

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2015/923

of 11 March 2015

amending Delegated Regulation (EU) No 241/2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for own funds requirements for institutions

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 ⁽¹⁾, and in particular the third subparagraph of Article 36(2), the third subparagraph of Article 73(7) and the third subparagraph of Article 84(4) thereof,

Whereas:

- (1) In order to avoid regulatory arbitrage and ensure harmonised application of the own funds requirements in the Union, it is important to ensure that there is a uniform approach concerning the deduction from own funds items of indirect and synthetic holdings in institutions' own own funds instruments and indirect and synthetic holdings in financial sector entities.
- (2) Given that Regulation (EU) No 575/2013 already provides rules for direct holdings of an institution's own funds instruments by the institution itself and direct holdings of own funds instruments of other financial sector entities, supplementing rules should be laid down for the deduction from own funds of holdings by the institution that relate to indirect and synthetic holdings in such instruments of the institution itself or in such instruments of other financial sector entities.
- (3) The treatment of indirect holdings arising from index holdings is covered by Article 76 of Regulation (EU) No 575/2013 and by Articles 25 and 26 of Commission Delegated Regulation (EU) No 241/2014 ⁽²⁾. However, Delegated Regulation (EU) No 241/2014 does not cover indirect and synthetic holdings arising in the context of points (f), (h) and (i) of Article 36(1), points (a), (c), (d) and (f) of Article 56, and points (a), (c) and (d) of Article 66 of Regulation (EU) No 575/2013. It is necessary to set out new rules in respect of the treatment of indirect and synthetic holdings referred to in those provisions.
- (4) Where an institution's own credit standing drives the rates set by market indices which are also used as a reference for the remuneration of Additional Tier 1 and Tier 2 instruments of that institution, prudential concerns arise, relating to the correlation between the distributions on the instrument and the credit standing of the institution. The number and the diversity of institutions in the panel should be high enough to adequately

⁽¹⁾ OJ L 176, 27.6.2013, p. 1.

⁽²⁾ Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for Own Funds requirements for institutions (OJ L 74, 14.3.2014, p. 8).

reflect the activities in the related market. Therefore, if an institution issues an Additional Tier 1 or Tier 2 instrument with a floating rate or a fixed rate that will revert to a floating rate, the rate that it pays on that instrument should not increase when the institution's credit standing declines. Therefore, where the rate is linked to an index, the index should be sufficiently 'broad' to ensure that the institution's credit standing is not a main factor influencing the rates set by that index. The distinction should be made between correlation due to the entire sector suffering stress and affecting the benchmark rate, and correlation due to one institution's credit standing affecting the benchmark rate.

- (5) The calculation of minority interests at the consolidated level and subconsolidated level should be consistent. Therefore, the eligible minority interests of a subsidiary that is itself a parent undertaking of a financial sector entity should be the amount that results, for the parent institution of that subsidiary, when the parent institution applies the prudential consolidation referred to in Title II of Part One of Regulation (EU) No 575/2013.
- (6) Given the similar nature of the deductions covered by Articles 84, 85 and 87 of Regulation (EU) No 575/2013, the same provisions for the calculation of eligible minority interests should apply to all of those cases.
- (7) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority to the Commission.
- (8) 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 opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council ⁽¹⁾.
- (9) Delegated Regulation (EU) No 241/2014 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) No 241/2014 is amended as follows:

1. In Article 1, the following points (o) and (p) are added:

'(o) the conditions according to which indices shall be deemed to qualify as broad market indices, according to Article 73(7) of Regulation (EU) No 575/2013;

(p) the sub-consolidation calculation required in accordance to Article 84(2) and Articles 85 and 87 of Regulation (EU) No 575/2013, pursuant to Article 84(4) of that Regulation.'

