Regulation (EU) 2016/445 of the European Central Bank of 14 March 2016 on the exercise of options and discretions available in Union law (ECB/2016/4)

REGULATION (EU) 2016/445 OF THE EUROPEAN CENTRAL BANK

of 14 March 2016

on the exercise of options and discretions available in Union law (ECB/2016/4)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions[(1)], and in particular Article 4(3), Article 6, and Article 9(1) and (2) thereof,

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[(2)], and in particular Articles 89(3), 178(1), 282(6), 327(2), Article 380, Articles 395(1), 400(2), 415(3), 420(2), 467(3), 468(3), 471(1), 473(1), 478(3), Article 479(1) and (4), Article 480(3), Article 481(1) and (5), and Articles 486(6) and 495(1) thereof,

Having regard to Commission Implementing Regulation (EU) No 650/2014 of 4 June 2014 laying down implementing technical standards with regard to the format, structure, contents list and annual publication date of the information to be disclosed by competent authorities in accordance with Directive 2013/36/EU of the European Parliament and of the Council[(3)], and in particular Article 2 thereof and Annex II thereto,

Having regard to 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[(4)], and in particular Articles 12(3) and 23(2), and Article 24(4) and (5) thereof,

Having regard to the public consultation and the analysis carried out pursuant to Article 4(3) of Regulation (EU) No 1024/2013,

Having regard to the proposal from the Supervisory Board approved in accordance with Article 26(7) of Regulation (EU) No 1024/2013,

Whereas:

(1) The European Central Bank (ECB) is empowered to adopt regulations in accordance with Article 132 of the Treaty on the Functioning of the European Union. In addition, Article 132 of the Treaty and Article 34 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the ‘Statute of the ESCB’), by referring to Article 25.2 of the Statute of the ESCB, entrust the ECB with regulatory powers to the extent necessary to implement specific tasks concerning policies relating to the prudential supervision of credit institutions.

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(2) With regard to prudential requirements for credit institutions Union law provides for options and discretions that competent authorities may exercise.

(3) The ECB is the competent authority in the participating Member States as established by relevant Union law for the purpose of carrying out its microprudential tasks within the single supervisory mechanism (SSM) under Regulation (EU) No 1024/2013 in respect of credit institutions that are classified as significant in accordance with Article 6(4) of that Regulation and Part IV and Article 147(1) of Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17)[(5)]. Therefore it has all the powers and obligations that competent authorities have under relevant Union law. In particular, the ECB has the power to exercise the options and discretions available in Union law.

(4) The ECB carries out its supervisory tasks within the SSM, which should ensure that the Union's policy relating to 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 credit institutions in all Member States concerned, and that those credit institutions are subject to supervision of the highest quality. In carrying out its supervisory tasks, the ECB should have full regard to the diversity of credit institutions and their size and business models, as well as the systemic benefits of diversity in the banking industry of the Union.

(5) In order to ensure progressive convergence between the level of own funds and the prudential adjustments applied to the definition of own funds across the Union and the definition of own funds laid down in Union law during a transitional period, the phasing-in of own funds requirements should occur gradually.

(6) The consistent application of prudential requirements for credit institutions within the Member States participating in the SSM is a specific objective of Regulation (EU) No 1024/2013 and Regulation (EU) No 468/2014 (ECB/2014/17) and is entrusted to the ECB.

(7) In accordance with Regulation (EU) No 1024/2013, the ECB applies all relevant Union law and where this Union law is composed of directives, the national legislation transposing those directives. Where relevant Union law is composed of regulations and where currently those regulations explicitly grant options and discretions to the Member States, the ECB should also apply the national legislation exercising those options and discretions. Such national legislation should not affect the smooth functioning of the SSM, for which the ECB is responsible.

(8) Such options and discretions do not include those available only to competent authorities, which the ECB is solely competent to exercise and should exercise as appropriate.

(9) In exercising options and discretions, the ECB, as the competent authority, should take account of the general principles of Union law, in particular equal treatment, proportionality and the legitimate expectations of supervised credit institutions.

(10) With regard to the legitimate expectations of supervised credit institutions, the ECB acknowledges the need to allow for transitional periods where its exercise of options

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and discretions significantly departs from the approach taken by the national competent authorities prior to the entry into force of this Regulation. In particular, where the ECB exercises its options and discretions in relation to transitional provisions laid down in Regulation (EU) No 575/2013, this Regulation should establish appropriate transitional periods.

(11) Article 143(1)(b) of Directive 2013/36/EU of the European Parliament and of the Council[6] requires competent authorities to publish the manner of exercise of the options and discretions available in Union law,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

This Regulation specifies certain of the options and discretions conferred on competent authorities under Union law concerning prudential requirements for credit institutions that the ECB is exercising. It shall apply exclusively with regard to those credit institutions classified as significant in accordance with Article 6(4) of Regulation (EU) No 1024/2013, and Part IV and Article 147(1) of Regulation (EU) No 468/2014 (ECB/2014/17).

Article 2

Definitions

For the purposes of this Regulation, the definitions contained in Article 4 of Regulation (EU) No 575/2013, Article 2 of Regulation (EU) No 1024/2013, Article 2 of Regulation (EU) No 468/2014 (ECB/2014/17) and Article 3 of Delegated Regulation (EU) 2015/61 shall apply.

