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From:	Presidency
To:	Permanent Representatives Committee
Subject:	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 - Presidency compromise proposal

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)

2017/0359(COD)

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 OJ C […], […], p. […].
2 OJ C […], […], p. […].

(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 a large part of investment firms. The specific vulnerabilities and risks inherent to these investment firms should therefore be specifically addressed by means of appropriate and proportionate prudential arrangements at Union level.

(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.

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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)

(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 all of 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 most 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 also 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, in order to facilitate the application of prudential requirements for investment firms in the EU which are part of banking groups, to avoid disrupting certain business models the risks of which are already covered by the application of prudential rules, investment firms should be allowed to apply the requirements of Regulation (EU) 575/2013 and Directive 2013/36/EU where appropriate and subject to approval by the competent authorities, as long as this choice is not driven by regulatory arbitrage purposes . Further, 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 for investment firms where they are part of a banking group or investment firm group headquartered and subject to consolidated supervision under Regulation (EU) No 575/2013 and Directive 2013/36/EU or under this Regulation and Directive ----/--EU [IFD] as applicable in the same Member State, as in such cases the consolidated application of Regulation (EU) No 575/2013 and Directive 2013/36/EU or this Regulation and Directive ----/---EU [IFD] to the group should adequately cover those risks. For investment firm only groups or where consolidation under Regulation (EU) No 575/2013 does not apply, in order to mirror the existing treatment of groups of investment firms under the Regulation (EU) No 575/2013 and Directive 2013/36/EU, the parent undertaking in such groups should be required to comply with requirements of this Regulation based on the prudentially consolidated situation of the group. Alternatively, instead of prudential consolidation, where such investment firm groups reflect simpler structures and risk-profiles, competent authorities may allow the parent undertakings in the group to have sufficient capital to support the book value of its holdings in the subsidiaries.

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 disclosure 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, the corresponding ratios of the types of capital have been mirrored into the IFR context. To ensure that the requirements are proportionate to the nature, scope and complexity of the activities of the investment firms and are readily accessible to them within this Regulation, a review should subsequently take place as to the appropriateness of continuing to align the definition and composition of own funds with Regulation (EU) No 575/2013.

(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[6]. Small and non-interconnected investment firms that prefer to exercise further caution and avoid cliff effects in case of 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, hold no client assets or money, have assets under both discretionary portfolio management and non-discretionary (advisory) arrangements of less than EUR 1.2 billion, handle fewer than EUR 100 million per day of client orders in cash trades or EUR 1 billion per day in derivatives, and have a balance sheet smaller than EUR 100 million including off-balance sheet items and total gross annual revenues from the performance of their investment services of less than EUR 30 million.

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6 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

(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 to 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-Client ('RtC'), Risk-to-Market ('RtM') and Risk-to-Firm ('RtF'). The K-factors under RtC capture client assets under management and ongoing advice (K-AUM), assets safeguarded and administered (KASA), 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 specific types of investment firms which deal on own account through clearing members, based on total margins required by an investment firm's clearing member (K-CMG). An investment firm should have an option to apply K-NPR and K-CMG simultaneously on a portfolio basis

(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 volumes for K-CMH, K-ASA, and K-DTF are calculated on the basis of a rolling average from the previous 9 calendar months. The volume for K-COH is calculated on the basis of a rolling average from the previous six months, while for K-AUM it is based on the previous 15 months .
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. KAUM 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 and advice. 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 and arrangements under applicable national law provide that client money is safeguarded in the event of bankruptcy, insolvency, or entry into resolution or administration of the investment firm. K-CMH excludes client money that is deposited on a (custodian) bank account in the name of the client itself, where the investment firm has access to these client funds via a third party mandate. 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[7]. 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) or the revised standardised approach under Regulation (EU) No 575/2013 as amended or the option to use internal models, when these latter two approaches become applicable to credit institutions not only for reporting purposes but also for capital requirements purposes. In the meantime, and at least during the next five years after entry into application of [IFR], investment firms shall apply the market risk framework (standardized approach or, if applicable, internal models) of the [current] CRR for the purposes of calculating their K-NPR. If those provisions never become applicable to credit institutions for capital requirements purposes, then investment firms shall continue to apply the requirements set out in Title IV of Part Three of [current] Regulation (EU) No 575/2013 for the purposes of calculating K-NPR. Alternatively, the capital requirement of trading firms with positions that are subject to clearing may , subject to the approval of the competent authority and a number of conditions, be equal to the amount of total margins required by their clearing member, multiplied by a fixed multiplier . The use of K-CMG should be primarily predicated on an investment firm's trading activity falling entirely or substantially under this approach. However, the investment firm's competent authority may also allow the investment firm to make partial use of the K-CMG approach, such that this margin approach is used for all positions that are subject to clearing or margining, whilst using one of the three alternative methods for K-NPR for portfolios that are not subject to clearing.

7 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.

In order to ensure that the requirements are proportionate to the nature, scope and complexity of the activities of the investment firms and are readily accessible to them within this Regulation, any review that takes place subsequently as to the application of the methods for calculating the K-factors should include the appropriateness of continuing to align the calculation of KNPR with the rules for market risk for trading book positions in financial instruments, in foreign exchange, and in commodities in accordance with Regulation (EU) No 575/2013 as amended.

(25) For investment firms which deal on own account, the K-factors for K-TCD and KCON 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, margin lending transactions, any other securities financing transactions as well as recipients of loans granted by the investment firm on an ancillary basis as part of an investment service failing to fulfil their obligations by multiplying the value of the exposures, based on replacement cost and 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. In order to further align the treatment of counterparty credit risk with Regulation (EU) No 575/2013, a fixed multiplier of 1.2 and a multiplier for credit valuation adjustment to reflect the current market value of the credit risk of the counterparty to the investment firm in specific transactions is also added. 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, adjusted for the time to maturity of interest rate derivatives in order to limit increases in capital requirements notably for short-term contracts where perceived operational risks are lower.

(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. However, competent authorities should be allowed to exempt small and non-interconnected investment firms from this requirement. 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[8] 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 unencumbered own cash and short-term deposits of the firm (which should not include any client money or financial instruments belonging to clients), and certain financial instruments for which there is a liquid market.

8 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)

If not exempted from liquidity requirements, small and non-interconnected firms, as well as investment firms which are not licensed to carry out trading or underwriting activities, 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. To ensure that the requirements are proportionate to the nature, scope and complexity of the activities of the investment firms and are readily accessible to them within this Regulation, a review should take place subsequently as to the appropriateness of the liquid assets which are eligible for meeting the minimum liquidity requirement, including the continued alignment with those listed in the Commission Delegated Regulation (EU) 2015/61 on the Liquidity Coverage Ratio, together with the haircuts applying to these assets under that Delegated Regulation.

(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.

Small and non-interconnected firms should be exempted from reporting on concentration risk and only be required to report on liquidity requirements where these apply to them. 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. 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.

(29a) Investment firms should apply gender neutral remuneration policies, according to the principle laid down in Article 157 of the Treaty on the Functioning of the European Union. Some clarifications should be made to the remuneration disclosures. The disclosure requirements relating to remuneration set out in in this Regulation should be compatible with the aims of the remuneration rules, namely to establish and maintain, for categories of staff whose professional activities have a material impact on the risk profile of investment firms, remuneration policies and practices that are consistent with effective risk management. Furthermore, investment firms benefitting from a derogation from certain remuneration rules should be required to disclose information concerning such derogation.

(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 with the exception of local firms referred to in Article 31 of Directive 2013/36/EU which should be subject to a specific transitional capital requirement reflecting their greater level of risk. For proportionality, specific transitional capital requirements should also be foreseen for smaller investment firms and those which provide a limited range of investment services where they would not benefit from the treatment of the previous sentence but their binding capital requirement under this Regulation would increase compared to their situation under Regulation (EU) 575/2013.

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 with respect to those investment firms 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 later , 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) Article 4(1)(1) of Regulation (EU) No 575/2013 defines credit institutions as undertakings the business of which consists of any of the activities listed in points (a) and (b) of that Article.

Undertakings should be allowed to 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.

Carrying out all such activities, including taking deposits or other repayable funds from the public and granting credits for their own account, should not be a necessary condition for undertakings to be considered as credit institutions in accordance with the amended definition. The change in the definition of credit institution introduced by this Regulation should therefore go without prejudice to the national authorisation regimes implemented by Member States in accordance with Directive 2013/36/EU and with Directive [IFD], including any provisions that Member States may consider appropriate in order to clarify the activities which large investment firms falling within the amended definition of credit institutions are permitted to take up.

(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.

(34a) Furthermore, large investment firms which are not of systemic importance but are dealing on own account or underwriting financial instruments or placing financial instruments on a firm commitment basis may still have business models and risk profiles that are similar to those of other systemic institutions. Given their size and activities, they may still present some risks to financial stability and, although their conversion into credit institutions is not deemed appropriate in light of their nature and complexity, they should remain subject to the same prudential treatment as those institutions. In order to prevent regulatory arbitrage and reduce the risks of circumvention, competent authorities should also endeavour to avoid situations where investment firms would structure their operations in such a way as to not exceed the thresholds set out in Article 1(2) of this Regulation, or to unduly limit their discretion to subject them to the requirements of Regulation (EU) No 575/2013 and to compliance with the prudential requirements of Directive 2013/36/EU in accordance with [Article 4a] of Directive ----/--- [IFD].

(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[9]. The Commission should consider specific prudential, organisational or business conduct requirements as equivalent only where the same effect is achieved. Furthermore, the Commission may, where appropriate, adopt equivalence decisions limited to specific services and activities or categories of services and activities as listed in Section A of Annex I of Directive (EU) 2014/65/EU.

(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 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.

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[9] 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).

(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 total margin required by 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

1. 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-client 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.

2. By way of derogation from paragraph 1, an investment firm authorised and supervised under Directive 2014/65/EU that carries out any of the activities referred to in points (3) and (6) of Section A of Annex 1 of Directive 2014/65/EU shall apply the requirements of Regulation (EU) 575/2013 where any of the following applies, but the undertaking is not a commodity and emission allowance dealer, a collective investment undertaking or an insurance undertaking:

(a) the total value of the consolidated assets of the investment firm exceeds EUR 15 billion, calculated as an average of the last 12 consecutive months and excluding the value of the individual assets of any subsidiaries carrying out any of the activities referred to in the first subparagraph established outside the Union; or

(b) the total value of the consolidated assets of the investment firm is below EUR 15 billion, and the investment firm is part of a group in which the total value of the consolidated 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 below EUR 15 billion exceeds EUR 15 billion, calculated as an average of the last 12 consecutive months and excluding the value of the individual assets of any subsidiaries carrying out any of the activities referred to in the first subparagraph established outside the Union; or

(c) the investment firm is subject to a decision by the competent authority in accordance with Article 4a of Directive (EU) ----/--[IFD].

3. Investment firms referred to in this paragraph shall be supervised for compliance with prudential requirements under Titles VII and VIII of Directive 2013/36/EU.

3a. Paragraph 2 shall not apply where an investment firm no longer meets any of the thresholds set out in that paragraph calculated over a period of 12 consecutive months or where a competent authority so decides in accordance with Article 4a of Directive (EU) ----/--[IFD]. The investment firm shall notify the competent authority without undue delay any breach of a threshold during that period.

