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)

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.

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2015/923. (See end of Document for details)*

(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 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[(3)].

(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;

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.