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Delegations will find attached document C(2014) 7237 final.

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Brussels, 10.10.2014
C(2014) 7237 final

COMMISSION DELEGATED REGULATION (EU) No …/..

of 10.10.2014

amending Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to the leverage ratio

(Text with EEA relevance)

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

1.1 Background and objective

Regulation (EU) No 575/2013 (the Capital Requirements Regulation or CRR) was adopted in June 2013 as the single rulebook for prudential requirements for institutions (i.e. credit institutions and investment firms) established in the Union. The need for common rules was further enhanced by the entry into force of the Single Supervisory Mechanism with the European Central Bank expected to assume direct supervisory powers over significant credit institutions authorised in the participating Member States as of November 2014.

The CRR is the first piece of Union law that includes a requirement for institutions to compute a leverage ratio, report it to their supervisors and disclose it to the public. More precisely, Article 429 of the CRR requires institutions to calculate their leverage ratio (LR) in accordance with the methodology laid down in that article. Article 430 requires them to report the ratio to their competent authorities and Article 451 to publicly disclose it.

One thing the CRR does not contain is a requirement for institutions to have an own funds requirement based on the LR. The decision on whether such a requirement will be introduced has been left for a later date. In accordance with Article 511 of the CRR, the European Commission is required to submit, by the end of 2016, a report on the LR to the Council and the Parliament. The report will be based on an EBA report and will be accompanied, where appropriate, by a legislative proposal to introduce a binding LR or different LRs for different business models, applicable from 1 January 2018 onwards. That proposal will be subject to a full impact assessment.

The introduction of leverage reporting and disclosure requirements was seen as one of the elements of the international and European regulatory response to the financial crisis. An underlying cause of the global financial crisis was the build-up of excessive on- and off-balance sheet leverage in the banking system. In many cases, banks built up excessive leverage while maintaining strong risk-based capital ratios. The leverage ratio has two objectives: first to limit the risk of excessive leverage by constraining the building up of leverage in the banking sector and second to act as a backstop to risk-based capital requirements.

Article 456(1)(j) of the CRR empowers the Commission to amend the capital measure and total exposure measure of the LR through a delegated act if the reporting to competent authorities uncovers shortcomings in the way those measures are currently defined prior to the date from which institutions must start disclosing the LR (i.e. prior to 1 January 2015). The European Banking Authority (EBA) has informed the Commission that there are significant differences in how institutions in different Member States understand and interpret the existing rules on the LR. Based on the EBA analysis, the Commission considers that these differences would result in significant differences in the way the LR is calculated. This would in turn lead to a situation where the numbers disclosed by different institutions would not be comparable. The Commission has therefore decided to come forward with this delegated act now in order to formulate these requirements in a clear way so that they can be implemented effectively and consistently across the European Union.

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Technical note: What is the leverage ratio?

The leverage ratio is defined as follows:

Leverage ratio equals Tier 1 capital divided by exposure measure

While there is no difference between the numerator of the LR and the numerator of the Tier 1 capital ratio (i.e. they both use Tier 1 capital), the two differ in the denominator. The former uses the so-called exposure measure while the latter uses risk-weighted assets (RWAs).

The calculation of the LR exposure measure uses by and large accounting values for exposures (it is close to being accounting-rules neutral, i.e. it is calculated in a way that eliminates the main accounting differences between US GAAP and IFRS) with the exception of the measurement of derivatives, written credit derivatives and securities financing transactions[1] (SFTs), including repurchase agreements ('repos').

While the calculation of RWAs also uses accounting values of exposures as its starting point, it differs from the exposure measure in that it takes into account eligible credit risk mitigation techniques such as collateral, mortgages, guarantees or hedges (the values of these are deducted from the values of exposures) and applies risk weights to the resulting values of exposures (these risk weights are often below 100%).

1.2 Current leverage ratio requirements in the Union

As indicated in the previous section, there is currently no requirement in EU law to meet an own funds requirement based on the LR and the disclosure requirement will be applicable from 1 January 2015 onwards. The only two binding requirements are those concerning the calculation and reporting of the LR.[2]

The Commission view at this point is that the LR is designed to cover the risk of excessive leverage and act as a backstop to the risk sensitive capital requirements. Hence the LR is neither designed, nor should be calibrated, as the overall leading capital requirement which would encourage moving away from low risk (weighted) business and possibly leading to improper risk-pricing for loans and other financial products. In any case this delegated act does not set any binding calibration of the LR which may be decided upon at the end of 2016 when the Commission will report to the European Parliament and the Council on the impact

[1] These are repurchase transactions (repos and reverse repos), securities or commodities lending or borrowing transactions, long settlement transactions and margin lending transactions

[2] In addition, Article 87 of Directive 2013/36/EU (the Capital Requirements Directive or CRD) enables competent authorities to impose a Pillar 2 LR requirement.