4. An investment firm that meets the conditions set out in paragraph 2 shall remain subject to the requirements of Articles 53 and 58a.

5. By way of derogation from paragraph 1, competent authorities may allow an investment firm authorized and supervised under Directive 2014/65/EU that carries out any of the activities referred to in points (3) and (6) of Section A of Annex 1 of Directive 2014/65/EU to apply the requirements of Regulation (EU) No 575/2013 where all of the following conditions are fulfilled:

(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) the investment firm notifies the competent authority under this Regulation and the consolidating supervisor, if applicable,

(c) the competent authority is satisfied that the application of the own funds requirements of Regulation (EU) No 575/2013 on an individual basis to the investment firm and on a consolidated basis to the group, as applicable, is prudentially sound, does not result in a reduction of the own funds requirements of the investment firm under this Regulation, and is not undertaken for the purpose of regulatory arbitrage.

Competent authorities shall inform the investment firm of a decision to allow the application of the requirements of Regulation (EU) No 575/2013 and Directive 2013/36/EU pursuant to the first subparagraph within [two months] from the receipt of a notification referred to in point b, and shall inform the EBA thereof. Where a competent authority refuses to allow the application of Regulation (EU) No 575/2013 and Directive 2013/36/EU, it shall provide full reasons.

Investment firms referred to in this paragraph shall be supervised for compliance with prudential requirements under Titles VII and VIII of Directive 2013/36/EU.
For the purposes of this paragraph, Article 7 of Regulation (EU) No 575/2013 shall not apply.

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 and liquid assets 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 an undertaking the principal activity of which consists of owning or managing property, managing data-processing services, or a similar activity which is ancillary to the principal activity of one or more investment firms ;

(1a) 'asset management company' means asset management company as defined in point (19) of Article 4 of Regulation (EU) No 575/2013;

(1b) 'clearing member' means an undertaking established in a Member State which fulfils the definition of Article 2(14) of Regulation (EU) No 648/2012;

(2) ‘client’ means client as defined in Article 4(1)(9) of Directive 2014/65/EU; for the purpose of Part Four, ‘client’ shall mean any counterparty of the investment firm;

(3) ‘commodity and emission allowance dealers’ means commodity and emission allowance 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, or executing orders on behalf of clients in its own name;

(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) ‘ prudentially consolidated situation’ means the situation that results from applying the requirements of this Regulation in accordance with Article 7 to a Union parent investment firm, a Union parent investment holding company or a Union parent mixed financial holding company as if that undertaking formed, together with all the investment firms, financial institutions, ancillary services undertakings and tied agents in the investment firm group, a single investment firm. For the purpose of this definition, the terms “investment firm”, “financial institution”, “ancillary services undertaking” and “tied agent” shall also apply to undertakings established in third countries, which, were they established in the Union, would fulfil the definitions of those terms;

(10a) ‘consolidated basis’ means on the basis of the prudentially consolidated situation;

(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;

(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 2015/2366/EC of the European Parliament and of the Council of 25 November 2015 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)(15) of Directive 2014/65/EU ;

(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;

(19a) ’investment advice of an ongoing nature’ means recurring provision of investment advice as well as continuous or periodic assessment and monitoring or review of a client portfolio of financial instruments including of the investments undertaken by the client on the basis of a contractual arrangement.”

(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 consists of a parent undertaking and its subsidiaries or of undertakings which meet the conditions set out in Article 22 of Directive 2013/34/EU, of which at least one is an investment firm and which does not include a credit institution ;

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

(25) ‘AUM’ or ‘ assets under management ’ means the value of assets that an investment firm manages for its clients under both discretionary portfolio management and nondiscretionary arrangements constituting investment advice of an on-going nature ;

(26) CMH’ or client money held means the amount of client money that an investment firm hold, 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) ‘ASA’ or ‘ assets safeguarded and administered ’ means the value of assets that an investment firm safeguards and administers for clients , irrespective of whether assets appear on the investment firm's own balance sheet or are segregated in other accounts;

(28) ‘COH’ or ‘ client orders handled ’ means 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) ‘CON’ or ‘ concentration risk ’ means 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) ‘CMG’ or ‘ clearing margin given ’ means the amount of total margin required by a clearing member or qualifying CCP, where the execution and settlement of transactions of an investment firm dealing on own account take place under the responsibility of a clearing member or qualifying CCP;

(31) ‘DTF’ or ‘ daily trading flow ’ means 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) ‘NPR’ or ‘ net position risk ’ means the value of transactions recorded in the trading book of an investment firm;

(33) ‘TCD’ or ‘ trading counterparty default ’ means 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;

(33a) ‘Current Market Value’ (hereinafter referred to as ‘CMV’) refers to the net market value of the portfolio of transactions or securities legs subject to netting according to Article 31(1), where both positive and negative market values are used in computing CMV;

(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;

(36a) mixed financial holding company’ means mixed financial holding company as defined in point (15) of Article 2 of Directive 2002/87/EC;

(36b) ‘off balance sheet item’ means any of the items referred to in Annex I of Regulation (EU) 575/2013;

(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;

(41a) ‘qualifying holding’ means a qualifying holding as defined in point (36) of Article 4(1) of Regulation (EU) No 575/2013;

(41b) ‘security financing transaction’ or ‘SFT’ means SFT as defined in point (11) of Article 3 of Regulation (EU) No 2015/2365;

(41c) ‘segregated accounts’ for the purposes of Table 1 of Article 15(2) means accounts with entities where client money held by an investment firm is deposited in accordance with Article 4 of Commission Delegated Directive (EU) 2017/593 and where applicable national law provides that, in the event of insolvency or entry into resolution or administration of the investment firm, the client money cannot be used to satisfy claims in relation to the investment firm other than claims by the client;

(43) ‘repurchase transaction’ means repurchase transaction as defined in Article 3(9) of Regulation (EU) No 2015/2365 ;

(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;

(48) ‘trading book’ means all positions in financial instruments and commodities held by an investment firm either with trading intent, or in order to hedge positions held with trading intent ;

(48a) ‘positions held with trading intent’ means any of the following:

(a) proprietary positions and positions arising from client servicing and market-making;

(b) positions intended to be resold short-term;

(c) positions intended to benefit from actual or expected short-term price differences between buying and selling prices or from other price or interest rate variations;

(49) ‘Union parent investment firm’ means an investment firm in a Member State which has an investment firm or a financial institution as a subsidiary or which holds a participation in such an investment firm or financial institution, and 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) one of the following conditions is satisfied:

(i) 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;

(ii) the investment firm is a subsidiary and is included in an investment firm group supervised on a consolidated basis in accordance with Article 7;

(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 or in accordance with Article 7 of this Regulation 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 Part Six , 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[10];

(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.

[10] ***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 or is included in an investment firm group for which Article 7(2) of this Regulation applies and the exemption provided for in Article 7(3) does not apply;

(b1) the parent undertaking on a consolidated basis monitors and has oversight at all times over the liquidity positions of all institutions and investment firms within the group or sub-group, that are subject to a waiver and ensures a sufficient level of liquidity for all of these institutions and investment firms;

(b2) the parent undertaking and the investment firm have entered into contracts that, to the satisfaction of the competent authorities, provide for the free movement of funds between them to nable them to meet their individual and joint obligations as they become due;

(b3) there is no current or foreseen material practical or legal impediment to the fulfilment of the contracts referred to in (b2);

(c) the authorities competent for the supervision on consolidated basis in accordance with Regulation (EU) No 575/2013 or in accordance with Article 7 of this Regulation agree to such an exemption.

CHAPTER 2

Prudential consolidation and exemptions for an investment firm group

Article 7

Prudential consolidation

1. A Union parent investment firm, a Union parent investment holding company or a Union parent mixed financial holding company shall comply with the obligations laid down in Parts Two to Four, Part Six and Part Seven on a consolidated basis. The parent undertaking and its subsidiaries subject to this Regulation shall set up a proper organisational structure and appropriate internal control mechanisms in order to ensure that the data required for consolidation are duly processed and forwarded. In particular, it shall ensure that subsidiaries not subject to this Regulation implement arrangements, processes and mechanisms to ensure a proper consolidation.

1a. For the purpose of paragraph 1, when applying Part Two on a consolidated basis, the rules laid down in Title II of Part Two of Regulation (EU) 575/2013 shall also apply to investment firms.

For that purpose, when applying the provisions of Articles 84(1), 85(1), and 87(1) of Title II of Part Two of Regulation (EU) 575/2013 only the references to Article 92(1) shall apply and shall consequently bread as referring to the capital requirements set out under the corresponding provisions in IFR.

2. A Union parent investment firm, a Union parent investment holding company or a Union parent mixed financial company shall comply with the obligations laid down in Part Five on the basis of its consolidated situation.

3. By derogation to paragraph 2, competent authorities may exempt the parent undertaking from compliance with paragraph 2, taking into account the nature, scale and complexity of the investment firm group.

4. EBA shall draft regulatory technical standards to specify the details of the scope and methods for prudential consolidation of an investment firm group, in particular for the purpose of calculating the fixed overheads requirement, the permanent minimum requirement, the K-factor requirement on the basis of the consolidated situation of the investment firm group, and the method and necessary details to properly implement paragraph 1a.

EBA shall submit those draft regulatory technical standards to the Commission by [twelve months from the 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 8

The group capital test

1. By way of derogation from Article 7, competent authorities may allow the application of this Article in case of group structures which are deemed sufficiently simple and if there are no significant risks to clients or to market stemming from the investment firm group as a whole that would otherwise require supervision on a consolidated basis. Competent authorities shall notify EBA when they allow the application of this Article.

2. For the purpose of this Article, the following shall apply:

(i) ‘own funds instruments’ shall mean ‘own funds’ as defined in Article 9 of this Regulation without applying the deductions referred to in point (i) of Article 36(1), point (d) of Article 56, and point (d) of Article 66 of Regulation (EU) No 575/2013.

(ii) the terms “investment firm”, “financial institution”, “ancillary services undertaking” and “tied agent” shall also apply to undertakings established in third countries, which, were they established in the Union, would fulfil the definitions of those terms in Article 4.

3. A Union parent investment firm, a Union parent investment holding company, a Union parent mixed financial holding company and any other parent undertaking that is an investment firm, a financial institution, an ancillary services undertaking or a tied agent in the investment firm group, shall hold at least enough own funds instruments to cover the sum of the following:

(a) the sum of the full book value of all of its holdings, subordinated claims and instruments referred to in point (i) of Article 36(1), point (d) of Article 56, and point (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 all of its contingent liabilities in favour of investment firms, financial institutions, ancillary services undertakings and tied agents in the investment firm group.

4. Competent authorities may allow a Union parent investment holding company or a Union parent mixed financial holding company and any other parent undertaking that is an investment firm, a financial institution, an ancillary services undertaking or a tied agent in the investment firm group, 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 its subsidiary investment firms, financial institutions, ancillary services undertakings and tied agents , and the total amount of any contingent liabilities in favour of these entities.

For the purposes of this paragraph , the own funds requirement for the subsidiary undertakings referred to in the previous subparagraph and which are located in third countries, shall be notional own funds requirements ensuring a satisfactory level of prudence to cover for the risks arising from these subsidiary undertakings, and approved by the competent authorities. .

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.