CHAPTER I

OWN FUNDS

Article 3

Article 89(3) of Regulation (EU) No 575/2013: Risk weighting and prohibition of qualifying holdings outside the financial sector

Without prejudice to Article 90 of Regulation (EU) No 575/2013 and for the purpose of calculating the capital requirements in accordance with Part Three of Regulation (EU) No 575/2013, credit institutions shall apply a risk weight of 1 250 % to the greater of the following:

(a) the amount of qualifying holdings in undertakings referred to in Article 89(1) of Regulation (EU) No 575/2013 in excess of 15 % of the eligible capital of the credit institution; and

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(b) the total amount of qualifying holdings in undertakings referred to in Article 89(2) of Regulation (EU) No 575/2013 that exceeds 60 % of the eligible capital of the credit institution.

CHAPTER II

CAPITAL REQUIREMENTS

Article 4

Article 178(1) of Regulation (EU) No 575/2013: Default of an obligor

Irrespective of the national treatment prior to the entry into force of this Regulation, credit institutions shall apply the 'more than 90 days past due' standard for the categories of exposures specified in Article 178(1)(b) of Regulation (EU) No 575/2013.

Article 5

Article 282(6) of Regulation (EU) No 575/2013: Hedging sets

For the transactions referred to in Article 282(6) of Regulation (EU) No 575/2013, credit institutions shall use the mark-to-market method set out in Article 274 of Regulation (EU) No 575/2013.

Article 6

Article 327(2) of Regulation (EU) No 575/2013: Netting

1 Credit institutions may use netting between a convertible and an offsetting position in the instrument underlying it, as referred to in Article 327(2) of Regulation (EU) No 575/2013, provided that either of the following conditions are fulfilled:

a prior to 4 November 2014 the national competent authority adopted an approach under which the likelihood of a particular convertible's being converted is taken into account; or

b prior to 4 November 2014 the national competent authority required an own funds requirement to cover any loss that conversion may entail.

2 The approaches adopted by national competent authorities referred to in paragraph 1 shall continue to be used pending the adoption by the ECB of its own approach pursuant to Article 327(2) of Regulation (EU) No 575/2013.

Article 7

Article 380 of Regulation (EU) No 575/2013: Waiver

In the event of a system-wide failure within the meaning of Article 380 of Regulation (EU) No 575/2013 which the ECB confirms by issuing a public statement, until the ECB issues a public statement that the situation referred to therein is rectified, the following provisions shall apply:

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(a) credit institutions shall not be required to comply with the own funds requirements laid down in Articles 378 and 379 of Regulation (EU) No 575/2013; and

(b) the failure of a counterparty to settle a trade shall not be deemed a default for purposes of credit risk.

CHAPTER III

LARGE EXPOSURES

Article 8

Article 395(1) of Regulation (EU) No 575/2013: Limits to large exposures

Irrespective of the national treatment prior to the entry into force of this Regulation, the limit on the value of a large exposure within the meaning of Article 395(1) of Regulation (EU) No 575/2013 shall not be lower than EUR 150 million.

Article 9

Article 400(2) of Regulation (EU) No 575/2013: Exemptions

1 The exposures listed in Article 400(2)(a) of Regulation (EU) No 575/2013 shall be exempted from the application of Article 395(1) of that Regulation for 80 % of the nominal value of the covered bonds, provided that the conditions set out in Article 400(3) of that Regulation are fulfilled.

2 The exposures listed in Article 400(2)(b) of Regulation (EU) No 575/2013 shall be exempted from the application of Article 395(1) of that Regulation for 80 % of their exposure value, provided that the conditions set out in Article 400(3) of that Regulation are fulfilled.

3 The exposures listed in Article 400(2)(c) of Regulation (EU) No 575/2013 incurred by a credit institution to the undertakings referred to therein shall be exempted in full from the application of Article 395(1) of that Regulation, provided that the conditions set out in Article 400(3) of that Regulation, as further specified in Annex I to this Regulation, are fulfilled and in so far as those undertakings are covered by the same supervision on a consolidated basis in accordance with Regulation (EU) No 575/2013, Directive 2002/87/EC of the European Parliament and of the Council[7], or with equivalent standards in force in a third country, as further specified in Annex I to this Regulation.

4 The exposures listed in Article 400(2)(d) of Regulation (EU) No 575/2013 shall be exempted in full from the application of Article 395(1) of that Regulation, provided that the conditions set out in Article 400(3) of that Regulation, as further specified in Annex II to this Regulation, are fulfilled.

5 The exposures listed in Article 400(2)(e) to (k) of Regulation (EU) No 575/2013 shall be exempted in full, or in the case of Article 400(2)(i) they shall be exempted up to the maximum allowed amount, from the application of Article 395(1) of that Regulation, provided that the conditions set out in Article 400(3) of that Regulation are fulfilled.

6 Credit institutions shall assess whether the conditions specified in Article 400(3) of Regulation (EU) No 575/2013, as well as the relevant Annex of this Regulation applicable to