2. The following Articles 15a to 15j are inserted:

'Article 15a

Indirect holdings for the purposes of Article 36(1)(f),(h) and (i) of Regulation (EU) No 575/2013

1. For the purposes of Articles 15c, 15d, 15e and 15i of this Regulation, "intermediate entity" as referred to in Article 4(1)(114) of Regulation (EU) No 575/2013 comprises any of the following entities that hold capital instruments of financial sector entities:

(a) a collective investment undertaking;

(b) a pension fund other than a defined benefit pension fund;

⁽¹⁾ 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).

- (c) a defined benefit pension fund, where the institution is supporting the investment risk and where the defined benefit pension fund is not independent from its sponsoring institution;
 - (d) entities that are directly or indirectly under the control or under significant influence of one of the following:
 - (1) the institution or its subsidiaries;
 - (2) the parent undertaking of the institution or the subsidiaries of that parent undertaking;
 - (3) the parent financial holding company of the institution or the subsidiaries of that parent financial holding company;
 - (4) the parent mixed activity holding company of the institution or the subsidiaries of the parent mixed activity holding company;
 - (5) the parent mixed financial holding company of the institution or the subsidiaries of the parent mixed financial holding company;
 - (e) entities that are jointly, directly or indirectly, under the control or under significant influence of one institution, several institutions, or a network of institutions, which are members of the same institutional protection scheme, or of the institutional protection scheme or the network of institutions affiliated to a central body that are not organised as a group to which the institution belongs;
 - (f) special purpose entities;
 - (g) entities whose activity is to hold financial instruments of financial sector entities;
 - (h) any entity that the competent authority considers to be used with the intention of circumventing the rules relating to the deduction of indirect and synthetic holdings.
2. Without prejudice to point (h) of paragraph 1, an “intermediate entity” as referred to in Article 4(1)(114) of Regulation (EU) No 575/2013 does not comprise:
- (a) mixed activity holding companies, institutions, insurance undertakings, reinsurance undertakings;
 - (b) entities that are, by virtue of applicable national law, subject to the requirements of Regulation (EU) No 575/2013 and Directive 2013/36/EU;
 - (c) financial sector entities other than the ones mentioned in point (a), which are supervised and required to deduct direct and indirect holdings of their own capital instruments and holdings of capital instruments of financial sector entities from their regulatory capital.
3. For the purposes of point (c) of paragraph 1, a defined benefit pension fund shall be deemed to be independent from its sponsoring institution where all of the following conditions are met:
- (a) the defined benefit pension fund is legally separate from the sponsoring institution and its governance is independent;
 - (b) the statutes, the instruments of incorporation and the internal rules of the specific pension fund, as applicable, have been approved by an independent regulator; or the rules governing the incorporation and functioning of the defined benefit pension fund, as applicable, are established in the applicable national law of the relevant Member State;
 - (c) the trustees or administrators of the defined pension fund have an obligation under applicable national law to act impartially in the best interests of the scheme beneficiaries instead of those of the sponsor, to manage assets of the defined pension fund prudently and to conform to the restrictions set out in the statutes, the instruments of incorporation and the internal rules of the specific pension fund, as applicable, or statutory or regulatory framework described in point (b);
 - (d) the statutes or the instruments of incorporation or the rules governing the incorporation and functioning of the defined benefit pension fund referred to in point (b) include restrictions on investments that the defined pension scheme can make in own funds instruments issued by the sponsoring institution.

4. Where a defined benefit pension fund referred to in point (c) of paragraph 1 holds own funds instruments of the sponsoring institution, the sponsoring institution shall treat that holding as an indirect holding of own Common Equity Tier 1 instruments, own Additional Tier 1 instruments or own Tier 2 instruments, as applicable. The amount to be deducted from the Common Equity Tier 1 items, Additional Tier 1 items or Tier 2 items, as applicable, of the sponsoring institution, shall be calculated in accordance with Article 15c.

Article 15b

Synthetic holdings for the purposes of Article 36(1)(f),(h) and (i) of Regulation (EU) No 575/2013

1. The following financial products shall be considered synthetic holdings of capital instruments pursuant to points (f), (h) and (i) of Article 36(1) of Regulation (EU) No 575/2013:

- (a) derivative instruments that have capital instruments of a financial sector entity as their underlying or have the financial sector entity as their reference entity;
- (b) guarantees or credit protection provided to a third party in respect of the third party's investments in a capital instrument of a financial sector entity.

