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Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the prudential requirements of investment firms and amending Regulations (EU) No 575/2013, (EU) No 600/2014 and (EU) No 1093/2010

PART ONE

GENERAL PROVISIONS

TITLE I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

This Regulation lays down uniform prudential requirements which apply to investment firms authorised and supervised under Directive 2014/65/EU and supervised for compliance with prudential requirements under Directive (EU) ----/--[IFD] in relation to the following:

(a) capital requirements relating to quantifiable, uniform and standardised elements of risk-to-firm, risk-to-**client** ~~customers~~ and risk-to-market;

(b) requirements limiting concentration risk;

(c) liquidity requirements relating to quantifiable, uniform and standardised elements of liquidity risk;

(d) reporting requirements related to points (a), (b) and (c);

(e) public disclosure requirements.

Article 2

Supervisory powers

For the purposes of ensuring compliance with this Regulation, competent authorities shall have the powers and shall follow the procedures set out in Directive (EU) ----/--[IFD].

Article 3

Application of stricter requirements by investment firms

This Regulation shall not prevent investment firms from holding own funds and their components **and liquid assets** in excess of, or applying measures that are stricter than, those required by this Regulation.

Article 4

Definitions

1. For the purpose of this Regulation, the following definitions shall apply:

(1) ‘ancillary services undertaking’ means ancillary services undertaking as defined in Article 4(1)(18) of Regulation (EU) No 575/2013;

(1a) ‘asset management company’ means asset management company as defined in point (19) of Article 4 of Regulation (EU) No 575/2013;

(1b) ‘clearing member’ means clearing member as defined in Article 2(14) of Regulation (EU) No 648/2012;

(2) ‘client’ means client as defined in Article 4(1)(9) of Directive 2014/65/EU;

(3) ‘commodity and **emission allowance** dealers’ means commodity **and emission allowance** dealers as defined in Article 4(1)(145) of Regulation (EU) No 575/2013;

(4) ‘commodity derivatives’ means commodity derivatives as defined in Article 2 (1)(30) of Regulation (EU) No 600/2014;

(5) ‘competent authority’ means competent authority as defined in Article 3(5) of Directive (EU) ----/--[IFD];

(6) ‘credit institution’ means credit institution as defined in Article 4(1)(1) of Regulation (EU) No 575/2013;

(7) ‘daily trading flow’ means the value of transactions in the trading book where the firm is dealing on own account, whether for itself or on behalf of a client, **or executing orders on behalf of clients in its own name**;

(8) ‘dealing on own account’ means dealing on own account as defined in Article 4(1)(6) of Directive 2014/65/EU;

(9) ‘derivatives’ means derivatives as defined in Article 2(1)(29) of Regulation (EU) No 600/2014;

(10) ‘K-factor consolidated situation’ means the situation that results from applying the requirements of this Regulation in accordance with K-factors to an investment firm as if that investment firm formed, together with one or more other entities in the same group, a single investment firm;

(11) ‘execution of orders on behalf of clients’ means execution of orders on behalf of clients as defined in Article 4(1)(5) of Directive 2014/65/EU;

~~(12) ‘exposure’ means the following:~~

~~(a) for the purposes of concentration risk limits, any asset or off-balance sheet item held in the trading book and not explicitly exempt under Article 40;~~

~~(b) for the purposes of reporting concentration risk, any asset or off-balance sheet item;~~

(13) ‘financial institution’ means an undertaking other than a credit institution or investment firm, the principal activity of which is to acquire holdings or to pursue one or more of the activities listed in points (2) to (12) and point (15) of Annex I to Directive 2013/36/EU, including a financial holding company, a mixed financial holding company, an investment holding company, a payment institution within the meaning of Directive **2015/2366/EC** ~~2007/64/EC~~ of the European Parliament and of the Council of **25 November 2015** ~~13 November 2007~~ on payment services in the internal market, and an asset management company, but excluding insurance holding companies and mixed-activity insurance holding companies as defined in point (g) of Article 212(1) of Directive 2009/138/EU;

(14) ‘financial instrument’ means financial instrument as defined in Article 4(1)**(15)** ~~(50)~~ of **Directive 2014/65/EU** ~~Regulation (EU) No 575/2013~~;

(15) ‘financial holding company’ means financial holding company as defined in point of Article 4(1)(20) of Regulation (EU) No 575/2013;

(16) ‘financial sector entity’ means financial sector entity as defined in Article 4(1)(27) of Regulation (EU) No 575/2013;

(17) ‘initial capital’ means initial capital as defined in Article 3**(16)**~~(17)~~ of Directive (EU) ----/--[IFD];

(18) ‘group of connected clients’ means group of connected clients as defined in Article 4(1)(39) of Regulation (EU) No 575/2013;

(19) ‘investment advice’ means investment advice as defined in Article 4(1)(4) of 2014/65/EU;

(19a) ‘investment advice of an ongoing nature’ means investment advice involving a continuous or periodic assessment of a client portfolio of financial instruments on the basis of a contractual arrangement;

(20) ‘investment firm’ means investment firm as defined in Article 4(1)(1) of Directive 2014/65/EU;

(21) ‘investment holding company’ means a financial institution, the subsidiaries of which are exclusively or mainly investment firms or financial institutions, at least one of such subsidiaries being an investment firm, and which is not a financial holding company as defined in Article 4(1)(20) of Regulation (EU) No 575/2013;

(22) ‘investment services and activities’ means investment services and activities as defined in Article 4(1)(2) of 2014/65/EU;

(23) ‘investment firm group’ means a group of undertakings which **consists of a parent undertaking and its subsidiaries or of undertakings which meet the conditions set out in Article 22 of Directive 2013/34/EU, of which at least one is an investment firm and which** does not include a credit institution ~~where the parent undertaking is either an investment firm, an investment holding company or a mixed financial holding company and which may include other financial institutions and tied agents owned by the investment firm. The investment firm group may consist either of a parent undertaking and its subsidiaries, or of undertakings which meet the conditions set out in Article 22 of Directive 2013/34/EU~~;

(24) ‘K-factors’ means capital requirements set out in Title II of Part Three for risks that an investment firm poses to **clients** ~~customers~~, markets and to itself;

(25) ‘~~K-~~AUM’ or ‘~~K-factor in relation to~~ assets under management ~~(AUM)~~’ means ~~the capital requirement relative to~~ the value of assets that an investment firm manages for its clients under both discretionary portfolio management and non-discretionary arrangements constituting investment advice **of an on-going nature** ~~including assets delegated to another undertaking and excluding assets that another undertaking has delegated to the investment firm~~;

(26) ‘~~K-~~CMH’ or ‘~~K-factor in relation to~~ client money held ~~(CMH)~~’ means ~~the capital requirement relative to~~ the amount of client money that an investment firm holds ~~or controls~~, regardless of any legal arrangements in relation to asset segregation and irrespective of the national accounting regime applicable to client money held by the investment firm;

(27) ‘~~K-~~ASA’ or ‘~~K-factor in relation to~~ assets safeguarded and administered ~~(ASA)~~’ means ~~the capital requirement relative to~~ the value of assets that an investment firm safeguards and administers for clients~~, including assets delegated to another undertaking and assets that another undertaking has delegated to the investment firm~~, irrespective of whether assets appear on the investment firm's own balance sheet or are segregated in other accounts;

(28) '~~K-~~COH' or '~~K-factor in relation to~~ client orders handled ~~(COH)~~' means ~~the capital requirement relative to~~ the value of orders that an investment firm handles for clients, through the reception and transmission of client orders and through the execution of orders on behalf of clients;

(29) '~~K-~~CON' or '~~K-factor in relation to~~ concentration risk ~~(CON)~~' means ~~the capital requirement relative to~~ the exposures in the trading book of an investment firm to a client or a group of connected clients the value of which exceeds the limits in Article 36(1);

(30) '~~K-~~CMG' or '~~K-factor in relation to~~ clearing **margin given** ~~member guarantee~~' means ~~the capital requirement equal to~~ the amount of **total margin required by** ~~initial margins posted with~~ a clearing member **or qualifying CCP**, where the execution and settlement of transactions of an investment firm dealing on own account take place under the responsibility of a ~~general~~ clearing member **or qualifying CCP**;

(31) '~~K-~~DTF' or '~~K-factor in relation to~~ daily trading flow ~~(DTF)~~' means ~~the capital requirement relative to~~ the daily value of transactions that an investment firm enters through dealing on own account or the execution of orders on behalf of clients in its own name;

(32) '~~K-~~NPR' or '~~K-factor in relation to~~ net position risk ~~(NPR)~~' means ~~the capital requirement relative to~~ the value of transactions recorded in the trading book of an investment firm;

(33) '~~K-~~TCD' or '~~K-factor in relation to~~ trading counterparty default ~~risk (TCD)~~' means ~~the capital requirement relative to~~ the exposures in the trading book of an investment firm in instruments and transactions referred to in Article 25 giving rise to the risk of trading counterparty default;

(33a) 'Current Market Value' (hereinafter referred to as 'CMV') refers to the net market value of the portfolio of transactions or securities legs subject to netting according to Article 31(1), where both positive and negative market values are used in computing CMV;

(34) ‘long settlement transactions’ means long settlement transactions as defined in Article 272(2) of Regulation (EU) No 575/2013;

(35) ‘margin lending transaction’ means margin lending transactions as defined in Article 272(3) of Regulation (EU) No 575/2013;

(36) ‘management body’ means management body as defined in Article 4(1)(36) of Directive 2014/65/EU;

(36a) ‘mixed financial holding company’ means mixed financial holding company as defined in point (15) of Article 2 of Directive 2002/87/EC;

(36b) ‘own funds’ means the sum of Tier 1 capital in accordance with Article 25 of Regulation (EU) 575/2013 and Tier 2 capital in accordance with Article 71 of Regulation (EU) 575/2013;

(37) ‘parent undertaking’ means parent undertaking within the meaning of Articles 2(9) and 22 of Directive 2013/34/EU;

(38) ‘participation’ means participation as defined in Article 4(1)(35) of Regulation (EU) No 575/2013;

(39) ‘profit’ means profit as defined in Article 4(1)(121)of Regulation (EU) No 575/2013;

(40) ‘qualifying central counterparty’ or ‘QCCP’ means qualifying central counterparty as defined in Article 4(1)(88) of Regulation (EU) No 575/2013;

(41) ‘portfolio management’ means portfolio management as defined in Article 4(1)(8) of Directive 2014/65/EU;

~~(42) ‘regulatory capital’ means the capital requirement specified in Article 11;~~

~~(43)~~ ‘repurchase transaction’ means repurchase transaction as defined in Article **3(9)** ~~4(1)(83)~~ of Regulation (EU) No **2015/2365** ~~575/2013~~;

(44) ‘subsidiary’ means subsidiary within the meaning of Article 2(10) and 22 of Directive 2013/34/EU, including any subsidiary of a subsidiary undertaking of an ultimate parent undertaking;

(45) ‘tied agent’ means tied agent as defined in Article 4(1)(29) of Directive 2014/65/EU

(46) ‘total gross revenue’ means the annual operating income of an investment firm, in connection with the firm's investment services and activities it is authorised to perform, including income stemming from interest receivable, from shares and other securities whether fixed yield or variable, from commission and fees, any gain and losses that the investment firms incurs on its trading assets, assets held at fair value, or from hedging activities, but excluding any income which is not linked to the investment services and activities performed;

~~(47) ‘trade exposure’ means trade exposure as defined in point (91) of Article 4(1) of Regulation (EU) No 575/2013;~~

(48) ‘trading book’ means trading book as defined in point (86) of Article 4(1) of Regulation (EU) No 575/2013;

(49) ‘Union parent investment firm’ means an investment firm in a Member State which **has an investment firm or a financial institution as a subsidiary or which holds a participation in such an investment firm or financial institution, and which** is not itself a subsidiary of another investment firm authorised in any Member State, or of an investment holding company or mixed financial holding company set up in any Member State;

(50) ‘Union parent investment holding company’ means an investment holding company in a Member State which is not itself a subsidiary of an investment firm authorised in any Member State or of another investment holding company in any Member State;

(51) ‘Union parent mixed financial holding company’ means a parent undertaking of an investment firm group which is a mixed financial holding company as defined in Article 2(15) of Directive 2002/87/EC.

