Commission Delegated Regulation (EU) 2016/451 of 16 December 2015 laying down general principles and criteria for the investment strategy and rules for the administration of the Single Resolution Fund

COMMISSION DELEGATED REGULATION (EU) 2016/451

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laying down general principles and criteria for the investment strategy and rules for the administration of the Single Resolution Fund

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010[(1)], and in particular Article 75(4) thereof,

Whereas:

(1) Regulation (EU) No 806/2014 establishes the Single Resolution Fund ('the Fund') owned by the Single Resolution Board ('the Board').

(2) The general principles and criteria for the investment strategy of the Fund should define the essential and foundational elements of the investment strategy that is to be adopted by the Board. The investment objectives should constitute one of those elements. In line with the requirement that the Board have a safe and prudent investment strategy, the overarching goal should be to protect the value of the Fund and satisfy its liquidity requirements. However, due to the intrinsic nature of investments, changing market conditions and interest rate environment, even the safest and most liquid assets may entail negative returns. In this respect, a loss incurred on the portfolio should not imply a violation of the investment objectives.

(3) Regulation (EU) No 806/2014 requires amounts held in the Fund to be invested in obligations of the Member States or intergovernmental organisations, or in highly liquid assets of high creditworthiness, taking into account Commission Delegated Regulation (EU) 2015/61[(2)] which defines assets of high liquidity and high credit quality and lays down requirements on their composition. Therefore, assets eligible for the investments of the Fund and criteria for the composition of the portfolio should be defined with reference to Delegated Regulation (EU) 2015/61. The eligibility of an asset for investment should not lead the Board to an automatic investment decision. Rather, the Board should always conduct an assessment of eligible assets. The interaction with the entire investment portfolio should be considered when determining the prudence of an individual investment. For instance, a volatile asset with a negative correlation to the portfolio could be judged in isolation as too risky but have a positive diversification

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2016/451. (See end of Document for details)*

effect for the overall portfolio. For that assessment, the Board should choose between the different levels (issuer, asset class, security) and sources of information that allow it to evaluate the liquidity, creditworthiness and compatibility with the investment objectives.

(4) Criteria should be provided to further specify sectorial diversification. In order to be applicable, sectorial diversification requires a definition of 'sector'. For practical reasons, high levels of sectorial classification should be used. Council Regulation (EC) No 2223/96[(3)] defines institutional sectors which can be used to diversify the investments of the Fund by type of economic entity. In addition, Regulation (EC) No 1893/2006 of the European Parliament and of the Council[(4)] defines a statistical classification of economic activities whose highest level (section) is appropriate to provide criteria for diversification to the Board. Finally, given the mission of the Fund, not only direct but also indirect exposures to the financial sector should be limited.

(5) Criteria should be provided to further specify geographical diversification. In order to ensure sufficient geographical diversification, the Board should make use of readily available criteria, namely the principles referred to in Article 77 of Regulation (EU) No 806/2014, which imply the calculation of the shares of contributions of institutions established in each participating Member State. Given that those shares are based on the size of the contributing credit institutions and investment firms, and adjusted to their risk profile, they will be positively correlated with the size and depth of the corresponding financial markets. Since other considerations may warrant additional investments in a given participating Member State, a buffer should be introduced to allow further margin of appreciation by the Board, while ensuring minimum diversification across a sufficient number of participating Member States. In addition, since those shares may not be calculated for investments in non-participating Member States or third countries, they should be subject to limits to be set by the Board proportionally to those for participating Member States, on the basis of the similarities between countries.

(6) Criteria should be provided to further specify proportional diversification. It is prudent for the Board to limit the exposure to any particular issue or issuer and to make use of different maturities in order to meet its investment objectives. As regards individual issues, commercial paper is issued with an International Securities Identification Number (ISIN) corresponding to the specific investment of the investor (in terms of maturity, amount and other characteristics), so that the investor owns 100 % of the security even if it does not own 100 % of the entire commercial paper programme. This should be taken into account when defining limits to the exposure to a particular issue. In addition, since irrevocable payment commitments may represent a significant share of the total amount of contributions to the Fund, the Board should also consider the collateral pledged to back irrevocable payment commitments when monitoring its overall concentration risk.

(7) Given the need to set up a prudent and safe investment strategy, the Board should limit its use of derivatives. In order to minimise counterparty credit risk, the Board should only use derivatives cleared by a central counterparty as authorised or recognised according to Regulation (EU) No 648/2012 of the European Parliament and of the

Council[5]. Transacting with certain central banks could also be consistent with the objective of minimising counterparty risk, provided that other risks, such as credit risk, are appropriately controlled. Given that derivatives are usually issued by credit institutions, and other entities referred to in Article 7(4) of Delegated Regulation (EU) 2015/61, the general prohibition to invest in assets issued by these entities laid down by that provision should not apply to the use of derivatives.

(8) The Board should endeavour to hedge currency risk into a mix of the currencies of the Member States participating in the Fund on the basis of the financial capacity of the Fund and of the expected disbursements as determined by current information, assumptions and stress scenarios. The extent of the hedging, and consequently of the remaining open currency exposure, should be calibrated in order to limit the foreign exchange risk for the Fund to the degree that is appropriate and compatible with its investment objectives.

(9) With regard to risk management, the Board should make use of best practices and establish internal capacities and functions to give effect to them. The adequate measurement of risk should be an essential element of that ongoing process.