2. The financial products provided for in paragraph 1 shall include the following:

- (a) investments in total return swaps on a capital instrument of a financial sector entity;
- (b) call options purchased by the institution on a capital instrument of a financial sector entity;
- (c) put options sold by the institution on a capital instrument of a financial sector entity or any other actual or contingent contractual obligation of the institution to purchase its own own funds instruments;
- (d) investments in forward purchase agreements on a capital instrument of a financial sector entity.

Article 15c

Calculation of indirect holdings for the purposes of points (f),(h) and (i) of Article 36(1) of Regulation (EU) No 575/2013

The amount of indirect holdings to be deducted from Common Equity Tier 1 items as required in points (f), (h) and (i) of Article 36(1) of Regulation (EU) No 575/2013 shall be calculated in one of the following ways:

- (a) according to the default approach set out in Article 15d;
- (b) where the institution demonstrates to the satisfaction of the competent authority that the approach described in Article 15d is excessively burdensome, according to the structure-based approach described in Article 15e. The structure-based approach described in Article 15e shall not be used by institutions for calculating the amount of those deductions in relation to investments in intermediate entities referred to in Article 15a(1)(d) and (e).

Article 15d

Default approach for the calculation of indirect holdings for the purposes of points (f),(h) and (i) of Article 36(1) of Regulation (EU) No 575/2013

1. The amount of indirect holdings of Common Equity Tier 1 instruments to be deducted as required by points (f), (h) and (i) of Article 36(1) of Regulation (EU) No 575/2013 shall be calculated as follows:

- (a) where the exposures of all investors to the intermediate entity rank *pari passu*, the amount shall be equal to the percentage of funding multiplied by the amount of Common Equity Tier 1 instruments of the financial sector entity held by the intermediate entity;
- (b) where the exposures of all investors to the intermediate entity do not rank *pari passu*, the amount shall be equal to the percentage of funding multiplied with the lower of the following amounts:
 - (i) the amount of Common Equity Tier 1 instruments of the financial sector entity held by the intermediate entity;
 - (ii) the institution's exposure to the intermediate entity together with all other funding provided to the intermediate entity that rank *pari passu* with the institution's exposure.

2. The calculation method set out in point (b) of paragraph 1 shall be made for each tranche of funding that ranks *pari passu* with the funding provided by the institution.
3. The percentage of funding for the purposes of paragraph 1 shall be the institution's exposure to the intermediate entity divided by the sum of the institution's exposure to the intermediate entity and of all other exposures to this intermediate entity that rank *pari passu* with the institution's exposure.
4. The calculation laid down in paragraph 1 shall be made separately for each holding in a financial sector entity held by each intermediate entity.
5. Where investments in Common Equity Tier 1 instruments of a financial sector entity are held indirectly through subsequent or several intermediate entities, the percentage of funding set out in paragraph 1 shall be determined by dividing the amount referred to in point (a) of this paragraph by the amount referred to in point (b) of this paragraph:
 - (a) the result of the multiplication of amounts of funding provided by the institution to intermediate entities, by the amounts of funding provided by these intermediate entities to subsequent intermediate entities, and by amounts of funding provided by these subsequent intermediate entities to the financial sector entity;
 - (b) the result of the multiplication of amounts of capital instruments or other instruments as relevant, issued by each intermediate entity.
6. The percentage of funding referred to in paragraph 5 shall be calculated separately for each holding in a financial sector entity held by intermediate entities and for each tranche of funding that ranks *pari passu* with the funding provided by the institution and the subsequent intermediate entities.