~~2. The Commission shall be empowered to adopt delegated acts in accordance with Article 54 in order to clarify:~~

~~(a)the definitions set out in paragraph 1 to ensure uniform application of this Regulation;~~

~~(b)the definitions set out in paragraph 1 to take account, in the application of this Regulation, of developments on financial markets.~~

TITLE II

LEVEL OF APPLICATION OF REQUIREMENTS

CHAPTER 1

Application of requirements on an individual basis

Article 5

General principle

An investment firm shall comply with the requirements laid down in Parts Two to Seven on an individual basis.

Article 6

Exemptions

1. Competent authorities may exempt an investment firm from the application of Article 5 in respect of Parts Two to Four, Six and Seven, where all of the following apply:

(a) the investment firm is a subsidiary and is included in the supervision on a consolidated basis of a credit institution, a financial holding company or a mixed financial holding company, in accordance with the provisions of Chapter 2, Title II, Part One of Regulation (EU) No 575/2013;

(b) both the investment firm and its parent undertaking are subject to authorisation and supervision by the same Member State;

(c) the authorities competent for the supervision on consolidated basis in accordance with Regulation (EU) No 575/2013 agree to such an exemption;

(d) own funds are distributed adequately between the parent undertaking and the investment firm and all of the following conditions are satisfied:

(i) the investment firm meets the conditions set out in Article 12(1);

(ii) there is no current or foreseen material practical or legal impediment to the prompt transfer of capital or repayment of liabilities by the parent undertaking;

(iii) upon prior approval by the competent authority, the parent undertaking declares that it guarantees the commitments entered into by the investment firm or that the risks in the investment firm are of negligible interest;

(iv) the risk evaluation, measurement and control procedures of the parent undertaking include the investment firm; and

(v) the parent undertaking holds more than 50% of the voting rights attached to shares in the capital of the investment firm or has the right to appoint or remove a majority of the members of the investment firm's management body.

2. Competent authorities may exempt investment firms from the application of Article 5 in respect of Part Five where all of the following conditions are satisfied:

(a) the investment firm is included in the supervision on a consolidated basis in accordance with Chapter 2, Title II of Part One of Regulation (EU) No 575/2013;

(b) the group has established centralised liquidity management functions; and

(c) the authorities competent for the supervision on consolidated basis in accordance with Regulation (EU) No 575/2013 agree to such an exemption.

CHAPTER 2

Application of requirements for compliance with the group capital test and exemptions for an investment firm group

Article 7

The group capital test

1. A Union parent investment firm, a Union parent investment holding company, a Union parent mixed financial holding company shall hold at least enough own funds to cover the sum of the following:

   (a) the sum of the full book value of any holdings, subordinated claims and instruments referred to in points (h) and (i) of Article 36(1), points (c) and (d) of Article 56, and points (c) and (d) of Article 66 of Regulation (EU) No 575/2013 in investment firms, financial institutions, ancillary services undertakings and tied agents in the investment firm group; and

   (b) the total amount of contingent liability in favour of investment firms, financial institutions, ancillary services undertakings and tied agents.

2. Competent authorities may allow a Union parent investment holding company or a Union parent mixed financial holding company to hold a lower amount of own funds than the amount calculated under paragraph 1, provided that this amount is no lower than the sum of the own funds requirements imposed on an individual basis on investment firms, financial institutions, ancillary services undertakings and tied agents in the group, and the total amount of any contingent liabilities in favour of these entities.

For the purposes of paragraph 1, where no Union or national prudential legislation applies for any of the entities referred to in paragraph 1, a notional own funds requirement shall apply.

3. A Union parent investment firm, a Union parent investment holding company, a Union parent mixed financial holding company shall have systems in place to monitor and control the sources of capital and funding of all investment firms, investment holding companies, mixed financial holding companies, financial institutions, ancillary services undertakings and tied agents within the investment firm group.]

Article 8

K-factor consolidation

By way of derogation from Article 7, the competent authorit**y**~~ies~~ of a Union parent investment firm or the competent authorit**y**~~ies~~ determined in accordance with Article 42(2) of Directive (EU)----/--[IFD] may require a Union parent investment firm, a Union parent investment holding company or a Union parent mixed financial holding company to comply with the requirements set out in Article 15 on the basis of the K-factor consolidated situation where either of the following conditions applies:

(a) there are significant material risks to **clients** ~~customers~~ or to market, stemming from the group as a whole which are not fully captured by the capital requirements applicable to the investment firms in the group on an individual basis; or

(b) for investment firm groups with a high degree of inter-connectedness in terms of risk management, the application of requirements to the investment firm on an individual basis may lead to a duplication of the requirements for those firms.

PART TWO

OWN FUNDS

Article 9

*Own funds **composition** ~~requirements~~*

1. An investment firm shall have own funds consisting of the sum of its Tier 1 capital and Tier 2 capital where:

   (a) at least 56 % of the sum shall consist of Common Equity Tier 1 capital in accordance with Chapter 2 of Title 1 of Part Two of Regulation (EU) No 575/2013;

   (b) up to 44 % of the sum may consist of additional Tier 1 capital in accordance with Chapter 3 of Title 1 of Part Two of Regulation (EU) No 575/2013;

   (c) up to 25% of the sum may consist of Tier 2 capital in accordance with Chapter 4 of Title 1 of Part Two of Regulation (EU) No 575/2013;

2. **By way of derogation from paragraph 1:**

   (a) the deductions referred to in Article 36(1)(c) of Regulation (EU) No 575/2013 shall apply in full, without the application of Articles 39 and 48 of that Regulation;

   (b) the deductions referred to in Article 36(1)(e) of Regulation (EU) No 575/2013 shall apply in full, without the application of Article 41 of that Regulation;

   (c) the deductions referred to in Articles 36(1)(h), 56(c), 66(c) of Regulation (EU) No 575/2013, insofar they relate to holdings of capital instruments which are not held in the trading book shall apply in full, without the application of the (*mehanisms provided for in*) Articles 46, 60 and 70 of that Regulation;

(d) the deductions referred to in Article 36(1)(i) of Regulation (EU) No 575/2013 shall apply in full, without the application of Article 48 of that Regulation;

(e) the following provisions shall not apply to the determination of own funds of investment firms:

(i) Article 49 of Regulation (EU) No 575/2013;

(ii) the deductions referred to in Articles 36(1)(h), 56(c), 66(c) of Regulation (EU) No 575/2013 and related provisions in Articles 46, 60 and 70 of that Regulation, insofar these deductions relate to holdings of capital instruments held in the trading book;

(iii) the trigger event referred to in Article 54(1)(a) of Regulation (EU) No 575/2013. The trigger event shall instead be specified by the investment firm in the terms of the additional Tier 1 instrument referred to in paragraph 1;

(iv) the aggregate amount referred to in Article 54(4)(a) of Regulation (EU) No 575/2013. The amount to be written down or converted shall be the full principal amount of the additional Tier 1 instrument referred to in paragraph 1.

~~2. By way of derogation from paragraph 1, the following shall not apply to the determination of own funds:~~

~~(a) the threshold exemptions referred to in Article 48 of Regulation (EU) No 575/2013;~~

~~(b) the deductions referred to in Articles 46, 60 and 70 of Regulation (EU) No 575/2013;~~

~~(c) the trigger event referred to in Article 54(1)(a) of Regulation (EU) No 575/2013. The trigger event shall instead be specified by the investment firm in the terms of the additional Tier 1 instrument referred to in paragraph 1;~~

~~(d) the aggregate amount referred to in Article 54(4)(a) of Regulation (EU) No 575/2013. The amount to be written down or converted shall be the full principal amount of the additional Tier 1 instrument referred to in paragraph 1.~~

3. An investment firms shall apply the provisions set out in Chapter 6 of Title 1 in Part Two of Regulation (EU) No 575/2013 where determining the own funds requirements pursuant to this Regulation. **In applying these provisions, the supervisory permission according to Articles 77 and 78 of Regulation (EU) No 575/2013 shall be deemed to be granted if one of the conditions set out in point (a) of Article 78(1) or Article 78(4) are fulfilled or the investment firm's own funds at the time of, and immediately after, the reduction of own funds, exceed 110% of its total capital requirement including any additional amount under the review process in Chapter 2 of Title IV of [Directive (EU) ---/---- [IFD]**.

4. For the purpose of applying point (a) of paragraph 1, for investment firms as defined in Article 4(1)(1) of Directive 2014/65/EU which are not legal persons or joint-stock companies, Member States may permit further instruments or funds as own funds for these investment firms, provided these instruments or funds qualify for a treatment under Article 22 of Directive 86/635/EEC.

On the basis of information received from each competent authority, EBA together with ESMA shall establish, maintain and publish a list of all the forms of funds or instruments in each Member State that qualify as such own funds.

5. **Where the competent authorities require a Union parent investment firm, Union parent investment holding company or Union parent mixed financial holding company to comply with the requirements set out in Article 15 on the basis of the K-factor consolidated situation, holdings of own funds instruments of a financial sector entity within the group shall not be deducted for the purpose of calculating own funds of any investment firm in the group on an individual basis, provided that the following conditions are met:**

(a) there is no current or foreseen material, practical or legal impediment to the prompt transfer of capital or repayment of liabilities by the parent undertaking; and

(b) the risk evaluation, measurement and control procedures of the parent undertaking include the financial sector entity.

Article 10

Holdings outside the financial sector

1. For the purposes of this Part, an investment firm **which does not meet the criteria set out in Articles 12(1)** shall deduct amounts in excess of the limits specified in points (a) and (b) from the determination of Common Equity Tier 1 items referred to in Article 26 of Regulation (EU) No 575/2013:

   (a) a holding, the amount of which exceeds 15 % of the regulatory capital of the investment firm, in an undertaking which is not a financial sector entity;

   (b) the total amount of the holdings of an investment firm in undertakings other than financial sector entities that exceeds 60 % of its regulatory capital.

2. Competent authorities may prohibit an investment firm from having holdings referred to in paragraph 1 the amount of which exceeds the percentages of regulatory capital laid down in that paragraph. Competent authorities shall make public their decision exercising this power without delay.

3. Shares in undertakings other than financial sector entities shall not be included in the calculation specified in paragraph 1 where any of the following conditions is met:

   (a) those shares are held temporarily during a financial assistance operation as referred to in Article 79 of Regulation (EU) No 575/2013;

   (b) the holding of those shares is an underwriting position held for five working days or fewer;

   (c) those shares are held in the own name of the investment firm and on behalf of others.

4. Shares which are not financial fixed assets as referred to in Article 35(2) of Directive 86/635/EEC shall not be included in the calculation specified in paragraph 1.

PART THREE
CAPITAL REQUIREMENTS

TITLE I
GENERAL REQUIREMENTS

Article 11

Capital requirement

1. An investment firm shall at all times have **own funds in accordance with Article 9** ~~capital~~ which amounts to **at least** the highest of the following:

   (a) its fixed overheads requirement calculated according to Article 13.

   (b) its permanent minimum requirement according to Article 14.

   (c) its K-factor requirement calculated according to Article 15.

2. **By way of derogation from paragraph 1,** an investment firm that meets the conditions set out in Article 12(1) shall at all times ~~only~~ have **own funds in accordance with Article 9** ~~capital~~ which amounts **at least** to the highest of the amounts specified in points (a) and (b) of paragraph 1.

3. Where competent authorities consider that there has been a material change in the business activities of an investment firm, they may require the investment firm to be subject to a different capital requirement referred to in this Article, in accordance with Title IV, Chapter 2, section **4** ~~IV~~ of Directive (EU) ----/--[IFD].

4. An investment firm shall notify the competent authority as soon as it becomes aware that it no longer satisfies or will no longer satisfy the requirements of this article.

Article 12

Small and non-interconnected investment firms

1. An investment firm shall be deemed a small and non-interconnected investment firm for the purposes of this Regulation where it meets all of the following conditions:

(a) AUM (or assets under management) calculated in accordance with Article 17 is less than EUR 1.2 billion;

(b) COH (or client orders handled) calculated in accordance with Article 20 is less than either:

i) EUR 100 million/day for cash trades or

ii) EUR 1 billion/day for derivatives.

(c) ASA (or assets safeguarded and administered) calculated in accordance with Article 19 is zero;

(d) CMH (or client money held) calculated in accordance with Article 18 is zero;

(e) DTF (daily trading flow) calculated in accordance with Article 32 is zero;

(f) NPR (net position risk) or CMG (clearing **margin given** ~~member guarantee~~) calculated in accordance with Articles 22 and 23 is zero;

(g) TCD (trading counterparty default) calculated in accordance with Article 26 is zero;

(h) the balance sheet total of the investment firm is less than EUR 100 million;

(i) the total annual gross revenue from investment services and activities of ~~by~~ the investment firm is less than EUR 30 million **calculated as an average on the basis of the annual figures from the two-year peiod immediately preceding the given financial year**.

