Commission Delegated Regulation (EU) 2018/990 of 10 April 2018 amending and supplementing Regulation (EU) 2017/1131 of the European Parliament and of the Council with regard to simple, transparent and standardised (STS) securitisations and asset-backed commercial papers (ABCPs), requirements for assets received as part of reverse repurchase agreements and credit quality assessment methodologies (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2018/990

of 10 April 2018

amending and supplementing Regulation (EU) 2017/1131 of the European Parliament and of the Council with regard to simple, transparent and standardised (STS) securitisations and asset-backed commercial papers (ABCPs), requirements for assets received as part of reverse repurchase agreements and credit quality assessment methodologies

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds[(1)], and in particular Articles 11(4), 15(7) and 22 thereof,

Whereas:

(1) Article 11(1) of Regulation (EU) 2017/1131 allows MMFs to invest in securitisations or asset-backed commercial papers (ABCPs). A specific incentive is in place to invest in simple, transparent and standardised (STS) securitisations or ABCPs. Since Regulation (EU) 2017/2402 of the European Parliament and of the Council[(2)] already contains requirements for STS securitisations and ABCPs, Regulation (EU) 2017/1131 needs to be amended to cross-refer to the provisions of Regulation (EU) 2017/2402 that contain those requirements.

(2) Reverse repurchase agreements enable MMFs to implement their investment strategy and objectives according to the terms of Regulation (EU) 2017/1131. That Regulation requires that the counterparty to a reverse repurchase agreement be creditworthy and that the assets received as collateral be of sufficient liquidity and quality to enable MMFs to achieve their objectives and fulfil their obligations should such assets need to be liquidated. The standard agreements used for reverse repurchase agreements may contribute to the goal of managing counterparty risk. However, certain clauses may make the assets underlying reverse repurchase agreements unavailable to managers of MMFs and therefore illiquid. It is therefore necessary to ensure that the assets are available to managers of MMFs in case of default or in case of early termination of reverse repurchase agreements, and that the counterparty does not limit the sale of the assets by requiring prior notice or approval.

Changes to legislation: *Commission Delegated Regulation (EU) 2018/990 is up to date with all changes known to be in force on or before 28 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(3) Managers of MMFs should not be obliged to apply a specific adjustment to the value of an asset (a haircut) if the counterparty to a reverse repurchase agreement is subject to prudential rules under Union law. To ensure that the collateral provided under reverse repurchase agreements is of high quality, managers of MMFs shall apply additional requirements when the counterparty to an agreement is not regulated under Union law or is not recognised as equivalent. To ensure consistency across Union law, the minimum requirements for haircuts should be the same as the corresponding requirements laid down in Regulation (EU) No 575/2013 of the European Parliament and of the Council[(3)].

(4) Managers of MMFs should be able to apply a higher haircut than the minimum laid down in Regulation (EU) No 575/2013 where they consider it necessary to ensure that the collateral received as part of reverse repurchase agreements is sufficiently liquid, if the market conditions so require. They should also monitor and revise the amount of the haircut requested to ensure an appropriate level of liquidity, in particular when the amount of the haircut stipulated in Article 224(1) of Regulation (EU) No 575/2013 is revised, or the remaining maturity of assets or other factors related to the viability of the counterparty have changed.

(5) The credit quality assessment methodologies referred to in Article 19(3) should be prudent enough to ensure that all qualitative and quantitative criteria supporting credit quality assessments are reliable and appropriate for properly assessing the credit quality of instruments eligible for investment. In addition, it should be ensured that the macroeconomic and microeconomic factors managers of MMFs take into consideration in a credit quality assessment are relevant for determining the credit quality of an issuer or of an instrument eligible for investment.