PART TWO

OWN FUNDS

Article 9

Own funds composition

1. An investment firm shall have own funds consisting of the sum of its Common Equity Tier 1 capital, Additional Tier 1 capital and Tier 2 capital, and all the following conditions shall be met at all times:

(a) $\frac{\text{Common equity Tier 1 capital}}{\text{D}} \geq 56\%$,

(b) $\frac{\text{Common equity Tier 1 capital} + \text{Additional Tier 1 capital}}{\text{D}} \geq 75\%$,

(c) $\frac{\text{Common equity Tier 1 capital} + \text{Additional Tier 1 capital} + \text{Tier 2 capital}}{\text{D}}$
$\geq 100\%$,

where

(i) Common Equity Tier 1 capital is defined in accordance with Chapter 2 of Title 1 of Part Two of Regulation (EU) No 575/2013, additional Tier 1 capital is defined in accordance with Chapter 3 of Title 1 of Part Two of Regulation (EU) No 575/2013, Tier 2 capital is defined in accordance with Chapter 4 of Title 1 of Part Two of Regulation (EU) No 575/2013,

(ii) D is defined in Article 11."

2. By way of derogation from paragraph 1:

(a) the deductions referred to in point (c) of Article 36(1)of Regulation (EU) No 575/2013 shall apply in full, without the application of Articles 39 and 48 of that Regulation;

(b) the deductions referred to in Article 36(1)(e) of Regulation (EU) No 575/2013 shall apply in full, without the application of Article 41 of that Regulation;

(c) the deductions referred to in Articles 36(1)(h), 56(c), 66(c) of Regulation (EU) No 575/2013, insofar they relate to holdings of capital instruments which are not held in the trading book shall apply in full, without the application of the (mechanisms provided for in) Articles 46, 60 and 70 of that Regulation;

(d) the deductions referred to in Article 36(1)(i) of Regulation (EU) No 575/2013 shall apply in full, without the application of Article 48 of that Regulation;.

(e) the following provisions shall not apply to the determination of own funds of investment firms:

(i) Article 49 of Regulation (EU) No 575/2013;

(ii) the deductions referred to in Articles 36(1)(h), 56(c), 66(c) of Regulation (EU) No 575/2013 and related provisions in Articles 46, 60 and 70 of that Regulation, insofar these deductions relate to holdings of capital instruments held in the trading book;

(iii) 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;

(iv) 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 relevant 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. In applying these provisions, the supervisory permission according to Articles 77 and 78 of Regulation (EU) No 575/2013 shall be deemed to be granted if one of the conditions set out in point (a) of Article 78(1) or Article 78(4) are fulfilled

4. For the purpose of applying point (a) of paragraph 1, for investment firms as defined in Article 4(1)(1) of Directive 2014/65/EU which are not legal persons or joint-stock companies or which meet the conditions set out in Article 12(1), competent authorities may, after consultation with the EBA, permit further instruments or funds to qualify as own funds for these investment firms, provided these instruments or funds also qualify for a treatment under Article 22 of Directive 86/635/EEC. On the basis of information received from each competent authority, EBA together with ESMA shall establish, maintain and publish a list of all the forms of funds or instruments in each Member State that qualify as such own funds. The list shall be published for the first time within 12 months after the date of entry into force of this Regulation.

5. Holdings of own funds instruments of a financial sector entity within an investment firm group shall not be deducted for the purpose of calculating own funds of any investment firm in the group on
an individual basis, provided that the following conditions are met:

a) 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; and

b) the risk evaluation, measurement and control procedures of the parent undertaking include the financial sector entity.

c) the derogation provided for in Article 8 is not used by the competent authorities.

Article 10

Qualifying 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 qualifying holding, the amount of which exceeds 15 % of the own funds of the investment firm calculated in accordance with Article 9 of this Regulation but without applying the deduction referred to in Article 36(1)(k)(i) of Regulation (EU) No 575/2013, in an undertaking which is not a financial sector entity;

(b) the total amount of the qualifying holdings of an investment firm in undertakings other than financial sector entities that exceeds 60 % of its own funds calculated in accordance with Article 9 of this Regulation but without applying the deduction referred to in Article 36(1)(k)(i) of Regulation (EU) No 575/2013.

Competent authorities may prohibit an investment firm from having qualifying holdings referred to in paragraph 1 the amount of which exceeds the percentages of own funds 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

Own funds requirements

An investment firm shall at all times have own funds in accordance with Article 9 which amounts to at least to D, where D is defined as 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, where an investment firm meets the conditions set out in Article 12(1), D shall be defined as 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 4 of Directive (EU) ----/--[IFD].

4. An investment firm shall notify the competent authority as soon as it becomes aware that it no longer satisfies or will no longer satisfy the requirements of this article.

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 zero;

(d) CMH (or client money held) calculated in accordance with Article 18 is zero;

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

(f) NPR (net position risk) or CMG (clearing margin given) 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 on- and off-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 the investment firm is less than EUR 30 million calculated as an average on the basis of the annual figures from the two-year peiod immediately preceding the given financial year.

By way of derogation from the provisions of Title II, for the purposes of points (a), (b), (c), (e), (f) in so far this relates to NPR and (g), end-of-day values shall apply.

For the purposes of point (f) in so far as this relates to CMG, intraday values shall apply.

For the purposes of point (d), and without prejudice to Article 16(9) of Directive 2014/65/EU ad Articles 2 and 4 of Commission Delegated Directive (EU 2017/593), intraday values shall apply with the exception of an error in recordkeeping or reconciliation of accounts that incorrectly indicated that an investment firm has breached the zero threshold referred to in point (d) and which is resolved before the end of the business day. The investment firm shall notify te competent authority without delay of the error, the reasons for its occurrence and its correction.

For the purposes of points (h) and (i), the levels at the end of the last financial year for which accounts have been finalised and approved by the management body shall apply. Where accounts have not been finalised and approved after 6 months having elapsed since the last financial year-end an investment firm shall use provisional accounts.

An investment firm may calculate the values under points (a) and (b) by using the methods specified under Title II, with the exception that the measurement shall be done over 12 months, without the exclusion of the 3 most recent monhly values. An investment firm that chooses this calculation method shall notify accordingly the comepetent authority and shall apply the chosen method for a continous period of no less than 12 consecutive calendar months.

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. For the purpose of measuring point (i), the investment firms may exclude any double counting that may arise in respect of gross revenues generated within the group.

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

3. Where an investment firm no longer meets all the conditions set out in paragraph 1, it shall cease to be considered a small and non-interconnected investment firm with immediate effect.

By way of derogation from the first subparagraph, where an investment firm no longer meets the conditions set out in points (a), (b), (h) or (i) of paragraph 1 but continues to meet the conditions set out in points (c) to (g) of that paragraph, it shall cease to be considered a small and non-interconnected investment firm after a period of 3 months, calculated from the date when the threshold has been exceeded. The investment firm shall notify the competent authority without undue delay any breach of a threshold.

4. Where an investment firm which has not met all of the conditions set out in paragraph 1 subsequently meets them , it shall be considered a small and non-interconnected investment firm only after a period of 6 months from the date when those conditions are met, if no breach of a threshold occurs during that period and the investment firm has without delay notified the competent authority accordingly.

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. Investment firms shall use figures resulting from the applicable accounting framework.

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. Where an investment firm has not completed business for one year from the day it starts providing investment services or performing investment activities , it shall use, for the calculation referred to in paragraph 1, the projected fixed overheads included in its projections for the first 12 months' trading, as submitted with its application for authorisation.

4. EBA, in consultation with ESMA, shall develop draft regulatory technical standards to supplement the calculation of the requirement referred to in paragraph 1 which includes at least the following items for deduction :

a) staff bonuses and other remuneration, to the extent that they depend on a net profit of the investment firm in the respective year;
b) employees', directors' and partners' shares in profits;
c) other appropriations of profits and other variable remuneration, to the extent that they are fully discretionary;
d) shared commission and fees payable which are directly related to commission and fees receivable, which are included within total revenue, and where the payment of the commission and fees payable is contingent upon the actual receipt of the commission and fees receivable;
e) fees to tied agents as defined by point 29 of Article 4 of Directive 2014/65/EU ;
g) non-recurring expenses from non-ordinary activities.

EBA shall also specify for the purpose of this Article the notion of a material change.

EBA shall submit those draft regulatory technical standards to the Commission by [twelve 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-Client (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 both discretionary portfolio management and nondiscretionary ~~(~~advisory~~)~~ arrangements of an on-going nature	K-AUM	0.02%
Client money held	K-CMH (on segregated accounts)	0.4%
	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) supplement this Regulation to lay down the methods for measuring the K-factors in Title II of Part Three

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

(d) specify adjustments to 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.

EBA shall submit those draft regulatory technical standards to the Commission by [12 months 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 of this paragraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.

CHAPTER 2

RtC K-factors

Article 16

RtC K-factor requirement

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

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 arithmetic mean of the remaining 12 monthly measurements.

   K-AUM shall be calculated on the first business day of each calendar month.

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

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

   Where an investment firm has been in operation managing assets for less than 15 calendar months, or when it has done so for a longer period as a small and noninterconnected investment firm and now exceeds the threshold for AUM it shall use historical data of AUM for the time period described under paragraph 1 as soon as it becomes available to calculate K-AUM : The competent authority may replace missing historical datapoints by regulatory determinations based on the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU.

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 9 calendar months, excluding the 3 most recent calendar months.

   CMH shall be the arithmetic mean of the daily measurements from the remaining 6 calendar months.
   K-CMH shall be calculated on the first business day of each calendar month .

2. Where an investment firm has been in operation holding client money for less than 9 calendar months, it shall use historical data of CMH for the time period described under paragraph 1 as soon as it becomes available to calculate K-CMH.

   The competent authority may replace missing historical datapoints by regulatory determinations based on the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU.

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 9 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 6 calendar months.

   K-ASA shall be calculated on the first business day of each calendar month.

1a. Where an investment firm has formally delegated the tasks of safekeeping and administration of assets to another financial entity, or where another financial entity has formally delegated such tasks to the investment firm, these assets shall be included in the total amount of ASA which are measured in accordance with paragraph 1.

2. Where an investment firm has been in operation safeguarding and administering assets for less than 6 calendar months, it shall use historical data of ASA from the time period described under paragraph 1 to calculate K-ASA. The competent authority may replace missing historical datapoints by regulatory determinations based on the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU.

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 throughout each business day over the previous 6 calendar months, excluding the 3 most recent calendar months.

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

   K-COH shall be calculated on the first business day of each month .

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.

   The notional amount of interest rate derivatives shall be adjusted for the time to maturity (in years) of these contracts. The notional amount shall be multiplied by the duration set out in the following formula:
   Duration = time to maturity (in years) / 10

   Without prejudice to the fith subparagraph, COH shall include transactions executed by investment firms providing portfolio management services on behalf of investment funds.

COH shall include transactions which arise from investment advice in respect of which an investment firm does not calculate K-AUM.

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 or where this activity relates to the delegation of management of assets to the investment firm not contributing to the AUM of this investment firm by virtue of Article 17(2).

COH shall exclude transactions executed by the investment firm in its own name either for itself or on behalf of a client.

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 handling client orders for less than 6 calendar months, or has done so for a longer period as a small and noninterconnected inevstment firm, it shall use historical data of COH from the time period described under paragraph 1 as soon as it becomes available to calculate K-COH. The competent authority may replace missing historical data points by regulatory determinations based on the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU.