By way of derogation from the provisions of Title II, for the purposes of points (a), (b), (c), (e), (f) **in so far this relates to NPR** and (g), end-of-day **values** ~~levels~~ shall apply.

For the purposes of point (d) **and (f) in so far as this relates to CMG**, intra-day **values** ~~levels~~ shall apply.

For the purposes of points (h) and (i), the levels ~~applicable~~ at the end of the last financial year **for which accounts have been finalised and approved by the management body** shall apply. **Where accounts have not been finalised and approved after 6 months having elapsed since the last financial year-end an investment firm shall use provisional accounts.**

An investment firm may calculate the values under points (a) and (b) by using the methods specified under Title II, with the exception that the measurement shall be done over 12 months, without the exclusion of the 3 most recent monhly values. An investment firm that chooses this calculation method shall notify accordingly the comepetent authority and shall apply the chosen method for a continous period of no less than 12 consecutive calendar months.

2. The conditions set out in points (a), (b), (h) and (i) of paragraph 1 shall apply on a combined basis for all investment firms that are part of a group. **For the purpose of measuring point (i), the investment firms may exclude any double counting that may arise in respect of gross revenues generated within the group.**

The conditions set out in points (c), (d), (e), (f) and (g) shall apply to each investment firm on an individual basis.

~~Where an investment firm no longer meets all the conditions set out in paragraph 1, it not be considered a small and non-interconnected investment firm with immediate effect.~~

3. **Where an investment firm no longer meets all the conditions set out in paragraph 1, it shall cease to be considered a small and non-interconnected investment firm with immediate effect.**

Where an investment firm no longer meets the conditions set out in points (a), ~~or~~ (b**), (h) or (j)** of paragraph 1 but continues to meet the conditions set out in points (c) to **(g)** ~~(i)~~ of **that** paragraph ~~1~~, it shall **cease to** ~~not~~ be considered a small and non-interconnected investment firm after a period of 3 months, calculated from the date when the threshold has been exceeded.

The investment firm shall notify the competent authority without undue delay any breach of a threshold.

4. Where an investment firm which has not met all of the conditions set out in paragraph 1 subsequently meets **them** ~~those conditions~~, it shall be considered~~, subject to approval by the competent authority,~~ a small and non-interconnected investment firm **only** after a period of 6 months from the date when those conditions are met, **if no breach of a threshold occurs during that period and the investment firm has without delay notified the competent authority accordingly**.

5. ~~In order to take account of developments in financial markets, the Commission shall be empowered to adopt delegated acts in accordance with Article 54 in order to adjust the conditions for investment firms to qualify as small and non-interconnected firms in accordance with this Article.~~

Article 13

Fixed overheads requirement

1. For the purposes of Article 11(1)(a), the fixed overheads requirement shall amount to at least one quarter of the fixed overheads of the preceding year. **Investment firms shall use figures resulting from the applicable accounting framework.**

2. Where the competent authority considers that there has been a material change in the activity of an investment firm, the competent authority may adjust the amount of capital referred to in paragraph 1.

3. ~~Subject to approval by the competent authorities,~~ Where an investment firm has ~~no fixed overheads from the previous year, it shall have capital amounting to at least one quarter of the fixed overheads which have been projected in its business plan for the year following the year of commencement of its activities~~**not completed business for one year from the day it starts trading, it shall use, for the calculation referred to in paragraph 1, the projected fixed overheads included in its projections for the first 12 months' trading, as submitted with its application for authorisation**.

4. EBA, in consultation with ESMA, ~~and taking into account Commission Delegated Regulation (EU)~~ 2015/488 shall develop draft regulatory technical standards to **supplement** ~~further specify~~ the calculation of the requirement referred to in paragraph 1 **which includes at least the following items for subtraction:**

   (a) staff bonuses and other remuneration, to the extent that they depend on a net profit of the investment firm in the respective year;

   (b) employees', directors' and partners' shares in profits;

(c) other appropriations of profits and other variable remuneration, to the extent that they are fully discretionary;

(d) shared commission and fees payable which are directly related to commission and fees receivable, which are included within total revenue, and where the payment of the commission and fees payable is contingent upon the actual receipt of the commission and fees receivable;

(e) fees to tied agents as defined by point 25 of Article 4 of Directive 2004/39/EC;

(f) interest paid to customers on client money;

(g) non-recurring expenses from non-ordinary activities.

EBA shall submit those draft regulatory technical standards to the Commission by [*nine month from the date of entry into force of this Regulation*].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 14

Permanent minimum requirement

For the purposes of Article 11(1)(b), the permanent minimum requirement shall amount to at least the levels of initial capital specified in Article 8 of Directive (EU) ----/--[IFD].

TITLE II

K-FACTOR CAPITAL REQUIREMENT

CHAPTER 1

General principles

Article 15

K-factor requirement and applicable coefficients

1. For the purposes of Article 11(1)(c), the K-factor requirement shall amount to at least the sum of the following:

   (a) Risk-to-**Client** ~~customer~~ (RtC) K-factors calculated in accordance with Chapter 2;

   (b) Risk-to-Market (RtM) K-factors calculated in accordance with Chapter 3;

   (c) Risk-to-Firm (RtF) K-factors calculated in accordance with Chapter 4.

2. The following coefficients shall apply to the corresponding K-Factors:

Table 1

K-FACTORS		**COEFFICIENT**
Assets under management under both discretionary portfolio management and non-discretionary ~~(~~advisory~~)~~ arrangements **of an on-going nature**	K-AUM	0.02%
Client money held	K-CMH	0.45%
Assets under safekeeping and administration	K-ASA	0.04%
Client orders handled	K-COH cash trades	0.1%
	K-COH derivatives	0.01%
Daily trading flow	K-DTF cash trades	0.1%
	K-DTF derivatives	0.01%

3. An investment firm shall monitor the value of its K-factors for any trends that could leave it with a materially different capital requirement for the next reporting period and shall notify its competent authority of that materially different capital requirement.

4. Where competent authorities consider that there has been a material change in the business activities of an investment firm that impacts the amount of a relevant K-factor, they may adjust the corresponding amount in accordance with Article 36(2)(a) of Directive (EU) ----/--[IFD].

5. In order to ensure the uniform application of this Regulation and to take account of developments in financial markets, the Commission shall be empowered to adopt delegated acts in accordance with Article 54 in order to~~:~~

~~(a)~~specify the methods for measuring the K-factors in Title II of Part Three~~;~~

~~(b)adjust the coefficients specified in paragraph 2 of this Article~~.

CHAPTER 2
RtC K-factors

Article 16
RtC K-factor requirement

The RtC K-factor requirement is determined by the following formula:

K-AUM + K-CMH + K-ASA + K-COH

where:

(a) K-AUM is equal to AUM measured in accordance with Article 17, multiplied by the corresponding coefficient in Article 15(2);

(b) K-CMH is equal to CMH measured in accordance with Article 18, multiplied by the corresponding coefficient in Article 15(2);

(c) K-ASA is equal to ASA measured in accordance with Article 19, multiplied by the corresponding coefficient in Article 15(2);

(d) K-COH is equal to COH measured in accordance with Article 20, multiplied by the corresponding coefficient in Article 15(2);

Article 17

Measuring AUM for the purposes of calculating K-AUM

1. For the purposes of calculating K-AUM, AUM shall be the rolling average of the value of the total monthly assets under management, measured on the last business day of each of the previous 15 calendar months, excluding the 3 most recent monthly values.

   AUM shall be the ~~average or simple~~ arithmetic mean of the remaining 12 monthly measurements.

   K-AUM shall be calculated **on** ~~within~~ the first ~~14~~ **business** day~~s~~ of each calendar month.

2. Where the investment firm has formally delegated the **management of** assets ~~under management~~ to another financial entity, those ~~delegated~~ assets shall be included in the total amount of AUM measured in accordance with paragraph 1.

   Where another financial entity has formally delegated the **management of** assets ~~under management~~ to the investment firm, those ~~delegated~~ assets shall ~~not~~ be **excluded from** ~~included in~~ the total amount of assets under management measured in accordance with paragraph 1.

3. Where an investment firm has been **in operation** managing assets for less than 15 **calendar** months, **or when it has done so for a longer period as a small and non-interconnected investment firm and now exceeds the threshold for AUM** it **shall** ~~may~~ use **historical data** ~~business projections~~ of AUM **for the time period described under paragraph 1 as soon as it becomes available** to calculate K-AUM ~~subject to the following cumulative requirements~~:

The competent authority may replace missing historical datapoints by regulatory determinations based on the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU.

~~(a)historical data is used as soon as it becomes available;~~

~~(b)the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU have been positively assessed by the competent authority.~~

Article 18

Measuring CMH for the purposes of calculating K-CMH

1. For the purposes of calculating K-CMH, CMH shall be the rolling average of the value of total daily client money held, measured at the end of each business day for the previous **6** ~~3~~ calendar months**, excluding the 3 most recent calendar months**.

CMH shall be the ~~average or simple~~ arithmetic mean of the daily measurements **from** ~~in~~ the **remaining** 3 calendar months.

K-CMH shall be calculated **on** ~~by~~ the **first** ~~end of~~ business day **of each calendar month** ~~following the measurement referred to in the first subparagraph~~.

2. Where an investment firm has been **in operation** holding client money for less than **6** ~~3~~ **calendar** months, it **shall** ~~may~~ use **historical data of CMH for the time period described under paragraph 1 as soon as it becomes available** ~~business projections~~ to calculate K-CMH. ~~subject to the following cumulative requirements:~~

~~(a) historical data is used as soon as it becomes available;~~

~~(b) the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU have been positively assessed by the competent authority.~~

The competent authority may replace missing historical datapoints by regulatory determinations based on the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU.

Article 19

Measuring ASA for the purposes of calculating K-ASA

1. For the purposes of calculating K-ASA, ASA shall be the rolling average of the value of the total daily assets safeguarded and administered, measured at the end of each business day for the previous 6 calendar months, excluding the 3 most recent calendar months.

ASA shall be the ~~average or simple~~ arithmetic mean of the daily measurements from the remaining 3 calendar months.

K-ASA shall be calculated **on** ~~within~~ the first ~~14~~ **business** day~~s~~ of each calendar month.

1a. Where an investment firm has formally delegated the tasks of safekeeping and administration of assets to another financial entity, or where another financial entity has formally delegated such tasks to the investment firm, these assets shall be included in the total amount of ASA which are measured in accordance with paragraph 1.

2. Where an investment firm has been in operation **safeguarding and administering assets** for less than **6** ~~3~~ **calendar** months, it **shall** ~~may~~ use **historical data of ASA from the time period described under paragraph 1** ~~business projections~~ to calculate K-ASA. **The competent authority may replace missing historical datapoints by regulatory determinations based on the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU**. ~~subject to the following cumulative requirements:~~

~~(a)historical data is used as soon as it becomes available;~~

~~(b)the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU have been positively assessed by the competent authority.~~

Article 20

Measuring COH for the purposes of calculating K-COH

1. For the purposes of calculating K-COH, COH shall be the rolling average of the value of the total daily client orders handled, measured **throughout** ~~at the end of~~ each business day over the previous 6 calendar months, excluding the 3 most recent calendar months.

COH shall be the ~~average or simple~~ arithmetic mean of the daily measurements for the remaining 3 calendar months.

K-COH shall be calculated **on** ~~within~~ the first **business** ~~14~~ days of each **month** ~~quarter~~.

2. COH shall be measured as the sum of the absolute value of buys and the absolute value of sells for both cash trades and derivatives in accordance with the following:

(a) for cash trades, the value is the amount paid or received on each trade.

(b) for derivatives, the value of the trade is the notional amount of the contract.

The notional amount of interest rate derivatives shall be adjusted for the time to maturity (in years) of these contracts. The notional amount shall be multiplied by the duration set out in the following formula:

Duration = time to maturity (in years) / 10

COH shall include transactions executed by investment firms providing portfolio management services on behalf of investment funds.

COH shall include transactions which arise from investment advice in respect of which an investment firm does not calculate K-AUM.

COH shall exclude transactions handled by the investment firm that arise from the servicing of a client's investment portfolio where the firm already calculates K-AUM in respect of the client's investments or where this activity relates to the delegation of management of assets to the investment firm not contributing to the AUM of this investment firm by virue of Article 17(2).

COH shall exclude transactions executed by the investment firm in its own name either for itself or on behalf of a client.

COH shall exclude orders which have not been executed either by the investment firm itself or by a third party to which the order has been transmitted.