(10) While it is within the Board's prerogatives to decide on the implementation of investments, and therefore to outsource part of all of its investment tasks, any potential conflict with the prudent and safe behaviour that the Board should maintain and with its overall investment objectives should be avoided, in consideration of the public interest in the Fund's ability to fulfil its duties at all times. Therefore, the Board should outsource investment tasks only to providers that are not profit-seeking undertakings. This should not preclude service providers and the Board from contracting necessary services from other third parties for execution purposes. Furthermore, the Board should maintain responsibility and oversight at all times irrespective of any outsourcing decision. When referring to the best business practices on outsourcing within the financial sector, the Board should, to the extent possible, take into account existing best practices, such as the Guidelines on Outsourcing of 14 December 2006 by the Committee of European Banking Supervisors.

(11) Until it is has adopted its first investment strategy, the Board should be allowed to give effect to Article 75(3) of Regulation (EU) No 806/2014 by virtue of deposits with central banks. Similarly, it should be allowed to use estimates to determine the percentage limits on geographical concentration as laid down in this Regulation before the actual data to compute them becomes available.

(12) Given the unique nature of the Fund, the general principles and criteria for its investment strategy and the rules for its management laid down in this Regulation may need to be reviewed relatively soon after their entry into force, once the Board has started applying them. To this end, the Board should provide the Commission with adequate information on the practical application of the new rules one year after the establishment of the Fund, subject to Article 99 of Regulation (EU) No 806/2014.

(13) This Regulation should apply from 1 January 2016, when the Fund becomes operational pursuant to Regulation (EU) No 806/2014,

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2016/451. (See end of Document for details)*

HAS ADOPTED THIS REGULATION:

Article 1

Scope

1 This Regulation lays down rules concerning the investment by the Single Resolution Board ('the Board') of the amounts held in the Single Resolution Fund ('the Fund') referred to in Article 75(3) of Regulation (EU) No 806/2014.

2 This Regulation does not apply to collateral of low-risk assets unencumbered by any third-party rights, at the free disposal of and earmarked for the exclusive use by the Board as referred to in Article 70(3) of Regulation (EU) No 806/2014.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

1. 'institutional sectors' means institutional sectors as defined by paragraph 1.28 of Annex A to Council Regulation (EC) No 2223/96;

2. 'sectors of economic activity' means sections set out in Annex I of Regulation (EC) No 1893/2006;

3. 'bodies governed by public law' shall mean bodies governed by public law as defined in Article 1(9) of Directive 2004/18/EC of the European Parliament and of the Council[6];

4. 'ESCB central banks' shall mean ECSB central banks as defined in Article 4(1)(45) of Regulation (EU) No 575/2013 of the European Parliament and of the Council[7].

Article 3

Investment objectives

1 The Board shall conduct a prudent and safe investment strategy with the objective of protecting the value of the amounts held in the Fund and of satisfying the liquidity requirements of the Fund. The Board shall take into account both the financial capacity of the Fund and the expected disbursements according to the mission of the Fund as defined in Article 76 of Regulation (EU) No 806/2014. It shall take into account all available information and adequate assumptions and stress scenarios.

2 The investment strategy shall include a definition of the risk appetite, quantifying the maximum tolerable potential loss over a defined time horizon with a defined probability.

3 The amounts referred to in Article 1(1) of this Regulation shall be invested all together as a single pool of resources, regardless of the division of the Fund into national compartments provided for in Article 77 of Regulation (EU) No 806/2014.

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Article 4

Eligible assets for investment

1 The Board shall determine the eligibility of assets for investment on the basis of the general requirements for liquid assets of credit institutions laid down in Article 7(2), (4), (5) and (6), and in points (a) and (b) of Article 7(7) of Delegated Regulation (EU) 2015/61.

2 The Board shall invest the amounts referred to in Article 1(1) exclusively in assets which meet the requirements established in Articles 10(1), 11(1), points (a) to (e) of Article 12(1) and Article 15(1) of Delegated Regulation (EU) 2015/61.

3 The requirements for credit institutions laid down in the second sentence of Article 10(1)(d) and in point (iii) of Article 10(1)(f), point (iii) of Article 11(1)(c), point (v) of Article 11(1)(d) and point (ii) of Article 12(1)(e) of Delegated Regulation (EU) 2015/61 shall not apply to the Board.

4 The Board shall conduct an appropriate assessment of an eligible asset before investing in it, including an evaluation of its liquidity and creditworthiness and of its compatibility with the investment objectives set out in Article 3. The interaction with the entire investment portfolio should be considered when determining the prudence of an individual investment.

5 In case any asset loses its eligibility, the Board shall progressively reduce the exposure of the Fund to that given asset. Without prejudice to Article 3, the Board shall do so within a timeframe and in a manner that minimise any impact on market prices.

Article 5

Composition of the portfolio

1 The Board shall comply with the following requirements on the composition of the Fund's portfolio:

a a minimum of 60 % of the portfolio shall be composed of assets which meet the requirements established in Article 10(1) of Delegated Regulation (EU) 2015/61;

b a minimum of 30 % of the portfolio shall be composed of assets which meet the requirements established in points (a) to (e) and (g) of Article 10(1) of Delegated Regulation (EU) 2015/61;

c a maximum of 15 % of the portfolio shall be held in assets which meet the requirements established in points (a) to (e) of Article 12(1) of Delegated Regulation (EU) 2015/61.

2 For the purposes of paragraph 1, assets which meet the requirements established in Article 15(1) of Delegated Regulation (EU) 2015/61 shall be treated equivalently to the assets underlying the relevant undertaking.

Article 6

Sectorial diversification

1 Investments of the amounts held in the Fund shall be sufficiently diversified across sectors.