CHAPTER 3

RtM K-Factors

Article 21

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 either K-NPR calculated in accordance with Article 22 or K-CMG calculated in accordance with Article 23.

2. An investment firm shall manage its trading book in accordance with Chapter 3 of Title I of Part Three of Regulation (EU) No 575/2013.

3. The RtM K-factor requirement applies to all trading book positions, which include in particular positions in debt instruments (including securitisiation instruments), equity instruments, collective investment undertakings (CIUs), foreign exchange and gold, commodities (including emmission allowances).

4. For the purpose of calculating the RtM K-factor requirement, an investment firm shall include positions other than trading book positions where these give rise to foreign exchange risk or commodity risk.

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 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].

Article 23

Calculating K-CMG

1. For the purposes of Article 21 , the competent authority shall allow an investment firm to calculate K-CMG for all positions that are subject to clearing, or on a portfolio basis where the whole portfolio is subject to clearing or margining, under the following conditions:

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

(b) the clearing and settlement of these transactions take place under the responsibility of a clearing member of a QCCP and this clearing member is a credit institution or an investment firm referred to in Article 1(2) of this Regulation, and the transactions are either centrally cleared in a QCCP or otherwise settled on a delivery-versuspayment basis under the responsibility of this clearing member ;

(c) the calculation of the total margin required by the clearing member is based on a margin model of the clearing member .

The regular assessment of the competent authority confirms that this margin model leads to margin requirements that are reflective of the risk characteristics of the products the investment firms trades in and takes into account the interval between margin collections, market liquidity and the possibility of changes over the duration of the transaction.

The margin requirements shall be sufficient to cover losses that may result from at least 99% of the exposures movements over an appropriate time horizon with at least a two-business days holding period. The margin models used by that clearing member to call the margin referred to in point (c) above shall always be designed to achieve a similar level of prudence than the one required in the provisions on margin requirements in Article 41 of Regulation (EU) No 648/2012.

(da) The investment firm shall demonstrate to the competent authority that the choice of calculating RtM with K-CMG is justified by certain criteria. Such criteria may include the the nature of the main activities of the firm which shall essentially be trading activities subject to clearing and margining under the responsibility of a clearing member, and the fact that other activities performed by the investment firm shall be immaterial in comparison to these main activities.

(db) The competent authority has assessed that the choice of the portfolio(s) subject to K-CMG has not been made with a view to arbitrate own funds requirements in a disproportionate or prudentially unsound manner.

2. K-CMG shall be the third highest amount of total margin required on a daily basis by the clearing member or QCCP from the investment firm over the preceding 3 months multiplied by a factor of 1.3.

EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify the calculation of the amount of the total margin required and the method of calculation of K-CMG as referred to in paragraph 2, in particular when K-CMG is applied on a portfolio basis, and the conditions for the fulfilment of the provisions in paragraph 1 point =(db) .

The EBA shall submit those draft regulatory technical standards to the Commission by [twelve months 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.

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. This section applies to the following contracts and transactions:

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

(iii) Derivative contracts directly or indirectly cleared through a central counterparty (CCP) 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 CCP , 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.

Derivative contracts directly or indirectly cleared through a qualifying central counterparty (QCCP) are deemed to meet the conditions above.

(iv) exchange-traded derivative contracts;

(v) derivative contracts 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.

(f) any other type of SFTs;

(g) credits and loans referred to in point (2) of Section B of Annex I of Directive 2014/65/EU, if the firm is executing the trade in the client's name or receiving and transmitting the order without executing it.

2. Transactions with the following types of counterparties shall be excluded from the calculation of K-TCD:

(a) central governments and central banks, would the underlying exposures receive a 0 % risk weight under Article 114 of Regulation (EU) 575/2013;

(b) multilateral development banks listed in Article 117(2) of Regulation (EU) No 575/2013;

(c) international organisations listed in Article 118 of Regulation (EU) 575/2013.

3. Subject to prior approval of the competent authorities, an investment firm may exclude from the scope of calculation of K-TCD transactions with a counterparty which is its parent undertaking, its subsidiary, a subsidiary of its parent undertaking or an undertaking linked by a relationship within the meaning of Article 22(7) of Directive 2013/34/EU. Competent authorities shall grant approval if the following conditions are fulfilled:

(a) the counterparty is a credit institution, an investment firm, or a financial institution, subject to appropriate prudential requirements;

(b) the counterparty is included in the same prudential consolidation as the investment firm on a full basis in accordance with Regulation (EU) No 575/2013 or with Article 7 of this Regulation, or the counterparty and the investment firm are supervised for compliance with the group capital test in accordance with Article 8 of this Regulation;

(c) the counterparty is subject to the same risk evaluation, measurement and control procedures as the investment firm;

(d) the counterparty is established in the same Member State as the investment firm;

(e) there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities from the counterparty to the investment firm.

4. By way of derogation from this Section, an investment firm may, subject to approval from the competent authority, calculate the exposure value of derivative contracts listed in Annex II of Regulation (EU) No 575/2013 and for the transactions referred to in points (b) to (f) of paragraph 1 by applying one of the methods set out in [Sections 3, 4 or 5, Chapter 6, Title II, Part Three of Regulation (EU) No 575/2013] and calculate the related capital requirements by multiplying the exposure value by the risk factor defined per counterparty type according to Table 2 in Article 26

Investment firms included in the supervision on a consolidated basis in accordance with Chapter 2, Title II of Part One of Regulation (EU) No 575/2013 may calculate the related capital requirement by multiplying the risk weighted exposure amounts, calculated in accordance with Section 1, Chapter 2, Title II, Part Three of Regulation (EU) No 575/2013, by 8%.

5. When applying the derogation in paragraph 4 of this Article, investment firms shall also apply a CVA factor by multiplying the capital requirement, calculated in accordance with paragraph 2 of this Article, by the CVA calculated in accordance with Article 31a. Rather than applying the CVA factor multiplier, investment firms included in the supervision on a consolidated basis in accordance with Chapter 2, Title II of Part One of Regulation (EU) No 575/2013 may calculate capital requirements for credit valuation adjustment risk according to Title VI, Part Three of Regulation (EU) No 575/2013.

Article 26

Calculating K-TCD

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

Capital requirement = α * EV * RF * CVA

Where: $\alpha = 1.2$

EV = the exposure value calculated in accordance with Article 27

RF = the risk factor defined per counterparty type according to Table 2

CVA = the credit valuation adjustment calculated in accordance with Article 31a.

Table 2

Counterparty type	Risk factor
Central governments, central banks and public sector entities	1.6%
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:

Exposure value = Max (0; RC + PFE - 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 .

An investment firm may calculate a single exposure value at netting level for all the transactions covered by a contractual netting agreement, subject to the conditions laid down in article 31. Where any of those conditions is not met, the investment firm shall treat each transaction as if it was its own netting set.

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 of cash to pay or to receive by the investment firm upon settlement. A receivable is treated as a positive amount and a payable is treated as a negative amount.

(c) for repurchase transactions and securities or commodities lending or borrowing transactions, RC is determined as the amount of cash lent or borrowed . Cash lent by the investment firm is treated as a positive amount and cash borrowed by the investment firm is treated as a negative amount.

(d) for securities financing transactions (SFT), where both legs of the transaction are securities, RC is determined by the current market value (CMV) of the security lent by the investment firm. The current market value (CMV) shall be increased using the corresponding volatility adjustment in Table 4 of Article 30.

(e) for margin lending transactions and credits and loans referred to in point (g) of Article 25(1), RC is determined by the book value of the asset in accordance with the applicable accounting framework.

Article 29

Potential future exposure

1. The potential future exposure (PFE) referred to in Article 27 shall be calculated for each derivative as the product of:

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

   (b) the supervisory factor (SF) set according to paragraph 7 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 calculated in accordance with paragraph 4 of this Article, and its supervisory delta 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 derivative contracts, 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 contracts and emission allowances and derivatives thereof, the notional amount is defined as the product of the market 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 derivative contracts for the time to maturity (in years) of these contracts shall be adjusted according to the duration set out in the following formula:

Duration = (1 – exp (-0.05 * time to maturity)) / 0.05;

For derivative contracts other than interest rate and credit derivative contracts the duration shall be 1.

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 supervisory delta of options and swaptions may be calculated by the investment firm itself, using an appropriate model subject to competent authorities' approval. 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 or where no model has been approved by the competent authorities, the delta shall be 1 .

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%
Other	32%

8. The potential future exposure of a netting set is the sum of the potential future exposure of all transactions included in the netting set, multiplied by:

(a) 0.42, for netting sets of transactions with financial and non-financial counterparties for which collateral is exchanged bilaterally with the counterparty, if required, in accordance with the conditions laid down in Article 11 of Regulation (EU) 648/2012;

(b) 1, for other netting sets.

Article 30

Collateral

1. All collateral for both bilateral and cleared transactions referred to in Article 25 , shall be subject to volatility adjustments in accordance with the following table:

Table 4

Asset class		Volatility adjustment repurchase transactions	Volatility adjustment 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 securities issued by other entities	≤ 1 year	1.414%	2%
	> 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%
Other securities and commodities		17.678%	25%
Gold		10.607%	15%
Cash		0%	0%

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

Competent authories may change the volatility adjustment for certain types of commodities for which there are different levels of volatility in prices. They shall notify EBA of such decisions together with the reasons for the changes.

2. The value of collateral shall be determined as follows:

(a) for the transactions referred to in points (a), (e) and (g) of Article 25(1), collateral is determined by the amount of collateral received by the investment firm from its counterparty decreased according to Table 4; and

(b) for the transactions referred to in points (b), (c), (d) and (f) of Article 25(1), collateral is determined by the sum of the current market value (CMV) of the security leg and the net amount of collateral posted or received by the investment firm.

For securities financing transactions (SFT), where both legs of the transaction are securities, collateral is determined by the current market value (CMV) of the security borrowed by the investment firm.

Where the investment firm is purchasing or has lent the security, the CMV shall be treated as a negative amount and be decreased, to a larger negative amount, using the volatility adjustment in Table 4. Where the investment firm is selling or has borrowed the security, the CMV shall be treated as a positive amount and be decreased using the volatility adjustment in Table 4.

Where different types of transactions are covered by a contractual netting agreement, subject to the conditions laid down in Article 31, the applicable volatility adjustments for “other transactions” of Table 4 shall be applied to the respective amounts calculated under points (a) and (b) on an issuer basis within each asset class.

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

Article 31

Netting

1. For the purposes of this Section, an investment firm firstly 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, secondly 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 thirdly may net other transactions where the investment firm ensures 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.

Article 31a

Credit Valuation Adjustment (CVA)

For the purposes of this Section, 'CVA' means an adjustment to the mid-market valuation of the portfolio of transactions with a counterparty. That adjustment reflects the current market value of the credit risk of the counterparty to the investment firm, but does not reflect the current market value of the credit risk of the investment firm to the counterparty.

CVA shall be 1.5 for all transactions other than the following, for which CVA shall be 1:

(a) transactions with non-financial counterparties as defined in point (9) of Article 2 of Regulation (EU) No 648/2012, or with non-financial counterparties established in a third country, where those transactions do not exceed the clearing threshold as specified in Article 10(3) and (4) of that Regulation;

(b) intragroup transactions as provided for in Article 3 of Regulation (EU) No 648/2012;

(c) long settlement transactions;

(d) SFTs, including margin lending transactions, unless the competent authority determines that the investment firm's CVA risk exposures arising from those transactions are material;

(e) credits and loans referred to in point (g) of Article 25(1).