3. Where an investment firm has been in operation **handling client orders** for less than **6** ~~3~~ **calendar** months**, or has done so for a longer period as a small and non-interconnected inevstment firm,** it **shall** ~~may~~ use **historical data of COH from the time period described under paragraph 1 as soon as it becomes available** ~~business projections~~ to calculate K-COH. **The competent authority may replace missing historical datapoints by regulatory determinations based on the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU.** ~~subject to the following cumulative requirements:~~

~~(a) historical data is used as soon as it becomes available;~~

~~(b) the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU have been positively assessed by the competent authority.~~

CHAPTER 3
RtM K-Factors

Article 21

RtM K-factor requirement

The RtM K-factor requirement for the trading book positions of an investment firm dealing on own account, whether for itself or on behalf of a client shall be **either** ~~the higher of~~ K-NPR calculated in accordance with Article 22 or K-CMG calculated in accordance with Article 23.

Article 22

Calculating K-NPR

1. For the purposes of K-NPR, the capital requirement for the trading book positions of an investment firm dealing on own account, ~~whether for itself or on behalf of a client~~ shall be calculated using one **or more** of the following approaches:

(a) the [simplified standardised] approach set out in Chapters 2 to 4 of Title IV of Part Three of Regulation (EU) No 575/2013 where the investment firm's trading book business is equal to or less than EUR **500**~~300~~ million;

(b) the standardised approach set out in [*Chapter 1(a) of Title IV of Part Three of the Regulation No (EU) No 575/2013, in accordance with Article 1(84) of the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements and amending Regulation (EU) No 648/2012*];

(c) the internal model approach set out in [*Chapter 1(b) of Title IV of Part Three of the Regulation No (EU) No 575/2013 in accordance with Article 1(84) of the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements and amending Regulation (EU) No 648/2012*].

~~K-NPR calculated under the approaches specified under points (b) and (c) shall be multiplied by a factor of 65%.~~

2. For the purposes of the second sentence of point (a) of paragraph 1, an investment firm shall calculate the size of on- and off- balance sheet business in accordance with [*paragraphs 2 to 7 of Article 325a of Regulation No (EU) No 575/2013*].

Article 23

Calculating K-CMG

1. **For the purposes of** ~~By way of derogation from~~ Article **21** ~~22~~, the competent authority may allow an investment firm**, for all positions held or on a portfolio basis,** to calculate K-CMG for positions that are ~~centrally cleared~~ subject to **clearing under** ~~subject to~~ the following conditions:

   (a) the investment firm is not part of a group containing a credit institution;

   (b) the **clearing** ~~execution~~ and settlement of the transactions of the investment firm that are **subject to clearing** ~~centrally cleared~~ take place under the responsibility of a clearing member **or qualifying CCP** and **the transactions** are either **centrally cleared by a** ~~guaranteed by that~~ **qualifying CCP** ~~clearing member~~ or otherwise settled on a delivery-versus-payment basis;

   (c) the calculation of the **total** ~~initial~~ margin **required by** ~~posted by the investment firm to~~ the clearing member **or qualifying CCP** is based on **a margin** ~~an internal~~ model of the clearing member **or qualifying CCP** ~~that complies with the requirements set out in Article 41 of Regulation (EU) No~~ 648/2012.

   The assessment of the competent authority confirms that this margin model leads to margin requirements that are reflective of the risk characteristics of the products the investment firms trades in and takes into account the interval between margin collections, market liquidity and the possibility of changes over the duration of the transaction.

The margin requirements shall be sufficient to cover losses that may result from at least 99% of the exposures movements over an appropriate time horizon with at least a two-business days holding period.

(d) **when clearing and settlement of the transactions of the investment firm take place under the responsibility of a clearing member,** the clearing member is a credit institution.

1a. K-CMG shall be the highest ~~total~~ amount of **total** ~~initial~~ margin **required on a daily basis by** ~~posted to~~ the clearing member **or qualifying CCP from** ~~by~~ the investment firm over the preceding **6**~~3~~ months.

Competent authorities may increase the capital requirement calculated in accordance with this Article by a multiplying factor of [1.5] based on the prudence, frequency and depth of their regular assessment of the model used to calculate margin requirements referred to in paragraph 1 point (c) of this Article, and the extent of cooperation between authorities under Article 11(5a) of Directive (EU) ----/--[IFD].

2. EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify the calculation of the amount of the **total** ~~initial~~ margin **required as** referred to in paragraph **2** ~~1(c)~~.

The EBA shall submit those draft regulatory technical standards to the Commission by [*nine months from the date of entry into force of this Regulation*].

Power is delegated to the Commission to adopt the revised regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

CHAPTER 4

Rtf K-Factors

Article 24

RtF K-factor requirement

1. The RtF K-factor requirement is determined by the following formula:

K-TCD +K-DTF + K-CON

where

K-TCD is equal to the amount calculated in accordance with Article 26;

K-DTF is equal to DTF measured in accordance with Article 32, multiplied by the corresponding coefficient established in Article 15(2) and

K-CON is equal to the amount calculated in accordance with Article 38.

K-TCD and K-CON shall be based on the transactions recorded in the trading book of an investment firm dealing on own account, whether for itself or on behalf of a client.

K-DTF shall be based on the transactions recorded in the trading book of an investment firm dealing on own account, whether for itself or on behalf of a client, and the transactions that an investment firm enters into through the execution of orders on behalf of clients in its own name.

SECTION I

TRADING COUNTER PARTY DEFAULT

Article 25

Scope

1. **This section applies to the following contracts and transactions:** ~~The following transactions shall be subject to this Section:~~

(a) derivative **contracts** ~~instruments~~ listed in Annex II of Regulation (EU) No 575/2013, with the exception of the following:

~~(i) OTC derivatives traded with central governments and central banks of Member States;~~

~~(ii) OTC derivatives cleared through a qualifying central counterparty (QCCP);~~

(iii) ~~OTC derivatives~~ **Derivative contracts directly or indirectly** cleared through a **central counterparty (CCP)** ~~clearing member, where transactions are subject to a clearing obligation pursuant to Article 4 of Regulation (EU) No 648/2012 or to an equivalent requirement to clear that contract in a third country, or~~ where all of the following conditions are met:

aa. the positions and assets of the investment firm related to those transactions are distinguished and segregated, at the level of both the clearing member and the **CCP** ~~QCCP~~, from the positions and assets of both the clearing member and the other clients of that clearing member and, as a result of that distinction and segregation, those positions and assets are bankruptcy remote under national law in the event of the default or insolvency of the clearing member or one or more of its other clients;

bb. laws, regulations and contractual arrangements applicable to or binding the clearing member facilitate the transfer of the client's positions relating to those contracts and transactions and of the corresponding collateral to another clearing member within the applicable margin period of risk in the event of default or insolvency of the original clearing member;

cc. the investment firm has obtained an independent, written and reasoned legal opinion which concludes that, in the event of legal challenge, the investment firm would bear no losses on account of the insolvency of its clearing member or of any of its clearing member's clients.

Derivative contracts directly or indirectly cleared through a qualifying central counterparty (QCCP) are deemed to meet the conditions above.

(iv) exchange-traded derivative~~s~~ **contracts**;

(v) derivative~~s~~ **contracts** held for hedging a position of the firm resulting from a non-trading book activity;

(b) long settlement transactions;

(c) repurchase transactions;

(d) securities or commodities lending or borrowing transactions;

(e) margin lending transactions.

1a. Transactions with the following types of counterparties shall be excluded from the calculation of K-TCD:

(a) central governments and central banks where transactions are denominated and funded in the domestic currency of that central government and central bank;

(b) multilateral development banks listed in Article 117(2) of Regulation (EU) No 575/2013;

(c) international organisations listed in Article 118 of Regulation (EU) 575/2013.

1b. Subject to prior approval of the competent authorities, an investment firm may exclude from the scope of calculation of K-TCD transactions with a counterparty which is its parent undertaking, its subsidiary, a subsidiary of its parent undertaking or an undertaking linked by a relationship within the meaning of Article 22(7) of Directive 2013/34/EU. Competent authorities shall grant approval if the following conditions are fulfilled:

(a) the counterparty is a credit institution, an investment firm, or a financial institution, subject to appropriate prudential requirements;

(b) the counterparty is included in the same consolidation as the investment firm on a full basis;

(c) the counterparty is subject to the same risk evaluation, measurement and control procedures as the investment firm;

(d) the counterparty is established in the same Member State as the investment firm;

(e) there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities from the counterparty to the investment firm.

2. By way of derogation from this Section, an investment firm may**, subject to approval from the competent authority,** calculate **the exposure value of derivative contracts listed in Annex II of Regulation (EU) No 575/2013 and** ~~its capital requirement~~ for the transactions referred to in **points (b) to (e) of** paragraph 1 by applying one of the methods set out in [*Sections 3, 4 or 5, Chapter 6, Title II, Part Three ~~3~~ of Regulation (EU) No 575/2013*] and **calculate the related capital requirements by multiplying the risk weighted exposure amounts, calculated in accordance with Section 1, Chapter 2, Title II, Part Three of Regulation (EU) No 575/2013, by 8%.** ~~shall immediately inform the competent authority thereof.~~

Article 26

Calculating K-TCD

For the purposes of K-TCD, the capital requirement shall be determined by the following formula:

Capital requirement = Exposure value * RF

where **exposure value is defined in Article 27 and** RF is the risk factor defined per counterparty type according to Table 2.

Table 2

Counterparty type	Risk factor
Central governments, central banks and public sector entities	**1.6%**
Credit institutions and investment firms	**2%** ~~1.6%~~
Other counterparties	**10%** ~~8%~~

Article 27

Calculation of exposure value

The calculation of the exposure value shall be determined in accordance with the following formula:

Exposure value = Max (0; RC + PFE - C)

where:

RC = replacement cost as determined in Article 28.
PFE = potential future exposure as determined in Article 29; and
C = collateral as determined in Article 30.

The replacement cost (RC) and collateral (C) shall apply to all transactions referred to in Article 25.

The potential future exposure (PFE) applies only to derivative contracts contracts ~~and long settlement transactions~~.

An investment firm may calculate a single exposure value at netting level for all the transactions covered by a contractual netting agreement, subject to the conditions laid down in article 31. Where any of those conditions is not met, the investment firm shall treat each transaction as if it was its own netting set.

Article 28

Replacement cost (RC)

The replacement cost referred to in Article 27 shall be determined as follows:

(a) for derivative contracts, RC is determined as the current market value (CMV);

(b) for long settlement transactions, RC is determined as the settlement amount **of cash to pay or to receive by the investment firm upon settlement. A receivable is treated as a positive amount and a payable is treated as a negative amount**.

(c) for repurchase transactions and securities or commodities lending or borrowing transactions, RC is determined as the ~~net~~ amount of cash **lent or** borrowed ~~and received~~. **Cash lent by the investment firm is treated as a positive amount and cash borrowed by the investment firm is treated as a negative amount**.

(d) for securities financing transactions (SFT), where both legs of the transaction are securities, RC is determined by the current market value (CMV) of the security lent by the investment firm. The current market value (CMV) shall be increased using the corresponding volatility adjustment in Table 4 of Article 30.

(e) for margin lending transactions, RC is determined by the book value of the asset in accordance with the applicable accounting framework.

Article 29

Potential future exposure

1. The potential future exposure (PFE) referred to in Article **27** ~~28~~ shall be calculated for each derivative ~~and long-settlement transaction~~ as the product of:

   (a) the effective notional (EN) amount of the transaction set in accordance with paragraphs 2 to 6 of this Article; **and**

   (b) the supervisory factor (SF) set according to paragraph 7 of this Article. ~~and~~

   ~~(c) a maturity factor (MF) set according to paragraph 8 of this Article.~~

2. The effective notional (EN) amount shall be the product of the notional amount calculated in accordance with paragraph 3 of this Article, its duration ~~for interest rate and credit derivative contracts~~ calculated in accordance with paragraph 4 of this Article, and its **supervisory** delta ~~for option contracts~~ calculated in accordance with paragraph 6 of this Article.