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of the Leverage Ratio. Where appropriate, the report will be accompanied by a legislative proposal.

1.3 Impact

The impact assessment[3] that was published alongside the CRR proposal on 20 July 2011 included an analysis of the impact of introducing LR-related rules. This impact assessment justified the adoption of the CRR including the LR-related rules.

In January 2014 the European Banking Authority (EBA) performed an in depth impact assessment of the LR rules using data provided by approximately 170 banks from 18 Member States (the banks were split in two groups: 40 Group 1 (i.e. large) banks and 130 Group 2 banks). The EBA analysed two sets of impacts. First, it looked at the impact of the differences in interpretation of the rules on the treatment of SFTs where some banks interpreted that collateral received in a repo transaction could be deducted from the amount receivable – thereby reducing the impact of these transactions on overall exposures of the institution (the EBA report refers to this as 'interpretation 1').

Second, the EBA assessed the impact of the Basel revised rules text (see section below for more detail) as it considered that the revised, internationally-agreed rules endorsed by Central Bank Governors and Heads of Supervision on 14 January 2014 lead to a more accurate measurement of leverage compared to the previous version of the rules which formed the basis for the current Article 429 of the CRR.

The following table provides EBA's indicative overview of the average LRs per group of banks for interpretations 1 and 2 (i.e. not allowing the deduction allowed under interpretation 1) and the revised Basel III rules text on the LR.

Average leverage ratios (%) by Group 1 and Group 2 banks as assessed by EBA:

	Basel III	Interpretation 1	Interpretation 2
Group 1	3.3	3.3	3.1
Group 2	3.9	3.9	3.8

The table shows that on aggregate EU banks would comply with a hypothetical 3% Tier 1 LR requirement based on the revised Basel standard, regardless of which interpretation of the treatment of repo transactions exposures is used. This result also reflects the fact that the risk-based capital ratios of many EU banks have significantly improved compared to pre-crisis levels.

1.4 International developments

In January 2014, the Basel Committee finalised a definition of how the LR should be computed and set an indicative benchmark (namely 3% of Tier 1 capital). The 3% Tier 1 LR will be tested during the monitoring period until 2017 when the Basel Committee will decide on the final calibration. The Basel Committee LR rules text[4] clarifies the interpretation issue

[3] See http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52011SC0949.
[4] http://www.bis.org/publ/bcbs270.pdf

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pointed out by EBA. It makes clear that a strict interpretation of the treatment of repo transactions is to be preferred for prudential reasons.

1.5 Major substantial changes compared to the current text

The following substantial changes were made compared to the current text of Article 429 of the CRR:

1. A clarification that for SFTs collateral received cannot be used to reduce the exposure value of said SFTs but that cash receivables and payables of SFTs with the same counterparty, and subject to strict criteria, can be netted;

2. A calculation and reporting period defined as at the end of the reporting period (quarter) instead of a three-month average. This amendment not only reduces the operational burden for institutions but also aligns the LR with the solvency reporting data to which it should acts as a backstop;

3. Using the credit risk conversion factors (CCFs) of the standardised approach for credit risks of 0%, 20%, 50%, or 100% depending on the risk category, subject to a floor of 10 %, instead of the 100% weighting of off-balance sheet exposures;

4. For derivatives, cash variation margin received can be deducted from the exposure value;

5. Written credit derivatives are measured at their gross notional amount instead of at their fair value, but fair value changes recognised through P&L (losses) can be deducted from the notional amount. Also, offsetting of protection sold with protection bought is allowed, subject to strict criteria;

6. The deduction from the LR of the client leg of transactions with a Qualifying Central Counterparty (QCCP) where the institution has no obligation to reimburse the client if the QCCP would default as it does not create leverage.

7. The scope of consolidation will be the regulatory scope of consolidation used for the risk-based framework instead of the accounting scope of consolidation.

