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## COVER NOTE

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	31 October 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	C(2016) 6867 final
Subject:	COMMISSION DELEGATED REGULATION (EU) No .../.. of 31.10.2016 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for additional liquidity outflows corresponding to collateral needs resulting from the impact of an adverse market scenario on an institution's derivatives transactions

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Delegations will find attached document C(2016) 6867 final.

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Encl.: C(2016) 6867 final

Brussels, 31.10.2016  
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**COMMISSION DELEGATED REGULATION (EU) No .../..**

**of 31.10.2016**

**supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for additional liquidity outflows corresponding to collateral needs resulting from the impact of an adverse market scenario on an institution's derivatives transactions**

(Text with EEA relevance)

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE DELEGATED ACT**

Article 423(3) of Regulation (EU) No 575/2013 ('the Regulation') empowers the Commission to adopt, following submission of draft standards by the European Banking Authority (EBA), and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, delegated acts specifying the conditions of application in relation to the notion of materiality and the methods for measurement of additional collateral outflows resulting from the impact of an adverse market scenario on institutions' derivatives transactions, financing transactions and other contracts.

In accordance with Article 10(1) of Regulation (EU) No 1093/2010 establishing the EBA, the Commission must decide within three months of receipt of the draft standards whether to endorse the drafts submitted. The Commission may also endorse the draft standards in part only, or with amendments, where the Union's interests so require, having regard to the specific procedure laid down in those Articles.

The EBA submitted a first draft RTS to the Commission for endorsement on 28 March 2014, proposing to take flows of collateral into account on a gross basis contrary to the Basel Committee's net approach. The assessment of the draft RTS was delayed pending the adoption of the Commission's delegated act on the liquidity coverage ratio. The Commission informed the EBA about its intention not to endorse the methodology recommended by the EBA on 3 December 2015 as it involved an excessively conservative approach. Indeed, the potential benefits in terms of financial stability were incurred at the cost of disproportionate obligations for institutions. These costs would have inter-alia taken the form of an unjustified distortion to the level-playing field in this internationally competitive area as the EBA approach was more demanding than the approaches implemented by other leading jurisdictions. In addition, the fact that 80% or more of collateral received by banks is cash or very high quality sovereign debt provides a good argument for allowing netting as permitted under the Basel Committee's net approach. Eventually, due to last-minute changes, the EBA procedure for adoption of this first draft RTS did not involve consultation and impact assessment of the retained option. During the public consultation on the RTS, many respondents indicated their preference for close alignment with Basel and emphasised the importance of a level-playing field. Taken together, there were strong substantive and procedural grounds not to endorse the first draft submitted by the EBA. The Commission informed the EBA that it was open to endorsing an amended draft RTS based on the Basel Committee's approach in its letter of 3 December 2015. The EBA submitted such an amended draft RTS to the Commission for endorsement on 2 May 2016.

### **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

In accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1093/2010, the EBA has carried out a public consultation on the draft technical standards submitted to the Commission in accordance with Article 423(3) of the Regulation. A consultation paper was published on the EBA internet site on 23 May 2013, and the consultation closed on 14 August

2013. Moreover, the EBA invited the EBA's Banking Stakeholder Group set up in accordance with Article 37 of Regulation (EU) No 1093/2010 to provide advice on them.

Together with the draft technical standards, the EBA has submitted an explanation on how the outcome of these consultations has been taken into account in the development of the final draft technical standards submitted to the Commission.

Together with the draft technical standards, and in accordance with the third subparagraph of Article 10(1) of Regulation No (EU) 1093/2010, the EBA has submitted its Impact Assessment, including its analysis of the costs and benefits, related to the draft technical standards submitted to the Commission. This analysis is available at <http://www.eba.europa.eu/regulation-and-policy/liquidity-risk/draft-regulatory-technical-standards-on-additional-liquidity-outflows>, pages 22-32 of the Final Draft Regulatory Technical Standards (RTS) package.

### 3. LEGAL ELEMENTS OF THE DELEGATED ACT

The provisions of this delegated act determine the method for the measurement of the additional collateral outflows resulting from the impact of an adverse market scenario on institutions' derivative transactions, as a component of the liquidity coverage requirement specified in Commission Delegated Regulation (EU) No 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.