3. The notional amount, unless clearly stated and fixed until maturity, shall be determined as follows:

(a) for foreign exchange derivative~~s~~ **contracts**, the notional amount is defined as the notional of the foreign currency leg of the contract, converted to the domestic currency. If both legs of a foreign exchange derivative are denominated in currencies other than the domestic currency, the notional amount of each leg is converted to the domestic currency and the leg with the larger domestic currency value is the notional amount;

(b) for equity and commodity derivative~~s~~ **contracts** and emission allowances and derivatives thereof, the notional amount is defined as the product of the ~~current (~~future~~)~~ price of one unit of the stock or and the number of units referenced by the trade;

(c) for transactions with multiple payoffs that are state contingent including digital options or target redemption forwards, an investment firm shall calculate the notional amount for each state and use the largest resulting calculation;

(d) where the notional is a formula of market values, the investment firm shall enter the current market values to determine the trade notional amount;

(e) for variable notional swaps such as amortising and accreting swaps, investment firms shall use the average notional over the remaining life of the swap as the trade notional amount;

(f) leveraged swaps shall be converted to the notional amount of the equivalent unleveraged swap so that where all rates in a swap are multiplied by a factor, the stated notional amount is multiplied by the factor on the interest rates to determine the notional amount;

(g) for ~~a~~ derivative contract**s** with multiple exchanges of principal, the notional amount shall be multiplied by the number of exchanges of principal in the derivative contract to determine the notional amount.

4. The notional amount of interest rate and credit derivative contract**s** for the time to maturity (in years) of these contracts shall be adjusted according to the duration set out in the following formula:

Duration = (1 – exp (-0.05 * time to maturity)) / 0.05;

For derivative contracts other than interest rate and credit derivative contracts the duration shall be 1.

5. The maturity of a contract shall be the latest date when the contract may still be executed.

If the derivative references the value of another interest rate or credit instrument, the time period shall be determined on the basis of the underlying instrument.

For options, the maturity shall be the latest contractual exercise date as specified by the contract.

For a derivative contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the fair value of the contract is zero, the remaining maturity shall equal the time until the next reset date.

6. The **supervisory** delta of options and swaptions may be calculated by the investment firm itself, using an appropriate model. The model shall estimate the rate of change of the option's value with respect to small changes in the market value of the underlying. For transactions other than options and swaptions, the delta shall be 1 ~~for long positions and -1 for short positions~~.

7. The supervisory factor (SF) for each asset class shall be set according to the following table:

Table 3

Asset class	**Supervisory factor**
Interest rate	0.5%
Foreign exchange	4%
Credit	1%
Equity single name	32%
Equity index	20%
Commodity and emission allowance	18%
Other	**8%**

~~8. The maturity factor (MF) for each transaction shall be determined by the following formula:~~

$$~~MF = (\min(M;1\text{ year}) / 1\text{ year})^{0.5}~~$$

~~For unmargined trades, maturity (M) shall be the shorter of one year and remaining maturity of the derivative contract, as determined in the second subparagraph of paragraph 5, but no less than ten business days.~~

~~For margined trades, maturity (M) shall be the margin period of risk. The minimum margin period of risk shall be at least ten business days for non-centrally cleared derivative transactions subject to daily margin agreements and five business days for centrally cleared derivative transactions subject to daily margin agreements.~~

Article 30

Collateral

1. All ~~non-cash~~ collateral ~~posted and received by an investment firm,~~ **for** both ~~in~~ bilateral and cleared transactions referred to in Article **25** ~~23~~, shall be subject to **volatility adjustments** ~~haircuts~~ in accordance with the following table:

Table 4

Asset class		**~~Haircut~~ Volatility adjustment repurchase transactions**	**~~Haircut~~ Volatility adjustment other transactions**
Debt securities issued by central governments or central banks	≤ 1 year	0.707%	1%
	> 1 year ≤ 5 years	2.121%	3%
	> 5 years	4.243%	6%
Debt securities issued by other entities	≤ 1 year	1.414%	2%
	> 1 year ≤ 5 years	4.243%	6%
	> 5 years	8.485%	12%
Securitisation positions	≤ 1 year	2.828%	4%
	> 1 year ≤ 5 years	8.485%	12%
	> 5 years	16.970%	24%
Listed equities and convertibles		14.143%	20%
Other securities and commodities		**17.678%**	**25%**
Gold		10.607%	15%
Cash		0%	0%

For the purposes of Table 4, securitisation positions shall not include re-securitisation positions.

Competent authories may change the volatility adjustment for certain types of commodities for which there are different levels of volatility in prices.

They shall notify EBA of such decisions together with the reasons for the changes.

2. The value of ~~non-cash~~ collateral ~~posted by the investment firm to its counterparty~~ shall be **determined as follows**: ~~increased. The value of the non-cash collateral received by the investment firm from its counterparty shall be decreased according to Table 4.~~

(a) for the transactions referred to in points (a) and (e) of Article 25(1), collateral is determined by the amount of collateral received by the investment firm from its counterparty decreased according to Table 4; and

(b) for the transactions referred to in points (b), (c) and (d) of Article 25(1), collateral is determined by the sum of the current market value (CMV) of the security leg and the net amount of collateral posted or received by the investment firm.

For securities financing transactions (SFT), where both legs of the transaction are securities, collateral is determined by the current market value (CMV) of the security borrowed by the investment firm.

Where the investment firm is purchasing or has lent the security, the CMV shall be treated as a negative amount and be decreased, to a larger negative amount, using the volatility adjustment in Table 4. Where the investment firm is selling or has borrowed the security, the CMV shall be treated as a positive amount and be decreased using the volatility adjustment in Table 4.

Where different types of transactions are covered by a contractual netting agreement, subject to the conditions laid down in Article 31, the applicable volatility adjustments for "other transactions" of Table 4 shall be applied to the respective amounts calculated under points (a) and (b) on an issuer basis within each asset class.

3. Where there is a currency mismatch between the transaction and the collateral received or posted, an additional currency mismatch **volatility adjustment** ~~haircut~~ of 8% shall apply.

Article 31

Netting

1. For the purposes of this Section, an investment firm **firstly** may treat perfectly matching contracts included in a netting agreement as if they were a single contract with a notional principal equivalent to the net receipts, **secondly** may net other transactions subject to novation under which all obligations between the investment firm and its counterparty are automatically amalgamated in such a way that the novation legally substitutes one single net amount for the previous gross obligations, **and thirdly may net** other transactions where the investment firm ensures ~~to the satisfaction of the competent authority~~ that the following conditions have been met:

(a) a netting contract with the counterparty or other agreement which creates a single legal obligation, covering all included transactions, such that the investment firm would have either a claim to receive or obligation to pay only the net sum of the positive and negative mark-to-market values of included individual transactions in the event a counterparty fails to perform due to any of the following:

(i) default;

(ii) bankruptcy;

(iii) liquidation;

(iv) similar circumstances.

(b) the netting contract does not contain any clause which, in the event of default of a counterparty, permits a non-defaulting counterparty to make limited payments only, or no payments at all, to the estate of the defaulting party, even if the defaulting party is a net creditor;

(c) the investment firm has obtained an independent, written and reasoned legal opinion that, in the event of a legal challenge of the netting agreement, the investment firm's claims and obligations would be equivalent to those referred to in point (a) under the following legal regime:

– the law of the jurisdiction in which the counterparty is incorporated;

– if a foreign branch of a counterparty is involved, the law of jurisdiction in which the branch is located;

– the law that governs the individual transactions in the netting agreement; or

– the law that governs any contract or agreement necessary to effect the netting.

2. **Where the investment firm has ensured that the conditions of paragraph 1 apply, investment firms shall calculate the PFE for the derivative contracts included in a netting agreement in accordance with the following formula:**

$$PFE_{red} = 0{,}4 \cdot PFE_{gross} + 0{,}6 \cdot NGR \cdot PFE_{gross}$$

where:

PFE_{red} **= the reduced figure for potential future exposure for all derivative contracts with a given counterparty included in a legally valid bilateral netting agreement;**

PFE_{gross} **= the sum of the figures for potential future exposure for all derivative contracts with a given counterparty which are included in a legally valid bilateral netting agreement and are calculated in accordance with Article 29;**

NGR **= the net-to-gross ratio calculated as the quotient of the net replacement cost for all contracts included in a legally valid bilateral netting agreement with a given counterparty (numerator) and the gross replacement cost for all contracts included in a legally valid bilateral netting agreement with that counterparty (denominator). Where the amount obtained is negative NGR shall be deemed as zero.**

SECTION II

DAILY TRADING FLOW

Article 32

Measuring DTF for the purposes of calculating K-DTF

1. For the purposes of calculating K-DTF, DTF shall be the rolling average of the value of the total daily trading flow, measured **throughout** ~~at the end of~~ each business day over the previous 6 calendar months, excluding the 3 most recent calendar months.

   DTF shall be the ~~average or simple~~ arithmetic mean of the daily measurements for the remaining 3 calendar months

   K-DTF shall be calculated **on** ~~within~~ the first **business** ~~14~~ day~~s~~ of each **month** ~~quarter~~.

2. DTF shall be measured as the sum of the absolute value of buys and the absolute value **of** sells for both cash trades and derivatives in accordance with the following:

   (a) for cash trades, the value is the amount paid or received on each trade.

   (b) for derivatives, the value of the trade is the notional amount of the contract.

   The notional amount of interest rate derivatives shall be adjusted for the time to maturity (in years) of these contracts. The notional amount shall be multiplied by the duration set out in the following formula:

   Duration = time to maturity (in years) / 10

3. DTF shall exclude transactions executed by an investment firm **with the purpose of** providing portfolio management services on behalf of investment funds.

DTF shall include transactions executed by an investment firm in its own name either for itself or on behalf of a client.

4. Where an investment firm has been in operation **and has a daily trading flow** for less than **6** ~~3~~ **calendar** months, it **shall** ~~may~~ use **historical data of DTF from the time period described under paragraph 1 to calculate K-DTF as soon as it becomes available. The competent authority may replace missing historical datapoints by regulatory determinations based on** the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU.

~~subject to the following cumulative requirements:~~

~~(a) historical data is used as soon as it becomes available;~~

~~(b) the business projections of the investment firm submitted in accordance Article 7 of Directive 2014/65/EU have been properly assessed by the competent authority.~~

PART FOUR

CONCENTRATION RISK

Article 33

Monitoring obligation

1. An investment firm shall monitor and control its concentration risk in accordance with this Part, by means of sound administrative and accounting procedures and robust internal control mechanisms.

2. For the purposes of this Part, the terms credit institution and investment firm shall include private or public undertakings, including their branches, which, were they established in the Union, would be a credit institution or an investment firm as defined in this Regulation and have been authorised in a third country that applies prudential supervisory and regulatory requirements at least equivalent to those applied in the Union.

~~*Article 34*~~

~~*Reporting requirements*~~

~~An investment firm that does not meet the conditions set out in Article 12(1) shall report the following levels of risk to the competent authorities on at least an annual basis:~~

~~(a) level of concentration risk associated with the default of counterparties for trading book exposures, both on an individual counterparty and aggregate basis;~~

~~(b) level of concentration risk towards the credit institutions, investment firms and other entities where client money is held;~~

~~(c) level of concentration risk towards the credit institutions, investment firms and other entities where client securities are deposited;~~

~~(d) level of concentration risk towards the credit institutions where the firm's own cash is deposited; and~~

~~(e) level of concentration risk from earnings.~~

Article 35

Calculation of the exposure value

1. An investment firm that does not meet the conditions set out in Article 12(1) shall calculate the **exposure value to a client or group of connected clients** ~~following exposures~~ for the purposes of this Part **by adding together the following items**:

(a) The positive excess of an investment firm's long positions over its short positions in all the trading book financial instruments issued by the client in question, the net position of each calculated in accordance with the r~~ules~~ provisions referred to in Article 22(1) (a) to (c).

An investment firm that, for the purposes of the RtM K-factor requirement, calculates capital requirements for the trading book positions according to the approach specified in Article 23 shall calculate the net position for the purpose of concentration risk of those positions in accordance with the ~~rules~~ provisions referred to in Article 22(1)(a).

(b) The exposure value of transactions referred to in Article 25(1) with the client in question, calculated in the manner laid down in Article 27.

An investment firm that, for the purposes of K-TCD, calculates capital requirements by applying the methods referred to in Article 25(2) shall calculate the exposure value of such transactions by applying the methods set out in [*Sections 3, 4 or 5, Chapter 6, Title II, Part 3 of Regulation (EU) No 575/2013*].