Article 15e

Structure-based approach for the calculation of indirect holdings for the purposes of points (f), (h) and (i) of Article 36(1) of Regulation (EU) No 575/2013

1. The amount to be deducted from Common Equity Tier 1 items referred to in point (f) of Article 36(1) of Regulation (EU) No 575/2013 shall be equal to the percentage of funding, as defined in Article 15d(3) of this Regulation, multiplied by the amount of Common Equity Tier 1 instruments of the institution held by the intermediate entity.
2. The amount to be deducted from Common Equity Tier 1 items referred to in points (h) and (i) of Article 36(1) of Regulation (EU) No 575/2013 shall be equal to the percentage of funding, as defined in Article 15d(3) of this Regulation, multiplied by the aggregate amount of Common Equity Tier 1 instruments of financial sector entities held by the intermediate entity.
3. For the purposes of paragraphs 1 and 2, an institution shall calculate separately per intermediate entity the aggregate amount of Common Equity Tier 1 instruments of the institution that the intermediate entity holds and the aggregate amount of Common Equity Tier 1 instruments of other financial sector entities that the intermediate entity holds.
4. The institution shall consider the amount of holdings in Common Equity Tier 1 instruments of financial sector entities calculated in accordance with paragraph 2 of this Article as a significant investment referred to in Article 43 of Regulation (EU) No 575/2013 and shall deduct the amount in accordance with point (i) of Article 36(1) of that Regulation.
5. Where investments in Common Equity Tier 1 instruments are held indirectly through subsequent or several intermediate entities, paragraphs 5 and 6 of Article 15d shall apply.
6. Where an institution is not able to identify the aggregate amounts that the intermediate entity holds in Common Equity Tier 1 instruments of the institution or in Common Equity Tier 1 instruments of financial sector entities, the institution shall estimate the amounts it cannot identify by using the maximum amounts that the intermediate entity is able to hold on the basis of its investment mandates.
7. Where the institution is not able to determine, on the basis of the investment mandate, the maximum amount that the intermediate entity holds in Common Equity Tier 1 instruments of the institution or in Common Equity Tier 1 instruments of financial sector entities, the institution shall treat the amount of funding that it holds in the intermediate entity as an investment in its own Common Equity Tier 1 instruments and shall deduct them in accordance with point (f) of Article 36(1) of Regulation (EU) No 575/2013.

8. By way of derogation from paragraph 7 of this Article, the institution shall treat the amount of funding that it holds in the intermediate entity as a non-significant investment and shall deduct them in accordance with point (h) of Article 36(1) of Regulation (EU) No 575/2013, where all of the following conditions are met:

- (a) the amounts of funding are less than 0,25 % of the institution's Common Equity Tier 1 capital;
- (b) the amounts of funding are less than EUR 10 million;
- (c) the institution cannot reasonably determine the amounts of its own Common Equity Tier 1 instruments that the intermediate entity holds.

9. Where funding to the intermediate entity is in the form of units or shares of a CIU, the institution may rely on the third parties referred to in Article 132(5) of Regulation (EU) No 575/2013, and under the conditions set by that Article, to calculate and report the aggregate amounts referred to in paragraph 6 of this Article.

Article 15f

Calculation of synthetic holdings for the purposes of points (f),(h) and (i) of Article 36(1) of Regulation (EU) No 575/2013

1. The amount of synthetic holdings to be deducted from Common Equity Tier 1 items as required by points (f), (h) and (i) of Article 36(1) of Regulation (EU) No 575/2013 shall be as follows:

- (a) for holdings in the trading book:
 - (i) for options, the delta equivalent amount of the relevant instruments calculated in accordance with Title IV of Part III of Regulation (EU) No 575/2013;
 - (ii) for any other synthetic holdings, the nominal or notional amount, as applicable;
- (b) for holdings in the non-trading book:
 - (i) for call options, the current market value;
 - (ii) for any other synthetic holdings, the nominal or notional amount, as applicable.

2. An institution shall deduct the synthetic holdings referred to in paragraph 1 from the date of signature of the contract between the institution and the counterparty.

