

**COMMISSION DELEGATED REGULATION (EU) 2021/2153****of 6 August 2021****supplementing Directive (EU) 2019/2034 of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria for subjecting certain investment firms to the requirements of Regulation (EU) No 575/2013****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU <sup>(1)</sup>, and in particular the third subparagraph of Article 5(6) thereof,

Whereas:

- (1) In accordance with Article 5(1) of Directive (EU) 2019/2034, competent authorities may require certain investment firms to be subject to the same prudential treatment as credit institutions that fall within the scope of Regulation (EU) No 575/2013 of the European Parliament and of the Council <sup>(2)</sup> and to comply with prudential supervision under Directive 2013/36/EU of the European Parliament and of the Council <sup>(3)</sup>.
- (2) For the purposes of Article 5(1)(a) of Directive (EU) 2019/2034, it should be specified that if an investment firm carries out activities exceeding at least one out of four quantitative thresholds for over-the-counter derivatives, financial instruments underwriting and/or placing of financial instruments on a firm commitment basis, granted credits or loans to investors, and debt securities outstanding, those activities are carried out on such a scale that the failure or the distress of the investment firm could lead to systemic risk.
- (3) Given the systemic relevance of investment firms' activities, as referred to in Article 5 of Directive (EU) 2019/2034, and the potential significant impact of a contagion effect across the financial sector, investment firms that are clearing members as defined in Article 4(1)(3) of Regulation (EU) 2019/2033 and that offer clearing services to other financial institutions, which are not clearing members themselves, should be considered for the purposes of Article 5(1)(b) of Directive (EU) 2019/2034.
- (4) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority after having consulted the European Securities and Markets Authority.
- (5) The European Banking Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council <sup>(4)</sup>,

<sup>(1)</sup> OJ L 314, 5.12.2019, p. 64.

<sup>(2)</sup> 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).

<sup>(3)</sup> 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).

<sup>(4)</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

HAS ADOPTED THIS REGULATION:

*Article 1*

**Scale of activities**

For the purposes of Article 5(1)(a) of Directive (EU) 2019/2034, the activities of an investment firm shall be considered to be carried out on such a scale that the failure or distress of the investment firm could lead to systemic risk where the investment firm exceeds any of the following thresholds:

- (a) total gross notional value of non-centrally cleared over-the-counter derivatives of EUR 50 billion;
- (b) total value of financial instruments underwriting and/or placing of financial instruments on a firm commitment basis of EUR 5 billion;
- (c) total value of granted credits or loans to investors to allow them to carry out transactions of EUR 5 billion; and
- (d) total value of debt securities outstanding of EUR 5 billion.

*Article 2*

**Clearing member**

Investment firms that are clearing members and that offer clearing services to other financial sector entities, which are not clearing members themselves, shall be considered for the purposes of Article 5(1)(b) of Directive (EU) 2019/2034.

*Article 3*

**Entry into force**

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

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

Done at Brussels, 6 August 2021.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

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