~~(a) exposures to individual clients which arise on the trading book, by adding those exposures to the net exposures in all financial instruments issued by that individual client.~~

~~The net exposure shall be calculated by deducting those underwriting positions which are subscribed or sub-underwritten by third parties based on a formal agreement, reduced by the following factors:~~

~~*Table 5*~~

~~working day 0:~~	~~100 %~~
~~working day 1:~~	~~90 %~~
~~working days 2 to 3:~~	~~75 %~~
~~working day 4:~~	~~50 %~~
~~working day 5:~~	~~25 %~~
~~after working day 5:~~	~~0 %.~~

~~An investment firm shall set up systems to monitor and control its underwriting exposures between the time of the initial commitment and the next business day, in the light of the nature of the risks incurred in the markets in question.~~

~~(b) exposures to groups of connected clients, by adding all the exposures to the individual clients within the group, which shall be treated as a single exposure.~~

1a. The exposure value to a group of connected clients shall be calculated by adding together the exposures to the individual clients within the group, which shall be treated as a single exposure.

2. In calculating the exposure to a client or a group of connected clients, an investment firm shall take all reasonable steps to identify underlying assets in relevant transactions and the counterparty of the underlying exposures.

Article 36

Limits to concentration risk~~s~~ ***and exposure value excess***

1. An investment firm**'s** ~~dealing on own account, whether for itself or on behalf of a client,~~ **limit to concentration risk of** ~~shall not incur~~ an exposure **value** to an individual client or group of connected clients **shall be** ~~the value of which exceeds~~ 25% of its **own funds** ~~regulatory capital, unless it meets the obligation to notify set out in Article 37 and the K-CON capital requirement set out in Article 38~~.

Where that individual client is a credit institution or an investment firm, or where a group of connected clients includes one or more credit institutions or investment firms, ~~that~~ **the limit to concentration risk** ~~value~~ shall **be the higher of** ~~not exceed~~ 25% of the investment firm's **own funds** ~~regulatory capital calculated in accordance with Article 11~~ or EUR 150 million~~, whichever is higher,~~ provided that **for** the sum of exposure values, to all connected clients that are not credit institutions or investment firms**, the limit to concentration risk remains at** ~~does not exceed~~ 25 % of the investment firms' **own funds** ~~regulatory capital~~.

Where the amount of EUR 150 million is higher than 25% of the investment firm's **own funds** ~~regulatory capital~~, the ~~value of the exposure~~ **limit to concentration risk** shall not exceed 100% of the investment firm's **own funds** ~~regulatory capital~~.

1a. Where the limits referred to in paragraph 1 are exceeded, an investment firm shall meet an own funds requirement on the exposure value excess in accordance with Article 38.

An investment firm shall calculate an exposure value excess to an individual client or group of connected clients according to the following formula:

exposure value excess= EV – L

where:

EV = exposure value calculated in the manner laid down in Article 35.

L = limit to concentration risk as determined in paragraph 1 of this Article.

2. The **exposure value to an individual client or group of connected clients** ~~limits referred to in paragraph 1 may be~~ **shall not** exceed~~ed where the following conditions are met~~:

~~(a) the investment firm meets the K-CON capital requirement on the excess in respect of the limit laid down in paragraph 1, calculated in accordance with Article 38;~~

(b) **500% of the investment firm's own funds,** where 10 days or less have elapsed since the excess occurred~~, the trading-book exposure to the individual client or group of connected clients in question shall not exceed 500% of the investment firm's regulatory capital~~;

(c) **in aggregate, 600% of the investment firm's own funds, for** any excesses that have persisted for more than 10 days ~~do not, in aggregate, exceed 600 % of the investment firm's regulatory capital~~.

Article 37

Obligation to notify

1. Where the limits referred to in Article 36**(2)** ~~(1)~~ are exceeded, an investment firm shall notify the amount of the excess, the name of the individual client concerned and, where applicable, the name of the group of connected clients concerned, without delay to the competent authorities.

2. Competent authorities may grant the investment firm a limited period to comply with the limit**s** referred to in Article 36**(2)** ~~(1)~~.

~~Where the amount of EUR 150 million referred to in Article 36(1) is applicable, the competent authorities may allow the 100% limit of the investment firm's regulatory capital to be exceeded.~~

Article 38

Calculating K-CON

~~1. For the purposes of calculating K-CON, the excess referred to in Article 36(2) shall be the exposure to the individual client or group of connected clients in question that arises in the trading book.~~

~~2. Where the excess has not persisted for more than 10 days, the K-CON capital requirement shall be 200% of the requirements referred to in paragraph 1.~~

~~3. After the period of 10 days calculated from the date on which the excess has occurred, the excess shall be allocated to the appropriate line in Column 1 of Table 6.~~

4. The K-CON capital requirement shall be the **aggregate amount of the capital requirement calculated for each client or group of connected clients as the capital requirement of the appropriate line in Column 1 in Table 6 that accounts for a part of the total individual excess multiplied by:**

(a) 200% where the excess has not persisted for more than 10 days;

(b) the corresponding factor in Column 2 of Table 6, after the period of 10 days calculated from the date on which the excess has occurred, by allocating each proportion of the excess to the appropriate line in Column 1 of Table 6.

4a. The capital requirement of the excess referred to in paragraph 4 shall be calculated according to the following formula:

$$\mathbf{CRE} = \frac{\boldsymbol{CR}}{\boldsymbol{EV}} \times \boldsymbol{EVE}$$

where:

CRE = capital requirement for the excess.

CR = capital requirement of exposures to an individual client or groups of connected clients, calculated by adding together the capital requirements of the exposures to the individual clients within the group, which shall be treated as a single exposure.

EV = exposure value calculated in the manner laid down in Article 35.

EVE = exposure value excess calculated in the manner laid down in Article 36(1a).

For the purpose of K-CON, the capital requirements of exposures arising from the positive excess of an investment firm's long positions over its short positions in all the trading book financial instruments issued by the client in question, the net position of each calculated in accordance with the provisions referred to in Article 22(1) (a) to (c), shall only include specific-risk requirements.

An investment firm that, for the purposes of the RtM K-factor requirement, calculates capital requirements for trading book positions, according to the approach specified in Article 23, shall calculate the capital requirement of the exposure for the purpose of concentration risk of those positions in accordance with the provisions referred to in Article 22(1)(a).

Table 6

Column 1: **Exposure value excess as a percentage of own funds** ~~**Excess over the limits (based on a percentage of regulatory capital)**~~	Column 2: **Factors**
Up to 40 %	200 %
From 40 % to 60 %	300 %
From 60 % to 80 %	400 %
From 80 % to 100 %	500 %
From 100 % to 250 %	600 %
Over 250 %	900 %

5. ~~In order to ensure the uniform application of this Regulation and to take account of developments in financial markets, the Commission shall be empowered to adopt delegated acts in accordance with Article 54 in order to specify the method for measuring the K-factor in this Article.~~

Article 39

Procedures to prevent investment firms from avoiding the K-CON capital requirement

1. Investment firms shall not temporarily transfer the exposures exceeding the limit laid down in Article 36(1) to another company, whether within the same group or not, or by undertaking artificial transactions to close out the exposure during the 10-day period referred to in Article 38 and creating a new exposure.

2. Investment firms shall maintain systems which ensure that any transfer referred to in the paragraph 1 is immediately reported to the competent authorities.

Article 40

Exclusions

1. The following exposures shall be excluded from the requirements set out in Article **38(4)** ~~38(1)~~:

~~(a) exposures not arising in the trading book;~~

(b) exposures which are entirely deducted from an investment firm's own funds;

(c) ~~certain~~ exposures incurred in the ordinary course of settlement of payment services, foreign currency transactions, securities transactions and provision of money transmission;

d) **positions in financial instruments and other exposures** ~~asset items~~ constituting claims on ~~central governments~~:

(i) ~~exposures to~~ central governments, central banks, public sector entities, international organisations or multilateral development banks (MDBs) and exposures guaranteed by or attributable to such persons;

~~(ii) exposures to central governments or central banks (other than those referred to under point (i) which are denominated and, where applicable, funded in the national currency of the borrower;~~

(iii) ~~exposures to, or guaranteed by~~ European Economic Area (EEA) states' regional governments and local authorities**, or guaranteed by these**.

(e) exposures and default fund contributions to central counterparties.

2. **Member States** ~~competent authorities~~ may fully or partially exempt the following exposures from the application of Article **36(1)** ~~38(1)~~:

(a) covered bonds;

~~(b) exposures to, or guaranteed by EEA states' regional governments and local authorities;~~

~~(c) liquidity requirements held in government securities, provided that, at the discretion of the competent authority they are assessed as investment grade;~~

~~(d) exposures to recognised exchanges as defined in Article 4(1)(72) of Regulation (EU) 575/2013.~~

(b) exposures incurred by an investment firm to its parent undertaking, to other subsidiaries of that parent undertaking or to its own subsidiaries, in so far as those undertakings are covered by the supervision - either on a consolidated basis, in accordance with Regulation (EU) No 575/2013 or with Article 8 of this Regulation, or are supervised for compliance with the group capital test, in accordance with Article 7 of this Regulation - to which the investment firm itself is subject, in accordance with this Regulation or with equivalent standards in force in a third country, and the following conditions are met:

(i) there is no current or foreseen material practical or legal impediment to the prompt transfer of capital or repayment of liabilities by the parent undertaking; and

(ii) the risk evaluation, measurement and control procedures of the parent undertaking include the financial sector entity.

Article 41

Exemption for commodity and emission allowance dealers

1. The provisions of this Part shall not apply to commodity and emission allowance dealers when all the following conditions are met ~~for intra-group transactions~~:

(a) the other counterparty is a non-financial counterparty;

~~(b) both counterparties are included in the same consolidation;~~

(c) both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures;

(d) the transaction can be assessed as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty or of that group.

~~2. For the purposes of this Article, counterparties shall be considered to be included in the same consolidation under one of the following conditions:~~

~~(a) the counterparties are included in a consolidation in accordance with Article 22 of Directive 2013/34/EU;~~

~~(b) the counterparties are included in a consolidation in accordance with Article 4 of Regulation (EC) No 1606/2002;~~

~~(c) in relation to a group the parent undertaking of which has its head office in a third country, the counterparties are included in consolidation in accordance with generally accepted accounting principles of a third country determined to be equivalent to IFRS in accordance with Article 3 of Regulation (EC) No 1569/2007 or to accounting standards of a third country the use of which is permitted in accordance with Article 4 of that Regulation.~~

3. An investment firm shall notify the competent authority before using the exemption referred to in paragraph 1.

~~The competent authority shall permit the application of the exemption only if all the conditions set out in paragraph 1 are met.~~

PART FIVE

LIQUIDITY

Article 42

Liquidity requirement

1. An investment firm **that does not meet the conditions set out in Article 12(1)** shall hold an amount of liquid assets equivalent to at least one third of the fixed overhead requirements calculated in accordance with Article 13(1).

For the purposes of the first subparagraph, liquid assets shall be any of the following, **without limitation to their composition**:

(a) the assets referred to in Articles 10 to 13 of Commission Delegated Regulation (EU) 2015/61;

(aa) financial instruments not covered by point (a) traded on a trading venue for which there is a liquid market as defined in point (17) of Article 2(1) of Regulation (EU) No 600/2014 and in Articles 1 to 6 of Commission Delegated Regulation (EU) 2017/565, subject to a haircut of [60%];

(b) unencumbered cash **and short term deposit at a credit institution giving the investment firm ready access to liquidity**.

1a. Cash, short term deposits or financial instruments belonging to clients, even where held in the own name of the investment firm, shall not be counted as liquid assets for the purposes of paragraph 1.

2. For the purposes of paragraph 1, an investment firm that meets the conditions set out in Article 12(1) may also include receivables from trade debtors and fees or commissions receivable within 30 days in their liquid assets, where those receivables comply with the following conditions:

(a) they account for up to one third of the minimum liquidity requirements as referred to in paragraph 1;

(b) they are not to be counted towards any additional liquidity requirements required by the competent authority for firm-specific risks in accordance with Article 36(2)(k) of Directive (EU) ----/--[IFD];

(c) they are subject to a haircut of 50%.

Article 43

Temporary reduction of the liquidity requirement

1. An investment firm may, in exceptional circumstances, reduce the amount of liquid assets held. Where such reduction occurs, the investment firm shall notify the competent authority without delay.

2. Compliance with the liquidity requirement set out in Article 42(1) shall be restored within 30 days of the original reduction.

Article 44

Client ~~*customer*~~ *guarantees*

An investment firm shall increase their liquid assets by 1.6% of the total amount of guarantees provided to **clients** ~~customers~~.

PART SIX

DISCLOSURE BY INVESTMENT FIRMS

Article 45

Scope

1. An investment firm that does not meet the conditions set out in Article 12(1) shall publicly disclose the information specified in this Part on the same day it publishes its annual financial statements.