Article 15g

Calculation of significant investments for the purposes of Article 36(1)(i) of Regulation (EU) No 575/2013

1. For the purposes of Article 36(1)(i) of Regulation (EU) No 575/2013, in order to assess whether an institution owns more than 10 % of the Common Equity Tier 1 instruments issued by a financial sector entity, in accordance with point (a) of Article 43 of that Regulation, institutions shall add the amounts of their gross long positions in direct holdings, as well as indirect holdings of Common Equity Tier 1 instruments of this financial sector entity referred to in points (d) to (h) of Article 15a(1) of this Regulation.

2. Indirect and synthetic holdings shall be taken into account by the competent authority in order to assess whether the conditions in points (b) and (c) of Article 43 of Regulation (EU) No 575/2013 are met.

Article 15h

Holdings of Additional Tier 1 and Tier 2

The methodology referred to in Articles 15a to 15f of this Regulation shall apply *mutatis mutandis* to Additional Tier 1 holdings for the purposes of points (a), (c) and (d) of Article 56 of Regulation (EU) No 575/2013, and to Tier 2 holdings for the purposes of points (a), (c) and (d) of Article 66 of that Regulation, where references to Common Equity Tier 1 shall be read as references to Additional Tier 1 or Tier 2, as applicable.

*Article 15i***Order and maximum amount of deductions of indirect holdings of own funds instruments of financial sector entities**

1. Subject to the limits laid down in paragraphs 2 or 3, as applicable, where the intermediate entity holds Common Equity Tier 1 instruments, Additional Tier 1 instruments and Tier 2 instruments of financial sector entities, the Common Equity Tier 1 instruments shall be deducted first, the Additional Tier 1 instruments shall be deducted second, and the Tier 2 instruments last.
2. Where the intermediate entity holds own funds instruments of institutions, when applying paragraph 1 to each type of holding institutions shall deduct the holdings of their own own funds instruments first.
3. Where an institution holds capital instruments of financial sector entities indirectly, the amount to be deducted from the institution's own funds shall not be higher than the lower of the following amounts:
 - (a) the total funding provided by the institution to the intermediate entity;
 - (b) the amount of own funds instruments held by the intermediate entity in the financial sector entity.

*Article 15j***Goodwill**

For the application of deductions referred to in point (h) of Article 36(1) of Regulation (EU) No 575/2013, institutions may choose not to identify goodwill separately when determining the applicable amount to be deducted according to Article 46 of that Regulation.'

3. The following Article 24a is inserted:

*'Article 24a***Distribution on own funds instruments — broad market indices**

1. An interest rate index shall be deemed to be a broad market index if it fulfils all of the following conditions:
 - (a) it is used to set interbank lending rates in one or more currencies;
 - (b) it is used as a reference rate for floating rate debt issued by the institution in the same currency, where applicable;
 - (c) it is calculated as an average rate by a body independent of the institutions that are contributing to the index ("panel");
 - (d) each of the rates set under the index is based on quotes submitted by a panel of institutions active in that interbank market;
 - (e) the composition of the panel referred to in point (c) ensures a sufficient level of representativeness of institutions present in the Member State.
2. For the purposes of point (e) of paragraph 1, a sufficient level of representativeness shall be deemed to be achieved in either of the following cases:
 - (a) where the panel referred to in point (c) of paragraph 1 includes at least 6 different contributors before any discount of quotes is applied for the purposes of setting the rate;
 - (b) where all of the following conditions are met:
 - (i) the panel referred to in point (c) of paragraph 1 includes at least 4 different contributors before any discount of quotes is applied for the purposes of setting the rate;
 - (ii) the contributors to the panel referred to in point (c) of paragraph 1 represent at least 60 % of the related market.

3. The related market referred to in point (b)(ii) of paragraph 2 shall be the sum of assets and liabilities of the effective contributors to the panel in the domestic currency divided by the sum of assets and liabilities in the domestic currency of credit institutions in the relevant Member State, including branches established in the Member State, and money market funds in the relevant Member State.

4. A stock index shall be deemed to be a broad market index where it is appropriately diversified in accordance with Article 344 of Regulation (EU) No 575/2013.