Given that the original provisions in the CRR mirrored those of the Basel standards, the solutions found to the shortcomings of the Basel rules are also fit for the purpose of addressing the corresponding shortcomings of the relevant provisions in the CRR.

While the changes proposed in this delegated act are generally aligned with the Basel revised standards on the LR, one of those changes addresses a 'Union specificity' that is not addressed by those standards. This specificity stems from the fact that, compared to the Basel framework, the CRR has a broader scope of application. The CRR applies to all banks (and investment firms) established in the Union, at both consolidated and individual level, while the Basel framework applies only to (large) internationally active banks, generally at consolidated level. This broad scope of application applies both for risk-based capital requirements and LR-related requirements under the CRR. However, unlike the risk-based capital requirements, the LR-related requirements do not currently foresee a specific treatment of intragroup exposures when institutions apply the CRR at individual level. In order to align the two, this delegated act therefore foresees, subject to approval from the competent authority and subject to certain conditions, the possibility to exclude intra group exposures

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when the LR rules are applied at individual level. The application of the LR at individual level to intragroup exposures, when risk-based capital requirements are not applied at this level, would not be consistent with the role of the leverage ratio as a backstop to the risk-based capital requirements. This is particularly relevant for co-operative banking groups that have many smaller entities affiliated to a central body.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Commission organised on 10 March 2014 a public hearing with stakeholders. Subsequently the Commission received about 60 written comment letters and contributions most of which came from banks and business associations.

The vast majority of respondents were supportive of the LR as a supplementary backstop to the risk-based capital measure. Three main issues were raised: 1) the need for further clarification of the criteria to allow cash variation margin received to be deducted from the exposure value of derivatives; 2) the netting of cash receivables and payables for repos and reverse repos with the same counterparty (for example a CCP); and 3) the exclusion of intragroup exposures from the exposure measure when the LR is applied at individual level.

The main drivers behind the third issue were concerns about the impact on:

(a) internal refinancing operations between the parent company and its affiliates;

(b) derivatives operations between the group's investment bank and other entities of the group: this way of operating was reinforced by Regulation (EU) No 648/2012 (EMIR); and

(c) financial guarantees.

As mentioned in the previous section, this issue is caused by an extended scope of application in the Union as compared to the internationally agreed text and is addressed by a specific provision in the delegated act.

Another issue raised by industry was the treatment of open repos. These are repos that can be terminated at any day subject to an agreed recall notice period (often 2 to 3 days) and are economically comparable to US, rolled-over, overnight repos. Approximately 13% of repos in the EU are "open". The Commission would support the view that European open repos should be considered equivalent to having an explicit maturity equal to the recall notice period and the "same explicit final settlement date" should be deemed to be met. This would mean that such transactions are eligible for the netting of cash receivables and payables of repurchase transactions and reverse repurchase transactions with the same counterparty.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

As explained in Section 1.1., the CRR contains different articles related to the LR: the definition and calculation (Article 429), the level of application (Articles 6 and 11), the supervisory reporting (Article 430), the disclosure (Article 451), and the review (Article 511).

The co-legislators delegated via Article 456(1)(j) to the Commission the power to fine-tune the composition of the Leverage Ratio by amending the relevant Article in the CRR (Article

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429) before its disclosure becomes mandatory from 1 January 2015 onwards. As already pointed out in section 1.2, the EBA discovered that the current CRR text had been interpreted differently by institutions, therefore creating the need to clarify the text of Article 429 CRR. To address this issue the delegated act modifies the way in which the LR must be calculated, and hence reported to supervisors and disclosed. The proposed modifications are fully compatible with the legal mandate.

Once the delegated act is adopted, the supervisory reporting template and the common disclosure template will need to be amended accordingly.

The delegated act restructures Article 429 by splitting off some of the existing paragraphs into two new Articles:

(a) Article 429a provides the general treatment of the exposure value of derivatives (both on- and off-balance sheet) as well as the additional treatment of cash variation margin and written credit derivatives;

(b) Article 429b provides a specific treatment of the exposure value of cash receivables and cash payables of SFTs (both on- and off-balance sheet), including:

- the criteria for netting cash receivables and payables for repo and reverse repo transactions with the same counterparty;

- the "add-on" measure for SFTs with a counterparty; and

- the treatment of the "add-on" measure when a bank is acting as an agent.