2. An investment firm that meets the conditions set out in Article 12(1) which issues Additional Tier 1 instruments shall publicly disclose the information set out in Articles 46, 48 **and 49** ~~and 50~~ on the same day it publishes its annual financial statements.

3. **Where** an investment firm **no longer meets all the conditions set out in Article 12(1), it** shall publicly disclose the information set out in **this Part** ~~Articles 47 and 51 where it meets the requirements set out in Article 23 of Directive (EU) ---/-- [IFD]~~ **as of the financial year following the financial year in which it no longer met those conditions**.

~~The investment firm that meets the requirements set out in Art 23 of Directive (EU) ---/-- [IFD] shall disclose the information as of the financial year following the financial year in which the assessment referred to in Article 23(1) of Directive (EU) ---/-- [IFD] took place.~~

4. An investment firm may determine the appropriate medium and location to comply effectively with the disclosure requirements referred to in paragraphs 1 and 2. All disclosures shall be provided in one medium or location where possible. If the same or similar information is disclosed in two or more media, a reference to the synonymous information in the other media shall be included within each medium.

Article 46

Risk management objectives and policies

An investment firm shall disclose its risk management objectives and policies for each **relevant** ~~separate~~ category of risk in Parts Three to Five in accordance with Article 45, including **a summary of** the strategies and processes to manage those risks and a risk statement approved by the management body succinctly describing the investment firm's overall risk profile associated with the business strategy.

Article 47

Governance

An investment firm shall disclose the following information regarding internal governance arrangements, in accordance with Article 45:

(a) the number of directorships held by members of the management body;

(b) the policy on diversity with regard to the selection of members of the management body~~, its objectives and any relevant targets set out in that policy, and the extent to which those objectives and targets have been achieved;~~

(c) ~~whether or not~~ the **number of times the risk committee has met annually, where the** investment firm has set up a separate risk committee **in accordance with Article 26(4) of Directive (EU) ----/-- [IFD]** ~~and the number of times the risk committee has met annually~~.

Article 48

Own funds

1. An investment firm shall disclose the following information regarding its own funds, in accordance with Article 45:

(a) a full reconciliation of Common Equity Tier 1 items, Additional Tier 1 items, Tier 2 items and applicable filters and deductions applied to own funds of the investment firm and the balance sheet in the audited financial statements of the investment firm;

(b) a description of the main features of the Common Equity Tier 1 and Additional Tier 1 instruments and Tier 2 instruments issued by the investment firm;

~~(c) the full terms and conditions of all Common Equity Tier 1, Additional Tier 1 and Tier 2 instruments;~~

~~(d) separate disclosure of the nature and amounts of the prudential filters and deductions applied as well as of items not deducted in relation to own funds;~~

~~(e) a description of all restrictions applied to the calculation of own funds in accordance with this Regulation and the instruments, prudential filters and deductions to which those restrictions apply;~~

2. EBA, in consultation with ESMA, shall develop draft implementing technical standards to specify templates for disclosure under points (a) and (b)~~, (d) and (e)~~ of paragraph 1.

EBA shall submit those draft implementing technical standards to the Commission by [*nine months from the date of entry into force of this Regulation*].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

Article 49

Capital requirements

An investment firm shall disclose the following information regarding its compliance with the requirements laid down in Article 11(1) and in Article 22 of Directive (EU) ----/--[IFD], in accordance with Article 45:

(a) a summary of the investment firm's approach to assessing the adequacy of its internal capital to support current and future activities;

(b) upon demand from the competent authority, the result of the investment firm's internal capital adequacy assessment process, including the composition of the additional own funds based on the supervisory review process as referred to in Article 36(2)(a) of Directive (EU) ----/--[IFD] ;

(c) the **K-factor** capital requirements calculated ~~separately~~, in accordance with ~~each K-factor applicable to the investment firm as set out in~~ Article 15, ~~and in aggregate form,~~ based on the sum of the applicable K-factors;

(d) the fixed overheads requirement determined in accordance with Article 13.

~~*Article 50*~~

~~*Disclosure of return on assets*~~

~~An investment firm shall disclose its return on assets calculated as its net profit divided by its total balance sheet in its annual report as referred to in Article 45.~~

Article 51

Remuneration policy and practices

Investment firms shall disclose the following information regarding their remuneration policy and practices for those categories of staff whose professional activities have a material impact on investment firm's risk profile, in accordance with Article 45;

(a) the most important design characteristics of the remuneration system, including the level of variable remuneration and criteria for its award, pay out in instruments policy, deferral policy and vesting criteria;

(b) the ratios between fixed and variable remuneration set in accordance with Article 28(2) of Directive (EU) ----/--[IFD];

(c) aggregate quantitative information on remuneration, broken down by senior management and members of staff whose actions have a material impact on the risk profile of the investment firm, indicating the following:

i) the amounts of remuneration awarded in the financial year, split into fixed remuneration including a description of the fixed components, and variable remuneration, and the number of beneficiaries;

ii) the amounts and forms of awarded variable remuneration, split into cash, shares, share-linked instruments and other types separately for the part paid upfront and the deferred part;

iii) the amounts of deferred remuneration awarded for previous performance periods, split into the amount due to vest in the financial year and the amount due to vest in subsequent years;

iv) the amount of deferred remuneration due to vest in the financial year, and that is reduced through performance adjustments;

v) the guaranteed variable remuneration awards during the financial year, and the number of beneficiaries of those awards;

vi) the severance payments awarded in previous periods, that have been paid out during the financial year;

vii) the amounts of severance payments awarded during the financial year, split into paid upfront and deferred, the number of beneficiaries of those payments and highest payment that has been awarded to a single person;

~~(d) the number of individuals that have been remunerated EUR 1 million or more per financial year, with the remuneration between EUR 1 million and EUR 5 million broken down into pay bands of EUR 500 000 and with the remuneration of EUR 5 million and above broken down into pay bands of EUR 1 million;~~

~~(e) upon demand from the competent authority, the total remuneration for each member of the management body or senior management;~~

(f) information on whether the investment firm benefits from a derogation laid down in Article 30(4) of Directive (EU) ----/--[IFD].

For the purposes of point (f), investment firms that benefit from such a derogation shall indicate whether that derogation has been granted on the basis of point (a) or point (b) of Article 30(4) of Directive (EU) ----/--[IFD], or both. They shall also indicate for which of the remuneration principles they apply the derogation(s), the number of staff members that benefit from the derogation(s) and their total remuneration, split into fixed and variable remuneration.

This Article shall be without prejudice to the provisions set out in Regulation (EU) 2016/679.

PART SEVEN
REPORTING BY INVESTMENT FIRMS

Article 52

Reporting requirements

1. An investment firm shall submit a **quarterly** ~~annual~~ report to the competent authorities including all of the following information:

   (a) level and composition of own funds;

   (b) capital requirements;

   (c) capital requirement calculations;

   (d) the level of activity in respect of the conditions set out in Article 12(1), including the balance sheet and revenue breakdown by investment service and applicable K-factor;

   (e) concentration risk;

   (f) liquidity requirements.

By way of derogation from the first subparagraph, competent authorities may reduce the frequency of reporting laid down in the first subparagraph for investment firms that meet the conditions set out in Article 12(1) to at least annual reporting.

The information specified in point (e) shall include the following levels of risk and be reported to the competent authorities at least on an annual basis:

(a) level of concentration risk associated with the default of counterparties and with trading book positions , both on an individual counterparty and aggregate basis;

(b) level of concentration risk towards credit institutions, investment firms and other entities where client money is held;

(c) level of concentration risk towards credit institutions, investment firms and other entities where client securities are deposited;

(d) level of concentration risk towards credit institutions where the firm's own cash is deposited; and

(e) level of concentration risk from earnings.

2. By way of derogation from paragraph 1, an investment firm that meets the conditions in Article 12(1) shall not be required to report the information specified in point (e) and (f).

3. EBA, in consultation with ESMA, shall develop draft implementing technical standards to **be applied for the reporting referred to in paragraph 1 and 1a to** specify:

(a) the formats, **which shall be concise, proportionate to the nature, scope and complexity of the activities of the investment firms - whether they are small and non-interconnected investment firms or not - and shall comprise only the information that is necessary to allow effective monitoring by the competent authorities,**

(b) reporting dates **and**

(c) definitions **and associated instructions which shall describe succintly how to use those formats.**

EBA shall develop the implementing technical standards referred to in the first subparagraph by [nine months from the date of entry into force of this Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in this paragraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

Article 53

Reporting requirements for investment firms carrying out activities referred to in Article 4(1)(1)(b) of Regulation (EU) No 575/2013

1. Investment firms **other than those which meet** ~~which do not meet~~ the conditions of Article 12(1) and which carry out any of the activities referred to in Article 4(1)(1)(b) of Regulation (EU) No 575/2013, shall verify the size of their total assets on a monthly basis and report quarterly that information to the competent authority. **The competent authority shall inform** the EBA **thereof**.

2. Where an investment firm referred to in paragraph 1 is part of a group in which one or more other undertakings is an investment firm which carries out any of the activities referred to in Article 4(1)(1)(b) of Regulation (EU) No 575/2013, such investment firms shall verify the size of their total assets on a monthly basis and inform each other. Those investment firms shall then report quarterly their combined total assets to the relevant competent authorities. **The competent authorities shall inform** the EBA **thereof**.

3. Where the average of monthly total assets of the investment firms referred to in paragraphs 1 and 2 reaches any of the thresholds set out in Article 4(1)(1)(b) of Regulation (EU) No 575/2013 calculated over a period of twelve consecutive months, EBA shall notify those investment firms and the authorities competent for granting authorisation in accordance with Article [8a] of Directive 2013/36/EU thereof.

4. EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify further the obligation to provide information to the relevant competent authorities referred to in paragraphs 1 and 2 in order to allow effective monitoring of the thresholds set out in paragraphs 1 (a) and (b) of Article [8a] of Directive 2013/36/EU.

EBA shall submit those draft technical standards to the Commission by [*1st January 2019*].

Power is conferred on the Commission to adopt the regulatory technical standards referred to in this paragraph, in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

PART EIGHT
DELEGATED AND IMPLEMENTING ACTS

Article 54

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles ~~4(2), 12(5),~~ 15(5) and 38(5) shall be conferred on the Commission for an indeterminate period of time from [*date of entry into force of this Regulation*].

3. The delegation of power referred to in Article~~s 4(2) and~~ 15(5) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article~~s 4(2) and~~ 15(5) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of [*two months*] of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [two months] at the initiative of the European Parliament or of the Council.

Article 55

Implementing Acts

The specification of templates for disclosure prescribed in Article 48(2) and of formats, reporting dates, definitions and IT solutions to be applied to reporting as prescribed in Article 52(2) shall be adopted as implementing acts in accordance with the examination procedure referred to in Article 56(2).

Article 56

Committee procedure

1. The Commission shall be assisted by the European Banking Committee established by Commission Decision 2004/10/EC[1]. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council[2].

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

[1] Commission Decision 2004/10/EC of 5 November 2003 establishing the European Banking Committee (OJ L 3, 7.1.2004, p. 36).

[2] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

PART NINE
TRANSITIONAL PROVISIONS, REPORTS, REVIEWS AND AMENDMENTS

TITLE I
TRANSITIONAL PROVISIONS

Article 57

Transitional provisions

1. Articles 42 to 44 and 45 to 51 shall apply to commodity and emission allowance dealers from [*five years from the date of application of this Regulation*].

2. Until five years from the date of application of this *Regulation* or the date of application of the provisions referred to in Article 22(1)(b) and (c) pursuant to [*Chapters 1(a) and 1(b) of Title IV of Part Three of the Regulation No (EU) No 575/2013, in accordance with Article 1(84) of the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements and amending Regulation (EU) No 648/2012*], whichever is the earlier, an investment firm shall apply the requirements set out in Title IV of Part Three of Regulation (EU) No 575/2013.

3. By way of derogation from Article 11, investment firms may limit their capital requirements for a period of five years from [*the date of application of this Regulation*] as follows:

(a) twice the relevant capital requirement pursuant to Chapter 1 of Title 1 of Part Three of Regulation (EU) No 575/2013 had it continued to be subject to that Regulation;

(b) twice the applicable fixed overhead requirement set out in Article 13 of this Regulation where an investment firm was not in existence on or before [*date of application of this Regulation*];

(c) twice the applicable initial capital requirement set out in Title IV of Directive 2013/36/EU on [*date of application of this Regulation*] where an undertaking was subject only to an initial capital requirement until that point in time**, with the exception of local firms as defined in Article 4(1)(4) of Regulation (EU) 575/2013 on [*date before entry into force of this Regulation*]**.