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 throughout each business day over the previous 9 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 6 calendar months.

K-DTF shall be calculated on the first business day of each month.

2. DTF 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.

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

Duration = time to maturity (in years) / 10

3. DTF shall exclude transactions executed by an investment firm with the purpose of providing portfolio management services on behalf of investment funds.
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 and has a daily trading flow for less than 9 calendar months, it shall use historical data of DTF from the time period described under paragraph 1 to calculate K-DTF as soon as it becomes available. The competent authority may replace missing historical data points by regulatory determinations based on the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU.

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 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 exposure value to a client or group of connected clients for the purposes of this Part by adding together the following items:

(a) The positive excess of an investment firm's long positions over its short positions in all the trading book financial instruments issued by the client in question, the net position of each calculated in accordance with the r provisions referred to in Article 22(1) (a) to (c).

An investment firm that, for the purposes of the RtM K-factor requirement calculates capital requirements for the trading book positions according to the approach specified in Article 23 shall calculate the net position for the purpose of concentration risk of those positions in accordance with the provisions referred to in Article 22(1)(a).

(b) The exposure value of transactions referred to in Article 25(1) with the client in question, calculated in the manner laid down in Article 27.

An investment firm that, for the purposes of K-TCD, calculates capital requirements by applying the methods referred to in Article 25(2) shall calculate the exposure value of such transactions by applying the methods set out in [Sections 3, 4 or 5, Chapter 6, Title II, Part 3 of Regulation (EU) No 575/2013].

1a. The exposure value to a group of connected clients shall be calculated by adding together 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 risk and exposure value excess

1. An investment firm's limit to concentration risk of an exposure value to an individual client or group of connected clients shall be 25% of its own funds .

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, the limit to concentration risk shall be the higher of 25% of the investment firm's own funds or EUR 150 million provided that for the sum of exposure values, to all connected clients that are not credit institutions or investment firms, the limit to concentration risk remains at 25 % of the investment firms' own funds .

Where the amount of EUR 150 million is higher than 25% of the investment firm's own funds , the limit to concentration risk shall not exceed 100% of the investment firm's own funds .

1a. Where the limits referred to in paragraph 1 are exceeded, an investment firm shall meet the obligation to notify set out in Article 37 and meet an own funds requirement on the exposure value excess in accordance with Article 38.

An investment firm shall calculate an exposure value excess to an individual client or group of connected clients according to the following formula:

exposure value excess= EV – L

where:

EV = exposure value calculated in the manner laid down in Article 35.
L = limit to concentration risk as determined in paragraph 1 of this Article.

2. The exposure value to an individual client or group of connected clients shall not exceed:

(a) 500% of the investment firm's own funds, where 10 days or less have elapsed since the excess occurred;

(b) in aggregate, 600% of the investment firm's own funds, for any excesses that have persisted for more than 10 days.

Article 37

Obligation to notify

1. Where the limits referred to in Article 36 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

Article 38

Calculating K-CON

1. The K-CON capital requirement shall be the aggregate amount of the capital requirement calculated for each client or group of connected clients as the capital requirement of the appropriate line in Column 1 in Table 6 that accounts for a part of the total individual excess multiplied by:

(a) 200% where the excess has not persisted for more than 10 days;

(b) the corresponding factor in Column 2 of Table 6, after the period of 10 days calculated from the date on which the excess has occurred, by allocating each proportion of the excess to the appropriate line in Column 1 of Table 6.

1a. The capital requirement of the excess referred to in paragraph 4 shall be calculated according to the following formula:

$$\mathrm{CRE} = \frac{\mathrm{CR}}{\mathrm{EV}} \times \mathrm{EVE}$$

where:

CRE = capital requirement for the excess.

CR = capital requirement of exposures to an individual client or groups of connected clients, calculated by adding together the capital requirements of the exposures to the individual clients within the group, which shall be treated as a single exposure.

EV = exposure value calculated in the manner laid down in Article 35.

EVE = exposure value excess calculated in the manner laid down in Article 36(1a).

For the purpose of K-CON, the capital requirements of exposures arising from the positive excess of an investment firm’s long positions over its short positions in all the trading book financial instruments issued by the client in question, the net position of each calculated in accordance with the provisions referred to in Article 22(1) (a) to (c), shall only include specific-risk requirements. An investment firm that, for the purposes of the RtM K-factor requirement, calculates capital requirements for trading book positions, according to the approach specified in Article 23, shall calculate the capital requirement of the exposure for the purpose of concentration risk of those positions in accordance with the provisions referred to in Article 22(1)(a).

Table 6

Column 1: Exposure value excess as a percentage of own funds	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 %

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 36 :

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

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

(c) exposures constituting claims on:

(i) central governments, central banks, public sector entities, international organisations or multilateral development banks (MDBs) and exposures guaranteed by or attributable to such persons, where these exposures receive a 0 % risk weight under Articles 114 to 118 of Regulation (EU) 575/2013;

(ii) European Economic Area (EEA) states' regional governments and local authorities.

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

2. Competent authorities may fully or partially exempt the following exposures from the application of Article 36:

(a) covered bonds;

(b) exposures incurred by an investment firm to its parent undertaking, to other subsidiaries of that parent undertaking or to its own subsidiaries, in so far as those undertakings are covered by the supervision - either on a consolidated basis, in accordance with Regulation (EU) No 575/2013 or with Article 7 of this Regulation, or are supervised for compliance with the group capital test, in accordance with Article 8 of this Regulation - to which the investment firm itself is subject, in accordance with this Regulation or with equivalent standards in force in a third country, and the following conditions are met:

(i) 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; and

(ii) the risk evaluation, measurement and control procedures of the parent undertaking include the financial sector entity.

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

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

PART FIVE

LIQUIDITY

Article 42

Liquidity requirement

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).

By way of derogation to the first subparagraph, competent authorities may exempt investment firms that meet the conditions set out in Article 12(1) from the application of the provisions of the first subparagraph and shall duly inform EBA thereof.

For the purposes of the first subparagraph, liquid assets shall be any of the following, without limitation to their composition:

(a) the assets referred to in Articles 10 to 13 of Commission Delegated Regulation (EU) 2015/61, subject to the same conditions (eligibility criteria, applicable haircuts) provided in these Articles;

(b) the assets referred to in Article 15 of Commission Delegated Regulation (EU) 2015/61, up to an absolute amount of EUR 50 million (or equivalent amount in domestic currency), subject to the same conditions (eligibility criteria apart from the EUR 500 million threshold amount referred to in Article 15(1) of delegated Regulation(EU) 2015/61, applicable haircuts) provided in that Article;

(c) financial instruments not covered by point (a) and (b) traded on a trading venue for which there is a liquid market as defined in point (17) of Article 2(1) of Regulation (EU) No 600/2014 and in Articles 1 to 5 of Commission Delegated Regulation (EU) 2017/567, subject to a haircut of 55%;

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

1a. Cash, short term deposits or financial instruments belonging to clients, even where held in the own name of the investment firm, shall not be counted as liquid assets for the purposes of paragraph 1.

2. For the purposes of paragraph 1, an investment firm that meets the conditions set out in Article 12(1) and an investment firm that does not meet the conditions set out in Article 12(1) but which does not carry out any of the activities referred to in points (3) and (6) of Section A of Annex I of Directive 2014/65/EU 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 a maximum of 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%.

2a. For the purpose of the second subparagraph of paragraph 1, EBA, in consultation with ESMA, shall issue guidelines specifying further the criteria which the competent authorities may take into account when exempting investment firms that meet the conditions set out in Article 12(1) from the liquidity requirement.

Article 43

Temporary reduction of the liquidity requirement

1. An investment firm may, in exceptional circumstances, and after approval by the competent authority, reduce the amount of liquid assets held.

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

Article 44

Client guarantees

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

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 and 49 on the same day it publishes its annual financial statements.

3. Where an investment firm no longer meets all the conditions set out in Article 12(1), it shall publicly disclose the information set out in this Part as of the financial year following the financial year in which it no longer met those conditions.

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 a summary of 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;
   (e) a description of all restrictions applied to the calculation of own funds in accordance with this Regulation and the instruments 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)and (e) of paragraph 1.

   EBA shall submit those draft implementing technical standards to the Commission by [18 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 K-factor capital requirements calculated , in accordance with Article 15, in aggregate form for RtM, RtF, and RtC, based on the sum of the applicable K-factors;

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

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 and the gender pay gap, 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:

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

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

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

vii) 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;

(d) 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. Member States shall ensure that investment firms, which do not meet the criteria referred to in point (a) of paragraph 4 of Article 30 of Directive (EU)---/---[IFD] disclose, in accordance with Article 45, the following:

a) the proportion of voting rights attached to the shares held directly or indirectly by the investment firm, broken down by Member State and sector;

b) the complete description of voting behaviour in the general meetings of companies the shares of which are held in accordance with paragraph 2, an explanation of the votes, and the ratio of proposals put forward by the administrative or management body of the company which the investment firm has approved;

c) an explanation of the use of proxy advisor firms;

d) the voting guidelines regarding the companies the shares of which are held in accordance with paragraph 2

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. The investment firm referred to in paragraph 1 shall comply with paragraph 1 only in respect of each company the shares of which are admitted to trading on a regulated market and to the shares of which voting rights are attached where the proportion of voting rights that the investment firm directly or indirectly holds exceeds the threshold of 5% of all voting rights attached to the shares issued by the company. The voting rights shall be calculated on the basis of all the shares to which voting rights are attached even if the exercise thereof is suspended.

3. EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify templates for disclosure under paragraph 1.

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

Power is conferred on the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Article 10 to 14 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 a quarterly 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.

By way of derogation from the first subparagraph, the frequency of reporting laid down in the first subparagraph for investment firms that meet the conditions set out in Article 12(1) shall be annual .

1a. The information specified in point (e) of paragraph 1 shall include the following levels of risk and be reported to the competent authorities at least on an annual basis:

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

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

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

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

(e) level of concentration risk from earnings.

(f) level of concentration risk as described in points (a) to (e) calculated by also taking into account assets and off-balance sheet items not recorded in the trading book in addition to exposures arising from trading book positions.

For the purpose of this paragraph, the terms 'credit institution' and 'investment firm' shall apply in accordance with Article 33(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 point (e) and, insofar as an exception has been granted according to the second subparagraph of Article 42 (1), point (f) of paragraph 1 of this Article.

For the purpose of the reporting requirements laid down in this Article, EBA, in consultation with ESMA, shall develop draft implementing technical standards which shall be concise, proportionate to the nature, scope and complexity of the activities of the investment firms, taking into account the difference in granularity of information submitted by an investment firm that meets the conditions in Article 12(1), to specify:

(a) the formats,
(b) reporting dates and
definitions and associated instructions which shall describe how to use those formats.

EBA shall develop the implementing technical standards referred to in the first subparagraph by [12 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 points (3) and (6) of Section A of Annex 1 to Directive 2014/65/EU for the purposes of the thresholds referred to in Article 1(2) of this Regulation and 4(1)(1)(b) of Regulation (EU) No 575/2013

Investment firms which carry out any of the activities referred to in points (3) and (6) of Section A of Annex 1 to Directive 2014/65/EU , shall verify the size of their total assets on a monthly basis and report quarterly that information to the competent authority if the total value of the consolidated assets of the investment firm exceeds EUR 5 billion, calculated as an average of the last 12 consecutive months. The competent authority shall inform the EBA thereof.