(6) To ensure that the instruments managers of MMFs intend to invest in are of sufficient quality, the managers of MMFs should carry out a credit quality assessment every time they intend to make an investment. To avoid circumvention of the requirement in Regulation (EU) 2017/1131 that the managers of MMFs only invest in instruments that have received a favourable credit quality assessment, managers of MMF should clearly establish, as part of the credit quality methodology, the criteria for a favourable assessment of instruments eligible for MMF investment, before carrying out the actual credit quality assessment.

(7) The methodology and criteria used for credit quality assessments should be consistent, except where there is an objective reason for diverging from the methodology or the criteria. The criteria and the methodology should be developed for recurrent use, not solely for a particular case at a specific moment in time. The consistent use of the criteria and of the methodology should make it easier to monitor the credit quality assessment.

(8) To ensure the correct quantification of the credit risk of the issuer, and the relative risk of default of the issuer and of the instrument, as required under Article 20(2)(a) of Regulation (EU) 2017/1131, managers of MMFs should use the relevant quantitative criteria that are available on the market. However, they should not be prevented from using additional factors, if relevant.

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(9) The credit quality assessment of the issuer is one of the most important assessments to carry out, as it provides the first layer of guarantee of the quality of assets. Insofar as is possible, managers of MMFs should therefore take into account all factors that are relevant for assessing qualitative and quantitative credit risk criteria for an issuer of an instrument.

(10) In exceptional circumstances, in particular under stressed market conditions, managers of MMFs should be able to take investment decisions that override the result of a credit quality assessment if such investment decisions are in the interests of investors, provided those decisions are justified and properly documented.

(11) As the quality of instruments may vary over time, the credit quality assessment should not be a once-off assessment, rather it should be carried out continually. In addition, it should be revised, in particular, when there is a material change, as referred to in Article 19(4)(d) of Regulation (EU) 2017/1131, in the macroeconomic or microeconomic environment that could have an impact on the existing credit quality assessment of the instrument.

(12) Managers of MMFs should not mechanistically over-rely on external credit ratings. The downgrading by a credit rating agency of the credit rating or rating outlook given to an issuer or an the instrument should therefore only be considered a material change if it has been assessed and put in the balance with other criteria. For this reason, managers should still be required to carry out their own assessment even where such downgrading takes place.

(13) The collateral provided as part of reverse repurchase agreements should be of high quality and not display a high correlation with the performance of the counterparty. Its credit quality assessment should therefore be favourable. As there is no reason to differentiate between the assessments managers of MMFs carry out when investing directly in eligible assets and the assessment they carry out when they receive an asset as collateral, the credit quality assessment should be based on the same criteria in both cases.

(14) Regulation (EU) 2017/1131 contains three empowerments for the Commission to specify and amend certain provisions laid down in that Regulation. Those empowerments have the same aim of ensuring that MMFs are invested in appropriate eligible assets. To ensure the coherence and consistency of those requirements and to give the people subject to them an overview and a single point of access to them, those requirements should be put in a single regulation.

(15) The date of application of this delegated Regulation should be aligned with the date of application of Regulation (EU) 2017/1131 to ensure that all rules and requirements apply to MMFs from the same date. The date of application of the amending provision cross-referring to the criteria for STS securitisations and ABCPS should be the same as the date of application of Regulation (EU) 2017/2402,

HAS ADOPTED THIS REGULATION:

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CHAPTER 1

CRITERIA FOR ESTABLISHING A SIMPLE, TRANSPARENT AND STANDARDISED (STS) SECURITISATION OR ASSET-BACKED COMMERCIAL PAPER (ABCP)

(Article 15(7) of Regulation (EU) 2017/1131)

Article 1

Amendment to Regulation (EU) 2017/1131

In Article 11(1) of Regulation (EU) 2017/1131, point (c) is replaced by the following:

(c) a simple, transparent and standardised (STS) securitisation, as determined in accordance with the criteria and conditions laid down in Articles 20, 21 and 22 of Regulation (EU) 2017/2402 of the European Parliament and of the Council[(4)], or an STS ABCP, as determined in accordance with the criteria and conditions laid down in Articles 24, 25 and 26 of that Regulation..