Using separate Articles provides a better overview of the basic calculation and measurement principles of the LR. Given the change to the structure of Article 429 and the addition of Articles 429a and 429b, it was necessary to change correspondingly the first paragraph of Article 429, in order to keep the correct references. Therefore, for the purposes of clarity and in view of the changes to the structure of the Article, it was deemed preferable to replace the whole of Article 429 whilst keeping all the essential elements, not covered by the empowerment, intact.

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COMMISSION DELEGATED REGULATION (EU) No …/..

of 10.10.2014

amending Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to the leverage ratio

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012[5], and in particular Article 456(1)(j) thereof,

Whereas:

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

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

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

(4) The Basel Committee adopted on 14 January 2014 a revised rules text on the leverage ratio with in particular additional measurement and netting arrangements for repurchase transactions and securities financing transactions. Alignment of the

[5] OJ L 176, 27.6.2013, p. 1.

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provisions of Regulation (EU) No 575/2013 concerning the calculation of the leverage ratio with the internationally agreed rules should address diverging interpretations by institutions for the netting of collateral of securities financing and repurchase transactions and should also enhance international comparability as well as create a level playing field for institutions that are established in the Union and operate internationally.

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

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

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

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

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

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

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

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

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

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HAS ADOPTED THIS REGULATION:

Article 1

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

(1) Article 429 is replaced by the following:

"Article 429
Calculation of the leverage ratio

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

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

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

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

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

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

(b) derivatives referred to in paragraph 9;

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

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

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

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

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

(b) loans shall not be netted with deposits;

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

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

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

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

(a) the transactions have the same explicit final settlement date;

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

(i) in the normal course of business;

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

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

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

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

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

In accordance with Article 166(9), where a commitment refers to the extension of another commitment, the lower of the two conversion factors associated with the individual commitment shall be used. The exposure value of low risk off- balance

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sheet items referred to in Article 111(1)(d) shall be subject to a floor equal to 10% of their nominal value.

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

(a) contracts listed in Annex II;

(b) credit derivatives;

(c) repurchase transactions;

(d) securities or commodities lending or borrowing transactions;

(e) long settlement transactions;

(f) margin lending transactions.

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

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

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

(a) they are exposures to a public sector entity;

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

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

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

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"Article 429a
Exposure value of derivatives

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

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

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

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

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

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

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

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

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

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

   For the purposes of point (c) of the first subparagraph, where the derivative contract is subject to a qualifying master netting agreement, the currency of settlement means any currency of settlement specified in the derivative contract, the governing qualifying master netting agreement or the credit support annex to the qualifying master netting agreement.

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Where under the applicable accounting framework an institution recognises the variation margin paid in cash to the counterparty as a receivable asset, it may exclude that asset from the exposure measure provided that the conditions in points (a) to (e) are met.

4. For the purposes of paragraph 3 the following shall apply:

(a) the deduction of variation margin received shall be limited to the positive current replacement cost portion of the exposure value;

(b) an institution shall not use variation margin received in cash to reduce the potential future credit exposure amount, including for the purposes of Article 298 (1)(c)(ii);

5. In addition to the treatment laid down in paragraph 1, for written credit derivatives institutions shall include in the exposure value the effective notional amounts referenced by the written credit derivatives reduced by any negative fair value changes that have been incorporated in Tier 1 capital with respect to the written credit derivative. The resulting exposure value may be further reduced by the effective notional amount of a purchased credit derivative on the same reference name provided that all the following conditions are met:

(a) for single name credit derivatives, the credit derivatives purchased must be on a reference name which ranks *pari passu* with or is junior to the underlying reference obligation of the written credit derivative and a credit event on the senior reference asset would result in a credit event on the subordinated asset;

(b) where an institution purchases protection on a pool of reference names, the purchased protection may offset sold protection on a pool of reference names only if the pool of reference entities and the level of subordination in both transactions are identical;

(c) the remaining maturity of the credit derivative purchased is equal to or greater than the remaining maturity of the written credit derivative;

(d) in determining the additional exposure value for written credit derivatives, the notional amount of the purchased credit derivative is reduced by any positive fair value change that has been incorporated in Tier 1 capital with respect to the credit derivative purchased;

(e) for tranched products, the credit derivative purchased as protection is on a reference obligation which ranks equal to the underlying reference obligation of the written credit derivative.