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 points (3) and (6) of Section A of Annex 1 to Directive 2014/65/EU , such investment firms shall verify the size of their total assets on a monthly basis if the total value of the consolidated assets of the group exceeds EUR 5 billion calculated as an average of the last 12 consecutive months. Such investment firms shall inform each other of their total assets on a monthly basis. Those investment firms shall report quarterly their consolidated total assets to the relevant competent authorities. The competent authorities shall inform the EBA thereof.

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 1(2) of this Regulation or in Article 4(1)(1)(b) of Regulation (EU) No 575/2013 calculated as an average of the last 12 consecutive months, EBA shall notify those investment firms and the competent authorities, including the authorities competent for granting authorisation in accordance with Article [8a] of Directive 2013/36/EU thereof.

3a. Where a review in accordance with Article 33 of Directive --/--/---- [IFD] shows that an investment firm referred to in paragraph 1 of this Article may pose systemic risk as referred to in Article 23 of Regulation (EU) No 1093/2010, competent authorities inform EBA without delay about the results of that review.

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 ~~st~~ [twelve month from the date of entry into force of this Regulation].
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) and 12(5)shall be conferred on the Commission for period of 5 years 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[11]. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council[12].

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

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

12 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 to credit institutions for capital requirements purposes 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 later, an investment firm shall apply the requirements set out in Title IV of Part Three of [current] Regulation (EU) No 575/2013 for the purposes of calculating K-NPR.

3. By way of derogation from points (a) and (c) of Article 11(1), 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, taking into account Article 93(1) of that Regulation, had it continued to be subject to the capital requirements of 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];

4. By way of derogation from point (b) of Article 11(1) 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 applicable initial capital requirement set out in Title IV of Directive 2013/36/EU on [day before the date of application of this Regulation] without taking into account points (b) and (c) of paragraph 1, and paragraph 2 respectively, of Article 31 of that Directive where an undertaking was subject only to an initial capital requirement until that point in time;

(b) investment firms which were in existence before [date of application of this Regulation] may limit their permanent minimum capital requirements to the ones following Article 93 (1) of Regulation (EU) No 575/2013 had they continued to be subject to that Regulation, subject to an annual increase of at least EUR 5 000 during this five year period;

(c) investment firms which were in existence before [date of application of this Regulation] and are not authorised to provide the ancillary services referred to in point (1) of Section B of Annex I to Directive 2014/65/EU, which only provide one or more of the investment services and activities listed in points 1, 2, 4 and 5 of Section A of Annex I to that Directive and which are not permitted to hold client money or securities belonging to their clients and which for that reason may not at any time place themselves in debt with those clients, may limit their permanent minimum capital requirement to at least EUR 50 000, subject to an annual increase of at least EUR 5 000 during this five year period.

5. The derogations set out in paragraph 4 shall cease to apply where an investment firm has its authorisation extended on or after [date of application of this Regulation] such that a higher amount of initial capital is required in accordance with Article 8 of Directive [--/--/----][IFD].

6. By way of derogation from Article 11, undertakings which were in existence before [date of entry into force of this Regulation] which deal for their own accounts on markets in financial futures or options or other derivatives and on cash markets for the sole purpose of hedging positions on derivatives markets, or which deal for the accounts of other members of those markets and are guaranteed by clearing members of the same markets, where responsibility for ensuring the performance of contracts entered into by such firms is assumed by clearing members of the same markets, may limit their capital requirements for a period of five years from [date of application of this Regulation] to at least EUR 250 000, subject to an annual increase of at least EUR 100 000 during this five year period.

Irrespective of whether an undertaking referred to in this paragraph makes use of this derogation, the provisions of point (a) of paragraph 4 shall not apply to such an undertaking.

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.

Article 58a

Derogation for investment firms referred to in Article 1(2)

An investment firm which on the date of entry into force of this Regulation meets the conditions set out in Article 1(2) shall continue to be subject to the provisions of Regulation (EU) 575/2013 and of Directive 2013/36/EU.

TITLE II

REPORTS AND REVIEWS

Article 59

Review clause

By [3 years from the date of application of this Regulation], the Commission shall, after consulting with EBA and ESMA, carry out a review and submit a report, together with a legislative proposal if appropriate, on at least 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, including investment advice in the scope of AUM, and in Article 38;

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

(c1) the method used to calculate K-CMG, the level of capital requirements deriving from K-CMG compared with K-NPR, and the calibration of the multiplying factor set out in Article 23;

(d) the provisions set out in Articles 42 to 44 and in particular the eligibility for the liquidity requirement of liquid assets in points (a) to (c) of paragraph 1 of Article 42;

(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;

(g) the provisions set out in Part Two, in particular concerning the permission to use further instruments of own funds pursuant to Article 9(4), and the possibility to grant permission to firms that fulfill the requirements of Article 12(1);

(h) the conditions for investment firms to apply the requirements of Regulation (EU) 575/2013 in accordance with Article 1(2);

(i) the provision set out in Article 1(5).

(ia) The relevance of the application of the disclosure requirements set out in Article 51a for other sectors, including investment firms referred to in Article 1(2) and 1(5) of this regulation and credit institution as defined in point (1) of Article 4(1) [--CRR--]

(2a) By [1 year from the receipt of the report referred to in Article 52(13) MiFIR], the Commission shall submit a report on the resources needs arising from the assumption of new powers and duties by ESMA in accordance with Article [61] of Regulation [IFR], including the possibility for ESMA to levy registration fees to third-country firms registered by ESMA in accordance with Article 46(2) MiFIR, together with a legislative proposal where appropriate.

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.

1a. In Article 2, the following subparagraph is added:

When giving effect to the provisions laid down in Article 1(2) and 1(5) of [Regulation (EU) ---/---- [IFR], the competent authorities as defined in point (5) of Article 3 of Directive (EU) ----/--[IFD] shall treat the investment firms referred to in Article 1(2) and 1(5) of [Regulation (EU) ---/--- [IFR] as if those investment firms were ‘institutions’ under this Regulation.

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 consolidated assets of the undertaking exceeds EUR 30 billion, or

ii) the total value of the assets of the undertaking is below EUR 30 billion, and the undertaking is part of a group in which the total value of the consolidated 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 below EUR 30 billion exceeds EUR 30 billion, or

iii) the total value of the assets of the undertaking is below EUR 30 billion, and the undertaking is part of a group in which the total value of the consolidated 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 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.

(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 and other than a pure industrial holding company, 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;''.

(ea) point (29a) is replaced by the following:

(29a)‘’ parent investment firm in a Member State’ means a parent undertaking in a Member State that is an investment firm;’’

(eb) point (29b) is replaced by the following:

(29b) ‘EU parent investment firm’ means an EU parent undertaking that is an investment firm;

(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;’’;

(ff) point (60) is replaced by the following:

“(60) ‘cash assimilated instrument’ means a certificate of deposit, a bond, including a covered bond, or any other non-subordinated instrument, which has been issued by an institution or an investment firm, for which the institution has already received full payment and which shall be unconditionally reimbursed by the institution at its nominal value;”;

(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) (4). Institutions shall comply with the obligations laid down in Part Six of this Regulation on an individual basis.

The following institutions shall not be required to comply with Article 413(1) of this Regulation:

(a) institutions which are also authorised in accordance with Article 14 of Regulation (EU) No 648/2012;

(b) institutions which are also authorised in accordance with Article 16 and point (a) of Article 54(2) of Regulation (EU) No 909/2014, provided that they do not perform any significant maturity transformation; and

(c) institutions which are designated in accordance with point (b) of Article 54(2) of Regulation (EU) No 909/2014, provided that:

(i) their activities are limited to offering banking-type services, which are listed in points (a) to (e) of Section C of the Annex to that Regulation, to central securities depositories authorised in accordance with Article 16 of that Regulation; and

(ii) they do not perform any significant maturity transformation.

(b) paragraph 5 is replaced by the following:

(5). Institutions for which competent authorities have exercised the derogation specified in Article 7(1) or (3) and institutions which are also authorised in accordance with Article 14 of Regulation (EU) No 648/2012, shall not be required to comply with the obligations laid down in Part Seven on an individual basis.";

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, investment firms shall be considered as parent financial holding companies in a Member State or Union parent financial holding companies where such investment firms are parent undertakings of an institution or of an investment firm subject to this Regulation referred to in Article 1(2) or 1(5) IFR.

5. In Article 11, paragraph 4 is replaced by the following:

"4. ''EU parent institutions shall comply with Part Six of this Regulation on the basis of their consolidated situation where 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 2014/65/EU.

Where a waiver has been granted under Article 8(1) to (5), the institutions and, where applicable, the financial holding companies or mixed financial holding companies that are part of a liquidity sub-group shall comply with Part Six on a consolidated basis or on the sub-consolidated basis of the liquidity sub-group.''.

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 intermediate financial holding company in a third country that is subject to prudential requirements as stringent as those applied to credit institutions of that third country and where the Commission has decided in accordance with Article 107(4) that those prudential requirements are at least equivalent to those of this Regulation;

(iv) 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 intermediate financial holding company in a third country that is subject to prudential requirements as stringent as those applied to credit institutions of that third country and where the Commission has decided in accordance with Article 107(4) that those prudential requirements are at least equivalent to those of this Regulation;

(iv) an investment firm;’’.

10a. Article 84 is amended as follows:

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

‘’ 1. Institutions shall determine the amount of minority interests of a subsidiary that is included in consolidated Common Equity Tier 1 capital by subtracting from the minority interests of that undertaking the result of multiplying the amount referred to in point (a) by the percentage referred to in point (b):

(a) the Common Equity Tier 1 capital of the subsidiary minus the lower of the following:

(i) the amount of Common Equity Tier 1 capital of that subsidiary required to meet

(1) the sum of the requirement laid down in point (a) of Article 92(1), the requirements referred to in Articles 458 and 459, the specific own funds requirements referred to in Article 104 of Directive 2013/36/EU the combined buffer requirement defined in point (6) of Article 128 of Directive 2013/36/EU, the requirements referred to in Article 500 and any additional local supervisory regulations in third countries insofar as those requirements are to be met by Common Equity Tier 1 capital;

(2) where the subsidiary is an investment firm, the sum of the requirement laid down in Article 11 of [Regulation on the prudential requirements of investment firms [IFR], the specific own funds requirements referred to in Article 36 (2) (a) of Directive (EU)____/__[IFD] on the prudential supervision of investment firms and any additional local supervisory regulations in third countries insofar as those requirements are to be met by Common Equity Tier 1 capital;

(ii) the amount of consolidated Common Equity Tier 1 capital that relates to that subsidiary that is required on a consolidated basis to meet the sum of the requirement laid down in point (a) of Article 92(1), the requirements referred to in Articles 458 and 459, the specific own funds requirements referred to in Article 104 of Directive 2013/36/EU, the combined buffer requirement defined in point (6) of Article 128 of Directive 2013/36/EU, the requirements referred to in Article 500 and any additional local supervisory regulations in third countries insofar as those requirements are to be met by Common Equity Tier 1 capital.