CHAPTER 2

QUANTITATIVE AND QUALITATIVE CREDIT QUALITY REQUIREMENTS FOR ASSETS RECEIVED AS PART OF REVERSE REPURCHASE AGREEMENTS

(Article 15(7) of Regulation (EU) 2017/1131)

Article 2

Quantitative and qualitative liquidity requirements for the assets referred to in Article 15(6) of Regulation (EU) 2017/1131

1 Reverse repurchase agreements as referred to in Article 15(6) of Regulation (EU) 2017/1131 shall meet established market standards and their terms and conditions shall enable managers of MMFs to fully enforce their rights in case of default of the counterparty to such agreements, or their early termination and give managers of MMFs the unrestricted right to sell any assets received as collateral,

2 The assets referred to in Article 15(6) of Regulation (EU) 2017/1131 shall be subject to a haircut, that is equal to the volatility adjustment figures referred to in tables 1 and 2 of Article 224(1) of Regulation (EU) No 575/2013 for a given residual maturity, in respect of a 5-day liquidation period and the highest assessment in terms of credit quality step.

3 Where necessary, managers of MMFs shall apply an additional haircut to the one referred to in paragraph 2. To assess whether such an additional haircut is necessary, they shall take into account all of the following factors:

a the credit quality assessment of the counterparty to the reverse repurchase agreement;
b the margin period of risk, as defined in Article 272(9) of Regulation (EU) No 575/2013;
c the credit quality assessment of the issuer or of the asset that is used as collateral;
d the remaining maturity of the assets used as collateral;
e the volatility of the price of the assets used as collateral.

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4 For the purpose of paragraph 3, managers of MMFs shall put in place a clear haircut policy adapted to each asset, referred to in Article 15(6) of Regulation (EU) 2017/1131, received as collateral. That policy shall be documented and shall substantiate each decision to apply a specific haircut to the value of an asset.

5 Managers of MMFs shall regularly revise the haircut referred to in paragraph 2, taking into account changes in the residual maturity of the assets used as collateral. They shall also revise the additional haircut referred to in paragraph 3, whenever the factors referred to in that paragraph change.

6 Paragraphs 1 to 5 shall not apply if the counterparty to the reverse repurchase agreement is any of the following:

a a credit institution supervised under Directive 2013/36/EU of the European Parliament and of the Council[(5)], or a credit institution authorised in a third country, provided that the prudential supervisory and regulatory requirements are equivalent to those applied in the Union;

b an investment firm supervised under Directive 2014/65/EU of the European Parliament and of the Council[(6)], or a third country investment firm, provided that the prudential supervisory and regulatory requirements are equivalent to those applied in the Union;

c an insurance undertaking supervised under Directive 2009/138/EC of the European Parliament and of the Council[(7)], or a third country insurance undertaking, provided that the prudential supervisory and regulatory requirements are equivalent to those applied in the Union;

d a central counterparty authorised under Regulation (EU) No 648/2012 of the European Parliament and of the Council[(8)];

e the European Central Bank;

f a national central bank;

g a third country central bank, provided that the prudential supervisory and regulatory requirements applied in that country have been recognised as equivalent to those applied in the Union in accordance with Article 114(7) of Regulation (EU) No 575/2013.

CHAPTER 3

CREDIT QUALITY ASSESSMENT CRITERIA

(Article 22 of Regulation (EU) 2017/1131)

Article 3

Criteria for validating the internal credit quality assessment methodologies referred to in Article 19(3) of Regulation (EU) 2017/1131

1 Managers of MMFs shall validate the credit quality assessment methodologies referred to in Article 19(3) of Regulation (EU) 2017/1131 provided they fulfil all of the following criteria:

a the internal credit quality assessment methodologies are applied in a systematic way with respect to different issuers and instruments;

b the internal credit quality assessment methodologies are supported by a sufficient number of relevant qualitative and quantitative criteria;