

Regulation (EU) 2019/2033 of the European Parliament and of the Council
of 27 November 2019 on the prudential requirements of investment firms
and amending Regulations (EU) No 1093/2010, (EU) No 575/2013,
(EU) No 600/2014 and (EU) No 806/2014 (Text with EEA relevance)

PART TWO

OWN FUNDS

Article 9

Own funds composition

1 Investment firms shall have own funds consisting of the sum of their Common Equity Tier 1 capital, Additional Tier 1 capital and Tier 2 capital, and shall meet all the following conditions at all times:

- a $\frac{\text{Common Equity Tier 1 capital}}{D} \geq 56 \%$,
- b $\frac{\text{Common Equity Tier 1 capital} + \text{Additional Tier 1 capital}}{D} \geq 75 \%$,
- c $\frac{\text{Common Equity Tier 1 capital} + \text{Additional Tier 1 capital} + \text{Tier 2 capital}}{D} \geq 100 \%$,

where:

- (i) Common Equity Tier 1 capital is defined in accordance with Chapter 2 of Title I of Part Two of Regulation (EU) No 575/2013, Additional Tier 1 capital is defined in accordance with Chapter 3 of Title I of Part Two of Regulation (EU) No 575/2013, and Tier 2 capital is defined in accordance with Chapter 4 of Title I of Part Two of Regulation (EU) No 575/2013; and
- (ii) *D* is defined in Article 11.

2 By way of derogation from paragraph 1:

- a the deductions referred to in point (c) of Article 36(1) 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 point (e) of Article 36(1) 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 point (h) of Article 36(1), point (c) of Article 56, and point (c) of Article 66 of Regulation (EU) No 575/2013, insofar as they relate to holdings of capital instruments which are not held in the trading book, shall apply in full, without the application of the mechanisms provided for in Articles 46, 60 and 70 of that Regulation;
- d the deductions referred to in point (i) of Article 36(1) 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 point (h) of Article 36(1), point (c) of Article 56, point (c) of Article 66 of Regulation (EU) No 575/2013 and the related

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provisions in Articles 46, 60 and 70 of that Regulation, insofar as those deductions relate to holdings of capital instruments held in the trading book;

- (iii) the trigger event referred to in point (a) of Article 54(1) 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 point (a) of Article 54(4) 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 Investment firms shall apply the relevant provisions set out in Chapter 6 of Title I of Part Two of Regulation (EU) No 575/2013 when determining the own funds requirements pursuant to this Regulation. In applying those provisions, the supervisory permission in accordance with 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 in Article 78(4) of that Regulation is fulfilled.

4 For the purpose of applying point (a) of paragraph 1, for investment firms which are not legal persons or joint-stock companies or which meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) of this Regulation, competent authorities may, after consulting the EBA, permit further instruments or funds to qualify as own funds for those investment firms, provided that those instruments or funds also qualify for treatment under Article 22 of Council Directive 86/635/EEC⁽¹⁾. 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 instruments or funds in each Member State that qualify as such own funds. The list shall be published for the first time by 26 December 2020.

5 Holdings of own funds instruments of a financial sector entity within an investment firm 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 all of 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;
- b the risk evaluation, measurement and control procedures of the parent undertaking include the financial sector entity;
- c the derogation provided for in Article 8 is not used by the competent authorities.

Article 10

Qualifying holdings outside the financial sector

1 For the purposes of this Part, investment firms 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 qualifying holding, the amount of which exceeds 15 % of the own funds of the investment firm calculated in accordance with Article 9 of this Regulation but without applying the deduction referred to in point (k)(i) of Article 36(1) of Regulation (EU) No 575/2013, in an undertaking which is not a financial sector entity;
- b the total amount of the qualifying holdings of an investment firm in undertakings other than financial sector entities that exceeds 60 % of its own funds calculated in accordance with Article 9 of this Regulation but without applying the deduction referred to in point (k)(i) of Article 36(1) of Regulation (EU) No 575/2013.

2 Competent authorities may prohibit an investment firm from having qualifying holdings as referred to in paragraph 1 where the amount of those holdings exceed the percentages of own funds 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 of this Article.

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- (1) Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions ([OJ L 372, 31.12.1986, p. 1](#)).

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