(b) paragraph (3) is replaced by the following:

(3). Where a competent authority derogates from the application of prudential requirements on an individual basis, as laid down in Article 7, or, as applicable, as laid down in Article 6 of Regulation […] on the prudential requirements of investment firms [IFR], minority interest within the subsidiaries to which the waiver is applied shall not be recognised in own funds at the sub-consolidated or at the consolidated level, as applicable.

10b. Article 85 is amended as follows:

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

‘’ 1. Institutions shall determine the amount of qualifying Tier 1 capital of a subsidiary that is included in consolidated own funds by subtracting from the qualifying Tier 1 capital of that undertaking the result of multiplying the amount referred to in point (a) by the percentage referred to in point (b):

(a) the Tier 1 capital of the subsidiary minus the lower of the following:

(i) the amount of Tier 1 capital of the subsidiary required to meet:

(1) the sum of the requirement laid down in point (b) of Article 92(1), the requirements referred to in Articles 458 and 459, the specific own funds requirements referred to in Article 104 of Directive 2013/36/EU, the combined buffer requirement defined in point (6) of Article 128 of Directive 2013/36/EU, the requirements referred to in Article 500 and any additional local supervisory regulations in third countries insofar as those requirements are to be met by Tier 1 Capital;

(2) where the subsidiary is an investment firm, the sum of the requirement laid down in Article 11 of Regulation […] on the prudential requirements of investment firms [IFR], the specific own funds requirements referred to in Article 36 (2) (a) of Directive […] on the prudential supervision of investment firms […] [IFD] and any additional local supervisory regulations in third countries insofar as those requirements are to be met by Tier 1 capital;

(ii) the amount of consolidated Tier 1 capital that relates to the subsidiary that is required on a consolidated basis to meet the sum of the requirement laid down in point (b) of Article 92(1), the requirements referred to in Articles 458 and 459, the specific own funds requirements referred to in Article 104 of Directive 2013/36/EU, the combined buffer requirement defined in point (6) of Article 128 of Directive 2013/36/EU, the requirements referred to in Article 500 and any additional local supervisory regulations in third countries insofar as those requirements are to be met by Tier 1 Capital;

(b) paragraph (3) is replaced by the following:

Where a competent authority derogates from the application of prudential requirements on an individual basis, as laid down in Article 7 or, as applicable, as laid down in Article 6 of Regulation […] on the prudential requirements of investment firms [IFR], Tier 1 instruments within the subsidiaries to which the waiver is applied shall not be recognised as own funds at the sub-consolidated or at the consolidated level, as applicable.

10c. Article 87 is amended as follows:

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

1. Institutions shall determine the amount of qualifying own funds of a subsidiary that is included in consolidated own funds by subtracting from the qualifying own funds of that undertaking the result of multiplying the amount referred to in point (a) by the percentage referred to in point (b):

(a) the own funds of the subsidiary minus the lower of the following:

(i) the amount of own funds of the subsidiary required to meet

(1) the sum of the requirement laid down in point (c) of Article 92(1), the requirements referred to in Articles 458 and 459, the specific own funds requirements referred to in Article 104 of Directive 2013/36/EU, the combined buffer requirement defined in point (6) of Article 128 of Directive 2013/36/EU, the requirements referred to in Article 500 and any additional local supervisory regulations in third countries,

(2) where the subsidiary is an investment firm, the sum of the requirement laid down in Article 11 of Regulation […] on the prudential requirements of investment firms [IFR], the specific own funds requirements referred to in Article 36 (2) (a) of Directive […] on the prudential supervision of investment firms […] [IFD] and any additional local supervisory regulations in third countries;

(ii) the amount of own funds that relates to the subsidiary that is required on a consolidated basis to meet the sum of the requirement laid down in point (c) of Article 92 (1), the requirements referred to in Articles 458 and 459, the specific own funds requirements referred to in Article 104 of Directive 2013/36/EU, the combined buffer requirement defined in point (6) of Article 128 of Directive 2013/36/EU, the requirements referred to in Article 500 and any additional local supervisory own funds requirement in third countries;

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

Where a competent authority derogates from the application of prudential requirements on an individual basis, as laid down in Article 7 or, as applicable, as laid down in Article 6 of Regulation […] on the prudential requirements of investment firms [IFR], own funds requirements within the subsidiaries to which the waiver is applied shall not be recognised as own funds at the sub-consolidated or at the consolidated level, as applicable.

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.’’.

11a. 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 purposes of this paragraph, the prudential requirements defined in [Regulation (EU) ---/---- [IFR] shall be considered comparable to those applied to institutions in terms of robustness.”.

11b. Point (a) of the second subparagraph of Article 162(3) is amended as follows:

“(a) exposures to institutions or investment firms arising from settlement of foreign exchange obligations;”.

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

Article 197 is amended as follows:

(a) point (c) of paragraph 1 is 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;’’

in paragraph 4, the following words are inserted after the words “An institution may use debt securities that are issued by other institutions”:

“or investment firms”.

13a. In Article 200 point (c) is replaced by the following:

“(c) instruments issued by third party institutions or investment firms which will be repurchased by that institution on request.”.

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:’’.

14a. In Article 224 paragraph 6 is replaced by the following:

“6. For unrated debt securities issued by institutions or investment firms and satisfying the eligibility criteria in Article 197(4) the volatility adjustments is the same as for securities issued by institutions or corporates with an external credit assessment associated with credit quality step 2 or 3.”.

14b. A new point (bb) is inserted in Article Article 227(3), between points (b) and (c):

“(bb) investment firms”.

14c. The second subparagraph of Article 243 is replaced by the following:

“In the case of trade receivables, point (b) of the first subparagraph shall not apply where the credit risk of those trade receivables is fully covered by eligible credit protection in accordance with Chapter 4, provided that in that case the protection provider is an institution, an investment firm, an insurance undertaking or a reinsurance undertaking.”.

14d. Article 382(4)(b) is replaced by the following:

“(b) intragroup transactions as provided for in Article 3 of Regulation (EU) No 648/2012 unless Member States adopt national laws requiring the structural separation within a banking group, in which case competent authorities may require those intragroup transactions between the structurally separated entities to be included in the own funds requirements;”.

15. Article 388 is deleted.

15a. Article 395(1) is replaced by the following:

"1. An institution shall not incur an exposure, after taking into account the effect of the credit risk mitigation in accordance with Articles 399 to 403, to a client or group of connected clients the value of which exceeds 25 % of its Tier 1 capital. Where that client is an institution or an investment firm or where a group of connected clients includes one or more institutions or investment firms, that value shall not exceed 25 % of the institution's Tier 1 capital or EUR 150 million, whichever is higher, provided that the sum of exposure values, after taking into account the effect of the credit risk mitigation in accordance with Articles 399 to 403, to all connected clients that are not institutions does not exceed 25 % of the institution's Tier 1 capital.".

15b. Article 402(3) is amended as follows:

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

“(a) the counterparty is an institution or an investment firm;”;

(b) point (e) is repaced by the following:

“(e) the institution reports to the competent authorities in accordance with Article 394 the total amount of exposures to each other institution or investment firm that are treated in accordance with this paragraph.”.

15 ba. in Article 412, paragraph 4a is replaced by the following:

‘’4a. The delegated act referred to in Article 460 (1) shall apply to institutions’’

15c. Article 422(8)(a)(i) is replaced by the following:

“(i) a parent or subsidiary institution or investment firm of the institution or another subsidiary of the same parent institution or investment firm;”.

15d. Article 425(1) is replaced by the following:

"1. Institutions shall report their liquidity inflows. Capped liquidity inflows shall be the liquidity inflows limited to 75 % of liquidity outflows. Institutions may exempt liquidity inflows from deposits placed with other institutions and qualifying for the treatments set out in Article 113(6) or (7) from this limit. Institutions may exempt liquidity inflows from monies due from borrowers and bond investors related to mortgage lending funded by bonds eligible for the treatment set out in Article 129(4), (5) or (6) or by bonds as referred to in Article 52(4) of Directive 2009/65/EC from this limit. Institutions may exempt inflows from promotional loans that the institutions have passed through. Subject to the prior approval of the competent authority responsible for supervision on an individual basis, the institution may fully or partially exempt inflows where the provider is a parent or a subsidiary institution or investment firm of the institution or another subsidiary of the same parent institution or investment firm or linked to the institution by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC.".

15e. in Article 428a, point (d) of paragraph (1) is deleted.

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

17. Article 493 is amended as follows:

(a) paragraph 1 is replaced by the following:

“Until the date of application of Regulation […] on the prudential requirements of investment firms [IFR], the provisions on large exposures as laid down in Articles 387 to 403 shall not apply to investment firms the main business of which consists exclusively of the provision of investment services or activities in relation to the financial instruments set out in points 5, 6, 7, 9, 10 and 11 of Section C of Annex I to Directive 2014/65/EU and to which Directive 2004/39/EC of the European Parliament and of the Council* did not apply on 31 December 2006.”

(b) paragraph 2 is deleted.’’.

18. Article 498 is replaced by the following:

Until the date of application of Regulation […] on the prudential requirements of investment firms [IFR], the provisions on own funds requirements as set out in this Regulation shall not apply to investment firms the main business of which consists exclusively of the provision of investment services or activities in relation to the financial instruments set out in points 5, 6, 7, 9, 10 and 11 of Section C of Annex I to Directive 2014/65/EU and to which Directive 2004/39/EC did not apply on 31 December 2006.”.

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

20. Paragraph (1)(d) of Annex I is replaced by the following:

“(d) endorsements on bills not bearing the name of another institution or investment firm;”.

21. Annex III is amended as follows:

paragraph (3)(b) is replaced by the following:

"(b) they are not an obligation of an institution or investment firm or any of its affiliated entities.";

paragraph (5)(b) is amended as follows:

"(b) they are not an obligation of an institution or investment firm or any of its affiliated entities.";

paragraph (6)(a) is amended as follows:

"(a) they do not represent a claim on an SSPE, an institution or investment firm or any of its affiliated entities;";

paragraph 7 is amended as follows:

"7. Transferable securities other than those referred to in points 3 to 6 that qualify for a 50 % or better risk weight under Chapter 2, Title II of Part Three or are internally rated as having an equivalent credit quality, and do not represent a claim on an SSPE, an institution or investment firm or any of its affiliated entities.";

paragraph 11 is amended as follows:

"11. Exchange traded, centrally cleared common equity shares, that are a constituent of a major stock index, denominated in the domestic currency of the Member State and not issued by an institution or investment firm or any of its affiliates.".

Article 61

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

In Article 1, the following paragrah is inserted:

4a. Title VII Chapter 1 of this Regulation also applies to third-country firms providing investment services or performing activities within the Union.

(-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.
Application of tick sizes shall not prevent systematic internalisers matching orders large in scale at mid-point within the current bid and offer prices.

(1) Article 46 is amended as follows:

(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.’’;

(aa) in paragraph 4, the last subparagraph shall be replaced by :

Member States may allow third-country firms to provide investment services or perform investment activities together with ancillary services to eligible counterparties and professional clients within the meaning of Section I of Annex II to Directive 2014/65/EU in their territories in accordance with national regimes in the absence of the Commission decision in accordance with Article 47(1), where such decision is no longer in effect, or where the services or activities concerned are not covered by the Commission decision.

(aaa) paragraph 5 shall be replaced by:

“5. Third-country firms providing services in accordance with this Article shall inform clients established in the Union, before the provision of any investment services, that they are not allowed to provide services to clients other than eligible counterparties and professional clients within the meaning of Section I of Annex II to Directive 2014/65/EU and that they are not subject to supervision in the Union. They shall indicate the name and the address of the competent authority responsible for supervision in the third country.

