Commission Delegated Regulation (EU) 2015/62 of 10 October 2014 amending Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to the leverage ratio (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2015/62

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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 Article 456(1)(j) thereof,

Whereas:

(1) The leverage ratio calculated in accordance with Article 429 of Regulation (EU) No 575/2013 is to be disclosed by institutions from 1 January 2015 onwards and before that date, the Commission is empowered to adopt a delegated act amending the exposure and capital measure for calculating the leverage ratio to correct any shortcomings detected on the basis of reporting by institutions.

(2) Differences have been observed in the reported leverage ratios referred to in Article 429(2) of Regulation (EU) No 575/2013 due to diverging interpretation by institutions of the netting of collateral in securities financing and repurchase transactions. These differences in interpretation and reporting have become manifest following the analytical report published on 4 March 2014 by the European Banking Authority (EBA).

(3) Given that the provisions of Regulation (EU) No 575/2013 mirrored those of the Basel standards, the solutions found to the shortcomings of the Basel rules are also fit for the purpose of addressing the corresponding shortcomings of the relevant provisions of that Regulation.

(4) The Basel Committee adopted on 14 January 2014 a revised rules text on the leverage ratio with in particular additional measurement and netting arrangements for repurchase transactions and securities financing transactions. Alignment of the provisions of Regulation (EU) No 575/2013 concerning the calculation of the leverage ratio with the internationally agreed rules should address diverging interpretations by institutions for the netting of collateral of securities financing and repurchase transactions and should also enhance international comparability as well as create a level playing field for institutions that are established in the Union and operate internationally.

(5) Clearing via central counter parties under the principal model commonly used in the Union creates a double counting of leverage in the exposure measure of an institution acting as a clearing member.

(6) Clearing of securities financing transactions, especially repurchase transactions, through qualifying central counterparties (QCCPs) can bring advantages such as multilateral netting and robust collateral management processes which enhance financial stability. Cash receivables and payables for repurchase and reverse repurchase transactions via the same QCCP should therefore be allowed to be netted.

(7) Repurchase transactions that can be terminated at any day subject to an agreed recall notice period should be considered equivalent to having an explicit maturity equal to the recall notice period and the 'same explicit final settlement date' should be deemed to be met so that such transactions are eligible for the netting of cash receivables and payables of repurchase transactions and reverse repurchase transactions with the same counterparty.

(8) The revised leverage ratio should lead to a more accurate measure of leverage and should serve as a proportionate constraint on the accumulation of leverage in institutions established in the Union.

(9) Point in time reporting of the leverage ratio at the end of the quarterly reporting period rather than reporting on the basis of a three-month average better aligns the leverage ratio with solvency reporting.

(10) Using gross notional amounts for written credit protection issued by an institution more appropriately reflects leverage as compared to using the mark to market method for those instruments.

(11) The scope of consolidation for calculating the leverage ratio should be aligned with the regulatory scope of consolidation used for determining the risk weighted capital ratios.

(12) The changes introduced by this Regulation should lead to better comparability of the leverage ratio disclosed by institutions and should help to avoid misleading market participants as to the real leverage of institutions. It is therefore necessary that this Regulation enters into force as soon as possible.

(13) Regulation (EU) No 575/2013 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 575/2013 is amended as follows:

(1) Article 429 is replaced by the following:

Article 429

Calculation of the leverage ratio

1 Institutions shall calculate their leverage ratio in accordance with the methodology set out in paragraphs 2 to 13.

2 The leverage ratio shall be calculated as an institution's capital measure divided by that institution's total exposure measure and shall be expressed as a percentage.

Institutions shall calculate the leverage ratio at the reporting reference date.

3 For the purposes of paragraph 2, the capital measure shall be the Tier 1 capital.

4 The total exposure measure shall be the sum of the exposure values of:

a assets referred to in paragraph 5 unless they are deducted when determining the capital measure referred to in paragraph 3;

b derivatives referred to in paragraph 9;

c add-ons for counterparty credit risk of repurchase transactions, securities or commodities lending or borrowing transactions, long settlement transactions and margin lending transactions including those that are off-balance sheet referred to in Article 429b;

d off-balance sheet items referred to in paragraph 10.

5 Institutions shall determine the exposure value of assets, excluding contracts listed in Annex II and credit derivatives, in accordance with the following principles:

a the exposure values of assets means exposure values in accordance with the first sentence of Article 111(1);

b physical or financial collateral, guarantees or credit risk mitigation purchased shall not be used to reduce exposure values of assets;

c loans shall not be netted with deposits;

d repurchase transactions, securities or commodities lending or borrowing transactions, long settlement transactions and margin lending transactions shall not be netted.

6 Institutions may deduct from the exposure measure set out in paragraph 4 of this Article the amounts deducted from Common equity Tier 1 capital in accordance with Article 36(1)(d).

7 Competent authorities may permit an institution not to include in the exposure measure exposures that can benefit from the treatment laid down in Article 113(6). Competent authorities may grant that permission only where all the conditions set out in points (a) to (e) of Article 113(6) are met and where they have given the approval laid down in Article 113(6).

