced by the following:

‘‘An institution may use institutions, investment firms, insurance and reinsurance undertakings and export credit agencies as eligible providers of unfunded credit protection which qualify for the treatment set out in Article 153(3) where they meet all the following conditions:’’.

15. Article 388 is deleted.

16. In Article 456(1), points (f) and (g) are deleted.

17. In Article 493, paragraph 2 is deleted.

18. Article 498 is deleted.

19. In Article 508, paragraphs 2 and 3 are deleted.

Article 61

Amendments to Regulation (EU) No 600/2014

Regulation (EU) No 600/2014 is amended as follows:

(-1) The title of Title III is replaced by the following:

"TRANSPARENCY FOR SYSTEMATIC INTERNALISERS AND INVESTMENT FIRMS TRADING OTC ***AND TICK SIZE REGIME FOR SYSTEMATIC INTERNALISERS***"

(-1a) The following Article is inserted:

"Article 17a

Tick sizes

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."

(-1b) In Article 40(1), the second subparagraph is replaced by the following:

"A prohibition or restriction may apply in circumstances, or be subject to exceptions, specified by ESMA ***and may directly be applied to a management company pursuant to point (c) of Article 2(1) of Directive 2009/65/EC and to an alternative investment fund manager pursuant to point (b) of Article 4(1) of Directive 2011/61/EU***."

(-1c) In Article 42(2), the third subparagraph is replaced by the following:

"A prohibition or restriction may apply in circumstances, or be subject to exceptions, specified by the competent authority ***and may directly be applied to a management company pursuant to point (c) of Article 2(1) of Directive 2009/65/EC and to an alternative investment fund manager pursuant to point (b) of Article 4(1) of Directive 2011/61/EU***."

(1) Article 46 is amended as follows:

(-a) paragraph 1 is replaced by the following:

"1. A third-country firm may provide investment services or perform investment activities ***listed in points (1), (2), (4), (5), (7), (8) or (9) of Section A of Annex I to Directive 2014/65/EU*** with or without any ancillary services to eligible counterparties and to professional clients within the meaning of Section I of Annex II to Directive 2014/65/EU established throughout the Union without the establishment of a branch where it is registered in the register of third-country firms kept by ESMA in accordance with Article 47."

(a) in paragraph 2, the following point (d) is added:

''(d) the firm has established the necessary arrangements and procedures to report the information set out in paragraph 6a.'';

(b) the following paragraph 6a is added:

''6a. Third-country firms providing services or performing activities in accordance with this Article shall, on an annual basis, inform ESMA about the following:

(a) the scale and scope of the services and activities carried out by the firms in the Union;

(b) the turnover and the aggregated value of the assets corresponding to the services and activities referred to in point (a);

(c) whether investor protection arrangements have been taken, and a detailed description thereof;

(d) the risk management policy and arrangements applied by the firm to the carrying out of the services and activities referred to in point (a).'';

(c) paragraph 7 is replaced by the following:

''7. ESMA, in consultation with EBA, shall develop draft regulatory technical standards to specify the information that the applicant third-country firm is to provide in the application for registration referred to in paragraph 4 and the information to be reported in accordance with paragraph 6a.
ESMA shall submit those draft regulatory technical standards to the Commission by [date to be inserted].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.'';

(d) the following paragraph 8 is added:

''8. ESMA shall develop draft implementing technical standards to specify the format in which the application for registration referred to in paragraph 4 is to be submitted and the information referred to in paragraph 6a is to be reported. ESMA shall submit those draft implementing technical standards to the Commission by [date to be inserted].

Power is delegated to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.''.

(2) Article 47 is amended as follows:

(a) the first subparagraph of paragraph 1 is replaced by the following:

''The Commission may adopt a decision in accordance with the ▌ procedure referred to in Article ***50*** in relation to a third country stating that the legal and supervisory arrangements of that third country ensure all of the following:

(a) that firms authorised in that third country comply with legally binding prudential***, organisational, internal control*** and business conduct requirements which have equivalent effect to the requirements set out in this Regulation, in Directive 2013/36/EU, in Regulation (EU) No 575/2013, in Directive (EU) ----/--[IFD] and in Regulation (EU)----/---[IFR] and in Directive 2014/65/EU and in the implementing measures adopted under those Regulations and Directives;

(b) that firms authorised in that third country are subject to effective supervision and enforcement ensuring compliance with the applicable legally binding prudential***, organisational, internal control*** and business conduct requirements; and

(c) that the legal framework of that third country provides for an effective equivalent system for the recognition of investment firms authorised under third-country legal regimes;

Where the services provided and the activities performed by third-country firms in the Union following the adoption of the decision referred to in the first subparagraph are likely to be of systemic importance for the Union, the legally binding prudential***, organisational, internal control*** and business conduct requirements referred to in the first subparagraph may only be considered to have equivalent effect to the requirements set out in the acts referred to in that subparagraph after a detailed and granular assessment. For ***the purpose of that assessment***, the Commission shall also assess and take into account the supervisory convergence between the third country concerned and the Union.
When adopting the decision referred to in the first subparagraph, the Commission shall take into account whether the third country is identified as a non-cooperative jurisdiction for tax purposes under the relevant Union policy or as a high-risk third country pursuant to Article 9(2) of Directive (EU) 2015/849.";

(b) in paragraph 2, point (c) is replaced by the following:

''(c) the procedures concerning the coordination of supervisory activities including investigations and on-site inspections.'';

(ba) the following paragraph is inserted:

"2a. The Commission is empowered to adopt delegated acts in accordance with Article 50 clarifying the conditions that the provision of services or performance of activities are required to fulfil in order to be considered as likely to be of systemic importance for the Union."

(bb) paragraph 4 is replaced by the following:

"***4.*** A third-country firm may no longer use the rights under Article 46(1) where the Commission adopts a decision in accordance with the ▌ procedure referred to in Article ***50*** withdrawing its decision under paragraph 1 of this Article in relation to that third country."

(c) the following paragraph 5 is added:

‘‘5. ESMA shall monitor the regulatory and supervisory developments, the enforcement practices and other relevant market developments in third countries for which equivalence decisions have been adopted by the Commission pursuant to paragraph 1 in order to verify whether the conditions on the basis of which those decisions have been taken are still fulfilled. The Authority shall submit a ▌ report on its findings to the Commission***, the European Parliament and the Council*** on an annual basis.’’.

(ca) the following paragraph 5a is added:

“5a. The Commission shall, on an annual basis, provide the European Parliament with a list of the decisions on equivalence granted, suspended or withdrawn, including an explanation on the rationale supporting those decisions.”

Article 62

Amendment to Regulation (EU) No 1093/2010

Regulation (EU) No 1093/2010 is amended as follows:

(1) In Article 4(2), the following point (v) is added:

‘‘(v) with regard to Regulation (EU) ----/---- [IFR] and Directive (EU)----/--[IFD], competent authorities as defined in Article 3(5) of Directive (EU)----/--[IFD].’’.

PART TEN

FINAL PROVISIONS

Article 63

Entry into force and date of application

1. This Regulation shall enter into force on the […] day following that of its publication in the Official Journal of the European Union.

2. This Regulation shall apply from [18 months after the date of entry into force].

2a. Notwithstanding paragraph 2, point (-1) of Article 61(1) shall apply from ... [20 days after the day of publication of this Regulation in the Official Journal of the European Union].

3. For the purposes of prudential requirements of investment firms, references to Regulation (EU) No 575/2013 in other Union acts shall be construed as references to this Regulation.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at …,

For the European Parliament *The President*	*For the Council* *The President*