The information in the first subparagraph shall be provided in writing and in a prominent way.

Member States shall ensure that where an eligible counterparty or professional client within the meaning of Section I of Annex II to Directive 2014/65/EU established or situated in the Union initiates at its own exclusive initiative the provision of an investment service or activity by a third-country firm, this Article does not apply to the provision of that service or activity by the third-country firm to that person including a relationship specifically related to the provision of that service or activity. Without prejudice to intragroup relationships, where a third-country firm, including through an entity acting on its behalf or having close links with such third-country firm or any other person acting on behalf of such entity, solicits clients or potential clients in the Union, it shall not be deemed as a service provided at the own exclusive initiative of the client. An initiative by such clients shall not entitle the third-country firm to market new categories of investment product or investment service to that individual.

(b) the following paragraphs 6a, 6b and 6c are 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, including the geographical distribution across Member States

(aa) for firms performing activity (3) of Section A of Annex I to Directive 2014/65/EU, their monthly minimum, average and maximum exposure to EU counterparties;

(ab) for firms providing service (6) of Section A of Annex I to Directive 2014/65/EU, the total value of financial instruments originating from EU counterparties underwritten or placed on a firm commitment basis over the last 12 months;

(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).'';

(e) the governance arrangements, including key function holders for the activities of the firm in the Union;

(f) any other information necessary to enable ESMA or the competent authorities to carry out their tasks in accordance with this regulation;

ESMA shall communicate the information received in accordance with this paragraph to the competent authorities of the Member States where a third-country firm provides services or performs investment activities in accordance with this article.

Where necessary for the accomplishment of the tasks of ESMA or the competent authorities in accordance with this Regulation, ESMA may, including upon the request of the competent authority of the Member States where a third-country firm provides services or performs investment activities in accordance with this article, ask third country firms providing services or performing activities in accordance with this Article to provide any further information in respect of their operations.

6b. Where a third country firm provides services or performs activities in accordance with this Article, it shall keep, at the disposal of ESMA, the data relating to all orders and all transactions in the Union in financial instruments which they have carried out, whether on own account or on behalf of a client, for a period of five years.

Upon request by the competent authority of a Member State where a third-country firm provides services or performs investment activities in accordance with this article, ESMA shall access the relevant data kept at its disposal in accordance with the first sub-paragraph and shall make that data available to the requesting competent authority.

6c. Where a third country firm does not cooperate in an investigation or an on-site inspection carried out in accordance with Article 47(2), or does not comply with a request from ESMA in accordance with paragraphs 6a and 6b in due time and manner, ESMA may withdraw its registration or temporarily prohibit or restrict its activities according to Article 49.".

(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 [nine months 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 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 [nine months from the date of entry into force of this Regulation]

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 examination procedure referred to in Article 51(2) 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 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 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 scale and scope of 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 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 these purposes, the Commission shall also assess and take into account the supervisory convergence between the third country concerned and the Union.

The Commission shall be empowered to adopt delegated acts in accordance with Article 50 in order to further specify the circumstances under which the scale and scope of the services provided and activities performed by third-country firms in the Union following the adoption of an equivalence decision referred to in the first subparagraph are likely to be of systemic importance for the Union.

Where the scale and scope of the services provided and activities performed by third-country firms are likely to be of systemic importance for the Union, the Commission may attach specific operational conditions to an equivalence decision that would ensure that ESMA and national competent authorities have the necessary tools to prevent regulatory arbitrage and monitor the activities of third-country investment firms registered in accordance with Article 46(2) in respect of services provided and activities performed in the Union by :

- ensuring that these firms comply with requirements which have an equivalent effect to the requirements referred to in Articles 20 and 21 ;

- ensuring that these firms, comply with reporting requirements which have an equivalent effect to the requirements referred to in Article 26, where such information cannot be obtained directly and on an on-going basis through a Memorandum of Understanding with the third-country competent authority;

- ensuring that, where applicable, these firms comply with requirements that have an equivalent effect to the trading obligation referred to in article 23 and 28

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) the second subparagraph of paragraph 1 is replaced by the following:

The prudential, organisational and business conduct framework of a third country may be considered to have equivalent effect where that framework fulfils all the following conditions:

(a) firms providing investment services and activities in that third country are subject to authorisation and to effective supervision and enforcement on an ongoing basis;

(b) firms providing investment services and activities in that third country are subject to sufficient capital requirements. In particular, firms providing services or perfoming activities (3) or (6) of Section A of Annex I to Directive 2014/65/EU are subject to comparable capital requirements to those they would apply if they were established in the Union.

(ba) firms providing investment services and activities in that third country are subject to appropriate requirements applicable to shareholders and members of their management body;

(c) firms providing investment services and activities are subject to adequate business conduct and organisational requirements;

(d) market transparency and integrity is ensured by preventing market abuse in the form of insider dealing and market manipulation.

For the purpose of the second subparagraph, when assessing equivalence of third country rules as regards the trading obligation set out in Articles 23 and 28, the Commission shall also assess whether the third country legal framework provides for criteria for the designation of trading venues as eligible for compliance with the trading obligation which have a similar effect to those set out under this Regulation or Directive 2014/65/EU.

(c) in paragraph 2, point (a) is replaced by the following:
‘‘(a) the mechanism for the exchange of information between ESMA and the competent authorities of third countries concerned, including access to all information regarding the non-Union firms authorised in third countries that is requested by ESMA, and, where relevant, the modalities of the onward sharing by ESMA of such information with competent authorities of the Member States’’;

(d) 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 which ESMA may carry out, in cooperation with the competent authorities of the Member States where the third-country firm provides services or performs investment activities in accordance with article 46, where it is necessary for the accomplishment of the tasks of ESMA or the competent authorities in accordance with this Regulation, having duly informed the competent authority of the third-country thereof.’’;
(da) in paragraph 2, a new point (d) is added:
“(d) the procedures concerning a request for information pursuant to paragraphs 6a and 6b of Article 46 that ESMA may submit to a third country firm registered in accordance with Article 46(2).”

(e) 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. ESMA shall submit a confidential report on its findings to the Commission on an annual basis. Where considered appropriate by ESMA, ESMA can consult the EBA on the report.
The report shall also reflect the trends observed on the basis of the data collected under Article 46(6a), in particular as regards firms providing services or performing activities (3) and (6) of Section A of Annex I to Directive 2014/65/EU.
(ca) the following paragraph 5a is added:
5a. The Commission shall, on the basis of the report referred to in Article [47(5)], submit a report to the European Parliament and the Council at least on an annual basis. The report shall include a list of the equivalence decisions taken or withdrawn by the Commission in the reporting year, as well as any measures taken by ESMA pursuant to Article 49, and provide an explanation on the rationale supporting those decisions and measures.

In that respect, the report shall include information on the monitoring of the regulatory and supervisory developments, the enforcement practices and other relevant market developments in third countries for which equivalence decisions have been adopted. It shall also take stock of how the cross-border provision of investment services by third-country firms has evolved in general and in particular as regards the services and activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU. The report shall also include in due course information concerning ongoing equivalence assessments that the Commission is undertaking in relation to a third-country.

(3) Article 49 is replaced by the following:

''*Article 49*

Measures to be taken by ESMA

ESMA may temporarily prohibit or restrict a third-country firm from providing investment services or performing investment activities with or without any ancillary services in accordance with Article 46(1) where the third country firm has failed to comply with any prohibition or restriction imposed by ESMA or EBA in accordance with Article 40 and Article 41 or by a competent authority in accordance with Article 42 or with a request from ESMA in accordance with Article 46 (6a) and (6b) in due time and manner, or where the third country firm does not cooperate with an investigation or an on-site inspection carried out in accordance with Article 47(2).

Without prejudice to paragraph 1, ESMA shall withdraw the registration of a thirdcountry firm in the register established in accordance with Article 48, where ESMA has referred the matter to the competent authority of the third country and that competent authority has not taken the appropriate measures needed to protect investors or the proper functioning of the markets in the Union, or has failed to demonstrate that the third-country firm concerned complies with the requirements applicable to it in the third country, or with the conditions under which a decision in accordance with Article 47(1) has been adopted, and any of the following applies:

ESMA has well-founded reasons based on documented evidence, including but not limited to the annual information provided in accordance with Article 46(6a), to believe that, in the provision of investment services and activities in the Union, the third-country firm is acting in a manner which is clearly prejudicial to the interests of investors or the orderly functioning of markets;

ESMA has well-founded reasons based on documented evidence, including but not limited to the annual information provided in accordance with Article 46(6a), to believe that, in the provision of investment services and activities in the Union, the third-country firm has seriously infringed the provisions applicable to it in the third country and on the basis of which the Commission has adopted the Decision in accordance with Article 47(1);

2a. ESMA shall inform the third-country competent authority of its intention to take action according to paragraph 1 or 2 in due course.

In deciding the appropriate action to take under this Article, ESMA shall take into account the nature and seriousness of the risk posed to investors and the proper functioning of the markets in the Union, having regard to the following criteria:

(a) the duration and frequency of the risk arising;

(b) whether the risk has revealed serious or systemic weaknesses in the third country firms procedures;

(c) whether financial crime has been occasioned, facilitated or otherwise attributable to the risk;

(d) whether the risk has arisen intentionally or negligently.

ESMA shall inform the Commission and the third country firm concerned of any measure adopted in accordance with paragraph 1 or 2 without delay and shall publish its decision on its website.

The Commission shall assess whether the conditions under which a decision in accordance with Article 47(1) has been adopted continue to persist in relation to the third country concerned.".

(3a) In Article 52, a new paragraph is added:

(13) By 31 December 2020, ESMA shall assess the staffing and resources needs arising from the assumption of its powers and duties in accordance with Article [61] of Regulation [IFR] and submit a report to the European Parliament, the Council and the Commission.

(4) Paragraph 1 of Article 54 shall be replaced by :

1. Third-country firms shall be able to continue to provide services and activities in Member States, in accordance with national regimes until three years after the adoption by the Commission of a decision in relation to the relevant third country in accordance with Article 47. Services and activities not covered by such a decision may continue to be provided under national regime.

Article 61a

Amendment to Regulation 806/2014 [SRMR]

In Article 12a, a new paragraph 3 is added:

3. In accordance with Article 63(3) of Regulation (EU) [----/----IFR], references to Article 92 of Regulation (EU) No 575/2013 in this Regulation as regards the own funds requirements of investment firms referred to in Article 2(c) of this Regulation shall be construed in the following way:

- References to Article 92(1)(c) of Regulation (EU) No 575/2013 as regards the total capital ratio in this Regulation shall refer to Article 11(1) of Regulation (EU) [----/----IFR];
- References to Article 92(3) of Regulation (EU) No 575/2013 as regards the total risk exposure amount in this Regulation shall refer to the applicable requirement in Article 11(1) of Regulation (EU) [----/----IFR] multiplied by 12.5.

In accordance with Article 63(3) of Regulation (EU) [----/----IFR], references to Article 104a of Directive 2013/36/EU in this Regulation as regards additional own funds requirement of investment firms referred to in Article 2(c) of this Regulation shall be construed as referring to Article 37 of Directive ---/---/EU [IFD.

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 three months 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 Brussels,

For the European Parliament	For the Council
The President	The President