8 By way of derogation from point (d) of paragraph 5, institutions may determine the exposure value of cash receivables and cash payables of repurchase transactions, securities or commodities lending or borrowing transactions, long settlement transactions and margin lending transactions with the same counterparty on a net basis only if all the following conditions are met:

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2015/62. (See end of Document for details)*

a the transactions have the same explicit final settlement date;

b the right to set off the amount owed to the counterparty with the amount owed by the counterparty is legally enforceable in all the following situations:

(i) in the normal course of business;

(ii) in the event of default, insolvency and bankruptcy;

c the counterparties intend to settle net, settle simultaneously, or the transactions are subject to a settlement mechanism that results in the functional equivalent of net settlement.

For the purposes of point (c) of the first subparagraph, a settlement mechanism results in the functional equivalent of net settlement if, on the settlement date, the net result of the cash flows of the transactions under that mechanism is equal to the single net amount under net settlement.

9 Institutions shall determine the exposure value of contracts listed in Annex II and of credit derivatives including those that are off-balance sheet, in accordance with Article 429a.

10 Institutions shall determine the exposure value of off-balance-sheet items, excluding contracts listed in Annex II, credit derivatives, repurchase transactions, securities or commodities lending or borrowing transactions, long settlement transactions and margin lending transactions, in accordance with Article 111(1). However, institutions shall not reduce the nominal value of those items by specific credit risk adjustments.

In accordance with Article 166(9), where a commitment refers to the extension of another commitment, the lower of the two conversion factors associated with the individual commitment shall be used. The exposure value of low risk off- balance sheet items referred to in Article 111(1)(d) shall be subject to a floor equal to 10 % of their nominal value.

11 An institution that is a clearing member of a QCCP may exclude from the calculation of the exposure measure trade exposures of the following items, provided that those trade exposures are cleared with that QCCP and meet, at the same time, the conditions laid down in Article 306(1)(c):

a contracts listed in Annex II;

b credit derivatives;

c repurchase transactions;

d securities or commodities lending or borrowing transactions;

e long settlement transactions;

f margin lending transactions.

12 Where an institution that is a clearing member of a QCCP guarantees to the QCCP the performance of a client that enters directly into derivative transactions with the QCCP, it shall include in the exposure measure the exposure resulting from the guarantee as a derivative exposure to the client in accordance with Article 429a.

13 Where national generally accepted accounting principles recognise fiduciary assets on balance sheet, in accordance with Article 10 of Directive 86/635/EEC, those assets may be excluded from the leverage ratio total exposure measure provided that they meet the criteria for non-recognition set out in International Accounting Standard (IAS) 39, as applicable under Regulation (EC) No 1606/2002, and, where applicable,

the criteria for non-consolidation set out in International Financial Reporting Standard (IFRS) 10, as applicable under Regulation (EC) No 1606/2002.

14 Competent authorities may permit an institution to exclude from the exposure measure exposures that meet all of the following conditions:

a they are exposures to a public sector entity;

b they are treated in accordance with Article 116(4);

c they arise from deposits that the institution is legally obliged to transfer to the public sector entity referred to in point (a) for the purposes of funding general interest investments.

(2) The following Articles 429a and 429b are inserted:

Article 429a

Exposure value of derivatives

1 Institutions shall determine the exposure value of contracts listed in Annex II and of credit derivatives, including those that are off-balance sheet, in accordance with the method set out in Article 274. Institutions shall apply Article 299(2)(a) for the determination of the potential future credit exposure for credit derivatives.

When determining the potential future credit exposure of credit derivatives, institutions shall apply the principles laid down in Article 299(2)(a) to all their credit derivatives, not only those assigned to the trading book.

In determining the exposure value, institutions may take into account the effects of contracts for novation and other netting agreements in accordance with Article 295. Cross-product netting shall not apply. However, institutions may net within the product category referred to in point (25)(c) of Article 272 and credit derivatives when they are subject to a contractual cross-product netting agreement referred to in Article 295(c).

2 Where the provision of collateral related to derivatives contracts reduces the amount of assets under the applicable accounting framework, institutions shall reverse that reduction.

3 For the purposes of paragraph 1, institutions may deduct variation margin received in cash from the counterparty from the current replacement cost portion of the exposure value in so far as under the applicable accounting framework the variation margin has not already been recognised as a reduction of the exposure value and when all the following conditions are met:

a for trades not cleared through a QCCP, the cash received by the recipient counterparty is not segregated;

b the variation margin is calculated and exchanged on a daily basis based on mark-to-market valuation of derivatives positions;

c the variation margin received in cash is in the same currency as the currency of settlement of the derivative contract;

d the variation margin exchanged is the full amount that would be necessary to fully extinguish the mark-to-market exposure of the derivative subject to the threshold and minimum transfer amounts applicable to the counterparty;

e the derivative contract and the variation margin between the institution and the counterparty to that contract are covered by a single netting agreement that the institution may treat as risk-reducing in accordance with Article 295.