The method of calculation included in this delegated act (which is based on the amended draft RTS submitted by the EBA) is based on the Historical Look Back Approach ('HLBA') for market valuation changes developed by the Basel Committee on Banking Supervision ('BCBS') for determining these additional collateral outflows in paragraph 123 of the BCBS's document entitled 'Basel III: The Liquidity Coverage Ratio and liquidity risk monitoring tools' and published in January 2013 and as further elaborated by paragraph 10 of the BCBS's document entitled "Frequently Asked Questions on Basel III's January 2013 Liquidity Coverage Ratio framework, April 2014".

In addition, this delegated act determines the threshold above which an institution's derivative transactions must be considered material for the purposes of the first subparagraph of Article 423(3) of Regulation (EU) No 575/2013 and therefore must fall within the scope of application of the delegated act.

# COMMISSION DELEGATED REGULATION (EU) No .../..

of 31.10.2016

## **supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for additional liquidity outflows corresponding to collateral needs resulting from the impact of an adverse market scenario on an institution's derivatives transactions**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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<sup>1</sup>, and in particular the fourth subparagraph of Article 423(3) thereof,

Whereas:

- (1) Pursuant to Article 423(3) of Regulation (EU) No 575/2013, institutions are to add an additional outflow corresponding to collateral needs that would result from the impact of an adverse market scenario on the institution's derivatives transactions, financing transactions and other contracts if material. Given considerations of materiality, there is an urgency to specify an additional outflow corresponding to collateral needs that would result from the impact of an adverse market scenario on the institution's derivatives transactions while the materiality of collateral needs that would result from the impact of an adverse market scenario on the institution's financing transactions and other contracts will be considered in a next step.
- (2) Given that Article 423(3) of Regulation (EU) No 575/2013 refers to collateral needs, the rules to be introduced should be restricted to derivatives transactions that are collateralised, including those that mature within 30 days.
- (3) In order to ensure a level playing field for institutions and derivative markets, the calculation of the additional collateral outflows should be based on the Historical Look Back Approach for market valuation changes developed by the Basel Committee on Banking Supervision ('BCBS') for determining those additional collateral outflows, which uses for that purpose the largest aggregated cumulative net collateral outflow or inflow realised at the end of all 30-day periods during the preceding 24 months at the portfolio level.

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<sup>1</sup> OJ L 176, 27.6.2013, p. 1.

- (4) The European Banking Authority ('EBA') submitted to the Commission draft regulatory technical standards. However, in accordance with the procedure set out in Article 10 of Regulation (EU) No 1093/2010, the Commission informed the EBA about its intention not to endorse those draft regulatory technical standards, explaining the reasons for the non endorsement. The EBA resubmitted the draft regulatory technical standards in the form of a formal opinion accepting the Commission's proposed approach strictly based on the BCBS's Historical Look Back Approach. *(to add: COM final decision)*
- (5) This Regulation is based on the draft regulatory technical standards as resubmitted by the EBA to the Commission.
- (6) The EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council<sup>2</sup>,

HAS ADOPTED THIS REGULATION:

*Article 1*  
*Materiality of an institution's derivatives transactions*

1. An institution's derivatives transactions shall be considered material for the purposes of the first subparagraph of Article 423(3) of Regulation (EU) No 575/2013 where the total of notional amounts of such transactions has exceeded 10% of the net liquidity outflows as referred to in Article 412(1) of Regulation (EU) No 575/2013 at any time in the previous two years.
2. For the purposes of paragraph 1, the net liquidity outflows shall be calculated without the additional outflow component referred to in the first subparagraph of Article 423(3) of Regulation (EU) No 575/2013.

*Article 2*  
*Calculation of an additional outflow corresponding to collateral needs resulting from the impact of an adverse market scenario on an institution's derivative transactions*

1. The additional outflow corresponding to collateral needs resulting from the impact of an adverse market scenario on an institution's derivatives transactions considered as material in application of Article 1 of this Regulation, shall be the largest absolute net 30-day collateral flow realised during the 24 months preceding the date of calculation of the liquidity coverage requirement referred to in Article 412(5) of Regulation (EU) No 575/2013.
2. Institutions may only treat inflows and outflows of transactions on a net basis where they are executed under the same master netting agreement. The absolute net

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<sup>2</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

collateral flow shall be based on both realised outflows and inflows, and the netting shall be calculated at the institution's portfolio level.

*Article 3*  
*Entry into force*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 31.10.2016

*For the Commission*  
*The President*  
*Jean-Claude JUNCKER*