Where the notional amount of a written credit derivative is not reduced by the notional amount of a purchased credit derivative, institutions may deduct the individual potential future exposure of that written credit derivative from the total potential future exposure determined according to paragraph 1 of this Article in conjunction with Article 274(2) or Article 299(2)(a) as applicable. In case that the potential future credit exposure shall be determined in conjunction with Article 298(1)(c)(ii), PCE_{gross} may be reduced by the individual potential future exposure of written credit derivatives with no adjustment made to the NGR.

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6. Institutions shall not reduce the written credit derivative effective notional amount where they buy credit protection through a total return swap and record the net payments received as net income, but do not record any offsetting deterioration in the value of the written credit derivative reflected in Tier 1 capital.

7. In case of purchased credit derivatives on a pool of reference entities, institutions may recognise a reduction according to paragraph 5 on written credit derivatives on individual reference names only if the protection purchased is economically equivalent to buying protection separately on each of the individual names in the pool. If an institution purchases a credit derivative on a pool of reference names, it may only recognise a reduction on a pool of written credit derivatives when the pool of reference entities and the level of subordination in both transactions are identical.

8. By way of derogation from paragraph 1 of this Article, institutions may use the method set out in Article 275 to determine the exposure value of contracts listed in points 1 and 2 of Annex II only where they also use that method for determining the exposure value of those contracts for the purposes of meeting the own funds requirements set out in Article 92.

When institutions apply the method set out in Article 275, they shall not reduce the exposure measure by the amount of variation margin received in cash.

Article 429b
Counterparty credit risk add-on for repurchase transactions, securities or commodities lending or borrowing transactions, long settlement transactions and margin lending transactions

1. In addition to the exposure value of repurchase transactions, securities or commodities lending or borrowing transactions, long settlement transactions and margin lending transactions including those that are off-balance sheet in accordance with Article 429(5), institutions shall include in the exposure measure an add-on for counterparty credit risk determined in accordance to paragraph 2 or 3 of this Article, as applicable.

2. For the purposes of paragraph 1, for transactions with a counterparty which are not subject to a master netting agreement that meets the conditions laid down in Article 206 the add-on (E_i*)shall be determined on a transaction-by-transaction basis in accordance with the following formula:

$$E_i^* = max\{0, E_i - C_i\}$$

where:

E_i is the fair value of securities or cash lent to the counterparty under transaction i;

C_i is the fair value of cash or securities received from the counterparty under transaction i.

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3. For the purposes of paragraph 1, for transactions with a counterparty that are subject to a master netting agreement that meets the conditions laid down in Article 206, the add-on for those transactions (E_i*) shall be determined on an agreement-by-agreement basis in accordance with the following formula:

$$E_i^* = \max\left\{0, \left(\sum_i E_i - \sum_i C_i\right)\right\}$$

where:

E_i is the fair value of securities or cash lent to the counterparty for the transactions subject to master netting agreement i;

C_i is the fair value of cash or securities received from the counterparty subject to master netting agreement i.

4. By way of derogation from paragraph 1 of this Article, institutions may use the method set out in Article 222, subject to a 20% floor for the applicable risk weight, to determine the add on for repurchase transactions, securities or commodities lending or borrowing transactions, long settlement transactions and margin lending transactions including those that are off-balance sheet. Institutions may use this method only where they also use it for determining the exposure value of those transactions for the purpose of meeting the own funds requirements as set out in Article 92.

5. Where sale accounting is achieved for a repurchase transaction under its applicable accounting framework, the institution shall reverse all sales-related accounting entries.

6. Where an institution acts as an agent between two parties in repurchase transactions, securities or commodities lending or borrowing transactions, long settlement transactions and margin lending transactions including those that are off-balance sheet, the following apply:

(a) where the institution provides an indemnity or guarantee to a customer or counterparty limited to any difference between the value of the security or cash the customer has lent and the value of collateral the borrower has provided it shall only include in the exposure measure the add-on determined in accordance with paragraph 2 or 3, as applicable;

(b) where the institution does not provide an indemnity or guarantee to any of the involved parties, the transaction shall not be included in the exposure measure;

(c) where the institution is economically exposed to the underlying security or cash in the transaction beyond the exposure covered by the add-on, it shall include also in the exposure measure an exposure equal to the full amount of the security or cash.”.

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Article 2

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

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

Done at Brussels, 10.10.2014

For the Commission
The President
José Manuel BARROSO

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