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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union
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Subject:	COMMISSION DELEGATED REGULATION (EU) No .../.. of 18.12.2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for the specification of margin periods of risk

Delegations will find attached document C(2014) 9802 final.

Encl.: C(2014) 9802 final



Brussels, 18.12.2014
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COMMISSION DELEGATED REGULATION (EU) No .../..

of 18.12.2014

supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for the specification of margin periods of risk

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 304(5) of Regulation (EU) No 575/2013 ('the Capital Requirements Regulation' or 'CRR') empowers the Commission to adopt, following submission of draft standards by the European Banking Authority (EBA), and in accordance with Articles 10 to 14 of Regulation No (EU) 1093/2010, delegated acts on the margin periods of risk used for the treatment of clearing members' exposures to clients.

In accordance with Article 10(1) of Regulation No (EU) 1093/2010 establishing the EBA, the Commission shall decide within three months of receipt of the draft standards whether to endorse the drafts submitted. The Commission may also endorse the draft standards in part only, or with amendments, where the Union's interests so require, having regard to the specific procedure laid down in those Articles.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In accordance with the third subparagraph of Article 10(1) of Regulation No (EU) 1093/2010, the EBA has carried out a public consultation on the draft technical standards submitted to the Commission in accordance with Article 304(5) of the CRR. A consultation paper was published on the EBA internet site on 28 February 2014, and the consultation closed on 9 May 2014. Moreover, the EBA invited the EBA's Banking Stakeholder Group set up in accordance with Article 37 of Regulation No (EU) 1093/2010 to provide advice on them. Together with the draft technical standards, the EBA has submitted an explanation on how the outcome of these consultations has been taken into account in the development of the final draft technical standards submitted to the Commission.

Together with the draft technical standards, and in accordance with the third subparagraph of Article 10(1) of Regulation No (EU) 1093/2010, the EBA has submitted its Impact Assessment, including its analysis of the costs and benefits, related to the draft technical standards submitted to the Commission. This analysis is available at <http://www.eba.europa.eu/regulation-and-policy/market-infrastructures/draft-regulatory-technical-standards-on-the-margin-periods-for-risk-used-for-the-treatment-of-clearing-members-exposures-to-clients>, pages 13 to 17 of the Final Draft Regulatory Technical Standards package.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

In accordance with Article 304(5) of the CRR, EBA has the mandate to develop draft RTS specifying the minimum margin periods of risk ('MPOR') that institutions acting as clearing members may use as input for the calculation of their capital requirements for exposures to clients arising from cleared derivatives. The margin periods of risk determined by these RTS may be used both by institutions authorised to use the internal model method ('IMM') as well as by institutions using the other methods (i.e., mark-to-market, standardised method or original exposure method). In the first case, the MPOR will be an input for the internal model whereas in the other cases the MPOR determines a multiplier of the exposure at default. This multiplier, smaller than one, is set in the Level 1 text and is in line with the international standards.

The methodology prescribed in this delegated act seeks to strike a reasonable balance between the need to maintain the MPORs, and so the corresponding capital requirements, sufficiently risk-sensitive and to have a transparent approach that is not excessively cumbersome to implement.

In general, the MPOR used for exposures of the clearing members to clients and the liquidation periods estimated by the central counterparties ('CCPs') for margining purposes should not be considered identical concepts. The liquidation periods are defined in Article 1 of Regulation (EU) No 153/2013. In accordance with Article 26 of that Regulation, the methodologies the CCPs use for estimating the time horizon of the liquidation periods have to consider the liquidity of a class of financial instrument, the concentration of positions in that class, particularities of the markets used to close-out or hedge the positions and several other factors. That suggests that they are reasonable proxies for the MPOR.

Another advantage of linking MPORs to CCP's estimates of the liquidation periods is that the latter are subject to prior supervisory approval and the corresponding methodologies are harmonised under Regulation EU 648/2012 ('EMIR').

Accordingly, the methodology prescribed in this delegated act only allows the use of liquidation periods that are disclosed by qualifying CCPs ('QCCP'). The liquidation periods disclosed by non-qualifying CCPs cannot be used as proxies for the MPOR because those CCPs might not respect the same methodological requirements.

Article 10(1)(b)(vi) of Regulation (EU) No 153/2013 prescribes CCPs to disclose the methodological assumptions, including the liquidation periods, used for setting the initial margins ('liquidation periods'). In order to incentivise the transparency related to the methodologies used by CCPs and to guarantee a harmonised treatment, this delegated act does not allow the use of liquidation periods that are not publicly disclosed.

As stated in Article 304(3) of the CRR, institutions authorised to use the IMM and those using the other methods may use the MPOR set in this delegated act as long as they act as clearing members and the products are centrally cleared. Therefore, these MPOR may be applied also instead of the longer margin periods of risk prescribed by the IMM, such as in Article 285(3) to (5) of the CRR.