4. The following Article 34a is inserted:

Article 34a

Minority interests included in consolidated Common Equity Tier 1 capital

1. For the purpose of specifying the sub-consolidation calculation required in accordance with Articles 84(2), 85(2) and 87(2) of Regulation (EU) No 575/2013, the qualifying minority interests of a subsidiary referred to in Article 81 of that Regulation that is itself a parent undertaking of an entity referred to in Article 81(1) of that Regulation shall be calculated as described in paragraphs 2 to 4 of this Article.

2. Where a competent authority has exercised the discretion referred to in Article 9(1) of Regulation (EU) No 575/2013, the calculation to be undertaken in accordance with paragraphs 3 and 4 of this Article shall be made on the basis of the situation of the institution as if the discretion had not been exercised.

3. Where the subsidiary complies with the provisions of Part Three of Regulation (EU) No 575/2013 on the basis of its consolidated situation the following treatment shall apply:

(a) the Common Equity Tier 1 capital of that subsidiary on its consolidated basis referred to in point (a) of Article 84(1) of Regulation (EU) No 575/2013 shall include the eligible minority interests that arise from its own subsidiaries calculated pursuant to Article 84 of Regulation (EU) No 575/2013 and the provisions laid down in this Regulation;

(b) for the purpose of the sub-consolidation calculation, the amount of Common Equity Tier 1 capital required according to point (i) of Article 84(1)(a) of Regulation (EU) No 575/2013 shall be the amount required to meet the Common Equity Tier 1 requirements of that subsidiary at the level of its consolidated situation calculated in accordance with point (a) of Article 84(1) of that Regulation. The specific own funds requirements referred to in Article 104 of Directive 2013/36/EU shall be the ones set by the competent authority of the subsidiary;

(c) the amount of consolidated Common Equity Tier 1 capital required, according to point (ii) of Article 84(1)(a) of Regulation (EU) No 575/2013, shall be the contribution of the subsidiary on the basis of its consolidated situation to the Common Equity Tier 1 own funds requirements of the institution for which the eligible minority interests are calculated on a consolidated basis. For the purpose of calculating the contribution, all intra-group transactions between undertakings included in the prudential scope of consolidation of the institution shall be eliminated.

4. When performing the consolidation referred to in point (c) of paragraph 3, the subsidiary shall not include capital requirements arising from its subsidiaries which are not included in the prudential scope of consolidation of the institution for which the eligible minority interests are calculated.

5. Where the waiver referred to in Article 84(3) of Regulation (EU) No 575/2013 applies to a subsidiary, any parent undertaking of the subsidiary benefiting from the waiver may include in its Common Equity Tier 1 capital minority interests arising from subsidiaries of the subsidiary itself benefiting from the waiver, provided that the calculations referred to in Article 84(1) of that Regulation and in this Regulation have been made for each of those subsidiaries. The amount of Common Equity Tier 1 included in the Own Funds at the level of the parent undertaking shall not exceed the amount that would be included if no waiver had been granted to the subsidiary.

6. Where a parent institution has an intermediate subsidiary which is not referred to in Article 81(1) of Regulation (EU) No 575/2013 and where this intermediate subsidiary itself has subsidiaries which are referred to in Article 81(1) of that Regulation, the parent institution may include in its Common Equity Tier 1 capital the amount of minority interest arising from those subsidiaries calculated according to Article 84(1) of that Regulation. The parent institution cannot, however, include in its Common Equity Tier 1 capital any minority interests arising from an intermediate subsidiary which is not referred to in Article 81(1) of Regulation (EU) No 575/2013.

7. The methodology set out in paragraphs 2, 3 and 4 shall also apply *mutatis mutandis* for the calculation of the amount of qualifying Tier 1 instruments under Article 85 of Regulation (EU) No 575/2013 and the amount of qualifying own funds under Article 87 of that Regulation, where references to Common Equity Tier 1 shall be read as references to Tier 1 or own funds.

Article 2

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, 11 March 2015

For the Commission

The President

Jean-Claude JUNCKER