Article 58

Derogation for undertakings referred to in Article 4(1)(1)(b) of Regulation (EU) 575/2013

Investment firms which on the date of entry into force of this Regulation meet the conditions of Article 4(1)(1)(b) of Regulation (EU) 575/2013 and have not yet obtained authorisation as credit institutions in accordance with Article 8 of Directive 2013/36/EU shall continue to be subject to Regulation (EU) 575/2013 and to Directive 2013/36/EU.

TITLE II
REPORTS AND REVIEWS

Article 59

Review clause

1. By [*3 years from the date of* ***application*** ~~*entry into force*~~ *of this Regulation*], the Commission shall**, after consulting with EBA and ESMA,** carry out a review the application of the following:

   (a) the conditions for investment firms to qualify as small and non-interconnected firms in accordance with Article 12;

   (b) the methods for measuring the K-factors in Title II of Part Three and in Article 38;

   (c) the coefficients in Article 15(2);

   (d) the provisions set out in Articles 42 to 44 **and in particular the eligibility for the liquidity requirement of liquid assets in points (a) and (aa) of paragraph 1 of Article 42**;

   (e) the provisions set out in Section 1 of Chapter 4 of Title II of Part Three;

   (f) the application of Part Three to commodity and emission allowance dealers;

   (g) the provisions set out in Part Two;

   (h) the possibility to apply regulatory technical standards according to Art. 13(4) instead of Commission Delegated Regulation (EU) 2015/488 for management companies, investment companies and AIFMs.

2. By [*3 years from the date of* ***application*** ~~*entry into force*~~ *of this Regulation*], the Commission shall submit the report referred to in paragraph 1 to the European Parliament and the Council, together with legislative proposals where appropriate.

TITLE III
AMENDMENTS

Article 60

Amendments of Regulation (EU) No 575/2013

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

1. In the title, the words ‘and investment firms’ are deleted.

2. Article 4(1) is amended as follows:

(a) point (1) is replaced by the following:

‘‘(1) ‘credit institution’ means an undertaking the business of which consists of any of the following:

(a) to take deposits or other repayable funds from the public and to grant credits for its own account;

(b) to carry out any of the activities referred to in points (3) and (6) of Section A of Annex I of Directive 2014/65/EU, where one of the following applies, but the undertaking is not a commodity and emission allowance dealer, a collective investment undertaking or an insurance undertaking:

(i) the total value of the assets of the undertaking exceeds EUR 30 billion, or

(ii) the total value of the assets of the undertaking is below EUR 30 billion, and the undertaking is part of a group in which the combined total value of the assets of all undertakings in the group that carry out any of the activities referred to in points (3) and (6) of Section A of Annex I of Directive 2014/65/EU and have total assets below EUR 30 billion exceeds EUR 30 billion, or

(iii) the total value of the assets of the undertaking is below EUR 30 billion, and the undertaking is part of a group in which the combined total value of the assets of all undertakings in the group that carry out any of the activities referred to in points (3) and (6) of Section A of Annex I of Directive 2014/65/EU exceed EUR 30 billion, where the consolidating supervisor in consultation with the supervisory college so decides in order to address potential risks of circumvention and potential risks for the financial stability of the Union.

(b) point (2) is replaced by the following:

‘‘(2) ‘investment firm’ means a person as defined in Article 4(1)(1) of Directive 2014/65/EU, which is authorised under that Directive, excluding a credit institution;’’.

(c) point (3) is replaced by the following:

(3) ‘institution’ means a credit institution authorised under Article 8 of Directive 2013/36/EU or an undertaking referred to in Article 8a(3) of Directive 2013/36/EU;’’.

(d) point (4) is deleted;

(e) point (26) is replaced by the following:

‘‘(26) ‘financial institution’ means an undertaking other than an institution, the principal activity of which is to acquire holdings or to pursue one or more of the activities listed in points 2 to 12 and point 15 of Annex I to Directive 2013/36/EU, including an investment firm, a financial holding company, a mixed financial holding company, an investment holding company, a payment institution within the meaning of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market, and an asset management company, but excluding insurance holding companies and mixed-activity insurance holding companies as defined in point (g) of Article 212(1) of Directive 2009/138/EU;’’.

(f) point (51) is replaced by the following:

‘‘(51) ‘initial capital’ means the amount and types of own funds specified in Article 12 of Directive 2013/36/EU;’’;

(g) point (145) is added:

‘‘(145) ‘commodity and emission allowance dealers’ mean undertakings the main business of which consists exclusively of the provision of investment services or activities in relation to commodity derivatives or commodity derivatives contracts referred to in points 5, 6, 7, 9 and 10, derivatives of emission allowances referred to in point 4, or emission allowances referred to in point 11 of Section C of Annex I to Directive 2014/65/EU;’’.

3. Article 6 is amended as follows:

(a) paragraph 4 is replaced by the following:

‘‘(4) Credit institutions shall comply with the requirements laid down in Parts Six and Seven on an individual basis.’’.

(b) paragraph 5 is deleted.

4. In Part I, Title II, Chapter 2 on Prudential consolidation, a new Article 10a is inserted:

‘‘For the purposes of application of this Chapter, parent financial holding companies in a Member State and Union parent financial holding companies shall include investment firms where such investment firms are parent undertakings of an institution.’’.

5. In Article 11, paragraph 3 is replaced by the following:

"3. EU parent institutions, institutions controlled by an EU parent financial holding company and institutions controlled by an EU parent mixed financial holding company shall comply with the obligations laid down in Part Six on the basis of the consolidated situation of that parent institution, financial holding company or mixed financial holding company, if the group comprises one or more credit institutions or investment firms that are authorised to provide the investment services and activities listed in points (3) and (6) of Section A of Annex I to Directive **2014/65/EU** ~~2004/39/EC~~".

6. Article 15 is deleted.

7. Article 16 is deleted.

8. Article 17 is deleted.

9. In Article 81, point (a) of paragraph 1 is replaced by the following:

‘‘(a) the subsidiary is one of the following:

(i) an institution;

(ii) an undertaking that is subject by virtue of applicable national law to the requirements of this Regulation and Directive 2013/36/EU;

(iii) an investment firm;’’.

10. In Article 82, point (a) of paragraph 1 is replaced by the following:

‘‘(a) the subsidiary is one of the following:

(i) an institution;

(ii) an undertaking that is subject by virtue of applicable national law to the requirements of this Regulation and Directive 2013/36/EU;

(iii) an investment firm;’’.

11. Article 93 is amended as follows:

(a) paragraph 3 is deleted.

(b) paragraphs 4, 5 and 6 are replaced by the following:

‘‘4. Where control of an institution falling within the category referred to in paragraph 2 is taken by a natural or legal person other than the person who controlled the institution previously, the amount of own funds of that institution shall attain the amount of initial capital required.

5. Where there is a merger of two or more institutions falling within the category referred to in paragraph 2, the amount of own funds of the institution resulting from the merger shall not fall below the total own funds of the merged institutions at the time of the merger, as long as the amount of initial capital required has not been attained.

6. Where competent authorities consider it necessary to ensure the solvency of an institution that the requirement laid down in paragraph 1 is met, the provisions laid down in paragraphs 2 to 4 shall not apply.’’.

12. Section 2 of Chapter I, Title I, Part Three is deleted on [5 years from the date of application of Regulation (EU) ____/___IFR].

13. In Article 197, point (c) of paragraph 1 replaced by the following:

‘‘(c) debt securities issued by institutions and investment firms, which securities have a credit assessment by an ECAI which has been determined by EBA to be associated with credit quality step 3 or above under the rules for the risk weighting of exposures to institutions under Chapter 2;’’.

14. In Article 202, the introductory phrase is replaced by the following:

‘‘An institution may use institutions, investment firms, insurance and reinsurance undertakings and export credit agencies as eligible providers of unfunded credit protection which qualify for the treatment set out in Article 153(3) where they meet all the following conditions:’’.

15. Article 388 is deleted.

16. In Article 456(1), points (f) and (g) are deleted.

17. In Article 493, paragraph 2 is deleted.

18. Article 498 is deleted.

19. In Article 508, paragraphs 2 and 3 are deleted.

[Article 61

Amendment to Regulation (EU) No 600/2014

Regulation (EU) No 600/2014 is amended as follows:

(1) Article 46 is amended as follows:

(a) in paragraph 2, the following point (d) is added:

‘‘(d) the firm has established the necessary arrangements and procedures to report the information set out in paragraph 6a.’’;

(b) the following paragraph 6a is added:

‘‘6a. Third-country firms providing services or performing activities in accordance with this Article shall, on an annual basis, inform ESMA about the following:

(a) the scale and scope of the services and activities carried out by the firms in the Union;

(b) the turnover and the aggregated value of the assets corresponding to the services and activities referred to in point (a);

(c) whether investor protection arrangements have been taken, and a detailed description thereof;

(d) the risk management policy and arrangements applied by the firm to the carrying out of the services and activities referred to in point (a).’’;

(c) paragraph 7 is replaced by the following:

‘‘7. ESMA, in consultation with EBA, shall develop draft regulatory technical standards to specify the information that the applicant third-country firm is to provide in the application for registration referred to in paragraph 4 and the information to be reported in accordance with paragraph 6a.

ESMA shall submit those draft regulatory technical standards to the Commission by [*date to be inserted*].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.’’;

(d) the following paragraph 8 is added:

‘‘8. ESMA shall develop draft implementing technical standards to specify the format in which the application for registration referred to in paragraph 4 is to be submitted and the information referred to in paragraph 6a is to be reported.

ESMA shall submit those draft implementing technical standards to the Commission by [date to be inserted].

Power is delegated to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’’.

(2) Article 47 is amended as follows:

(a) the first subparagraph of paragraph 1 is replaced by the following:

‘‘The Commission may adopt a decision in accordance with the examination procedure referred to in Article 51(2) in relation to a third country stating that the legal and supervisory arrangements of that third country ensure all of the following:

(a) that firms authorised in that third country comply with legally binding prudential and business conduct requirements which have equivalent effect to the requirements set out in this Regulation, in Directive 2013/36/EU, in Regulation (EU) No 575/2013, in Directive (EU) ----/--[IFD] and in Regulation (EU)----/---[IFR] and in Directive 2014/65/EU and in the implementing measures adopted under those Regulations and Directives;

(b) that firms authorised in that third country are subject to effective supervision and enforcement ensuring compliance with the applicable legally binding prudential and business conduct requirements; and

(c) that the legal framework of that third country provides for an effective equivalent system for the recognition of investment firms authorised under third-country legal regimes;

Where the services provided and the activities performed by third-country firms in the Union following the adoption of the decision referred to in the first subparagraph are likely to be of systemic importance for the Union, the legally binding prudential and business conduct requirements referred to in the first subparagraph may only be considered to have equivalent effect to the requirements set out in the acts referred to in that subparagraph after a detailed and granular assessment. For these purposes, the Commission shall also assess and take into account the supervisory convergence between the third country concerned and the Union.

When adopting the decision referred to in the first subparagraph, the Commission shall take into account whether the third country is identified as a non-cooperative jurisdiction for tax purposes under the relevant Union policy or as a high-risk third country pursuant to Article 9(2) of Directive (EU) 2015/849.";

(b) in paragraph 2, point (c) is replaced by the following:

''(c) the procedures concerning the coordination of supervisory activities including investigations and on-site inspections.'';

(c) the following paragraph 5 is added:

''5. ESMA shall monitor the regulatory and supervisory developments, the enforcement practices and other relevant market developments in third countries for which equivalence decisions have been adopted by the Commission pursuant to paragraph 1 in order to verify whether the conditions on the basis of which those decisions have been taken are still fulfilled. The Authority shall submit a confidential report on its findings to the Commission on an annual basis.''.]

Article 62

Amendment to Regulation (EU) No 1093/2010

Regulation (EU) No 1093/2010 is amended as follows:

(1) In Article 4(2), the following point (v) is added:

‘‘(v) with regard to Regulation (EU) ----/---- [IFR] and Directive (EU)----/--[IFD], competent authorities as defined in Article 3(5) of Directive (EU)----/--[IFD].’’.

PART TEN
FINAL PROVISIONS

Article 63

Entry into force and date of application

1. This Regulation shall enter into force on the […] day following that of its publication in the Official Journal of the European Union.

2. This Regulation shall apply from [18 months after the date of entry into force].

3. For the purposes of prudential requirements of investment firms, references to Regulation (EU) No 575/2013 in other Union acts shall be construed as references to this Regulation.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*