COMMISSION DELEGATED REGULATION (EU) No .../..

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supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for the specification of margin periods of risk

(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 26 June 2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012¹, and in particular the fourth subparagraph of Article 304(5) thereof,

Whereas:

- (1) The framework for the calculation of margin periods of risk (MPORs) used to compute own funds requirements of clearing members for exposures to their clients should be suitable both for institutions using the internal model method (IMM) and for those using the standardised methods. It should also reflect changes in the market conditions in order to constitute a prudentially sound approach, without, at the same time, imposing an excessive operational burden on those institutions.
- (2) While the definition of liquidation periods used by central counterparties (CCPs) is not identical to the definition of MPORs used by clearing members for the purpose of calculating their own funds requirements for exposures to their clients, the former are nevertheless very similar to the latter from the point of view of their substance. Indeed, liquidation periods reflect changes in the market conditions and take into account close-out periods of contracts and transactions. CCPs' estimates of the liquidation periods should therefore serve as a proxy for the MPORs for the computation of own funds requirements of clearing members for exposures to their clients.
- (3) Using liquidation periods would also ensure comprehensive coverage of all types of products and transactions set out in Article 301(1) of Regulation (EU) No 575/2013 that are cleared by CCPs and would have the added benefit of not requiring updates to this Delegated Regulation every time a CCP would start clearing a new type of product or transaction.

¹ OJ L 176, 27.6.2013, p. 1.

- (4) Unlike MPORs, liquidation periods disclosed by the CCPs sometimes include additional periods to allow for the novation of positions to a non-defaulting clearing member. Since those additional periods are specific to liquidation periods and do not reflect any difference in the risks being incurred by clearing members, they need not be added to the MPOR that institutions may use for the calculation of the own funds requirements for their exposures to a client when acting as clearing members.
- (5) In order to ensure that such estimates are subject to supervisory approval, only the liquidation periods estimated by qualifying central counterparties as defined in point 88 of Article 4(1) of Regulation (EU) No 575/2013 should be allowed to serve as proxies for the MPORs for the computation of own funds requirements of clearing members for exposures to their clients.
- (6) As the MPOR is aimed at capturing changes in the market value of a netting set of transactions during the time from the most recent exchange of collateral covering that netting set with a defaulting counterparty until the transactions are closed out and the resulting market risk is re-hedged, and as markets can be closed on certain calendar days, MPORs should be expressed in business days. This will ensure that the own funds requirement for those transactions fully reflects the risks that the institution is exposed to during the MPOR. It is therefore appropriate to provide that the MPOR floor to be used for the purposes of Article 304(3) Regulation (EU) No 575/2013 is equal to 5 business days, i.e. longer than the minimum of five days provided for in that Article. The MPOR floor would thus also be aligned with the provisions set out in Section 6 of Chapter 6 of Title II of Part Three of Regulation (EU) No 575/2013 that cover the requirements for the use of the IMM.
- (7) In accordance with Article 304(3) and (4) of Regulation (EU) No 575/2013, the shorter MPORs that institutions may apply when calculating the own funds requirements for their exposures to a client are only applicable where institutions are acting as clearing members. Therefore rules on the MPORs that institutions may use under those provisions do not apply where institutions calculate own funds requirements for exposures to a client but are not acting as clearing members for those exposures. This is irrespective of whether such institutions apply the IMM or not, and irrespective of whether the relevant exposures to clients are centrally-cleared or not.
- (8) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority to the Commission.
- (9) The European Banking Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council²,

² Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

HAS ADOPTED THIS REGULATION:

Article 1

1. The margin periods of risk (MPORs) of a netting set that institutions may use for the purposes of Article 304(3) and (4) of Regulation (EU) No 575/2013 shall be determined in accordance with paragraphs 2 and 3 of this Article.
2. Where the relevant netting set includes transactions cleared with a qualifying central counterparty as defined in point 88 of Article 4(1) of Regulation (EU) No 575/2013, the MPORs that institutions may use shall be the longer of the following:
 - (a) five business days;
 - (b) the longest liquidation period of the contracts or transactions included in the netting set, as disclosed in accordance with point (b)(vi) of Article 10(1) of Commission Delegated Regulation (EU) No 153/2013³ by the qualifying central counterparty with which those contracts or transactions are cleared.

For the purposes of point (b) of the first subparagraph, where the liquidation period disclosed includes an additional period for the purpose of the novation of the positions to a non-defaulting clearing member, the period to be used by institutions as MPOR shall exclude that additional period.

3. Where the relevant netting set includes transactions not cleared with a qualifying central counterparty as defined in point 88 of Article 4(1) of Regulation (EU) No 575/2013, the MPORs that institutions may use shall be at least ten business days.

Article 2

This Regulation shall enter into force on the twentieth 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, 18.12.2014

For the Commission
The President
Jean-Claude JUNCKER

³ Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central counterparties (OJ L 52, 23.2.2013, p. 41).