

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 (Text with EEA relevance)

PART THREE

CAPITAL REQUIREMENTS

TITLE I

GENERAL REQUIREMENTS, VALUATION AND REPORTING

CHAPTER 1

Required level of own funds

Section 1

Own funds requirements for institutions

Article 92

Own funds requirements

- 1 Subject to Articles 93 and 94, institutions shall at all times satisfy the following own funds requirements:
 - a a Common Equity Tier 1 capital ratio of 4,5 %;
 - b a Tier 1 capital ratio of 6 %;
 - c a total capital ratio of 8 %.
- 2 Institutions shall calculate their capital ratios as follows:
 - a the Common Equity Tier 1 capital ratio is the Common Equity Tier 1 capital of the institution expressed as a percentage of the total risk exposure amount;
 - b the Tier 1 capital ratio is the Tier 1 capital of the institution expressed as a percentage of the total risk exposure amount;
 - c the total capital ratio is the own funds of the institution expressed as a percentage of the total risk exposure amount.
- 3 Total risk exposure amount shall be calculated as the sum of points (a) to (f) of this paragraph after taking into account the provisions laid down in paragraph 4:
 - a the risk weighted exposure amounts for credit risk and dilution risk, calculated in accordance with Title II and Article 379, in respect of all the business activities of an institution, excluding risk weighted exposure amounts from the trading book business of the institution;
 - b the own funds requirements, determined in accordance with Title IV of this Part or Part Four, as applicable, for the trading-book business of an institution, for the following:

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- (i) position risk;
 - (ii) large exposures exceeding the limits specified in Articles 395 to 401, to the extent an institution is permitted to exceed those limits;
 - c the own funds requirements determined in accordance with Title IV or Title V with the exception of Article 379, as applicable, for the following:
 - (i) foreign-exchange risk;
 - (ii) settlement risk;
 - (iii) commodities risk;
 - d the own funds requirements calculated in accordance with Title VI for credit valuation adjustment risk of OTC derivative instruments other than credit derivatives recognised to reduce risk-weighted exposure amounts for credit risk;
 - e the own funds requirements determined in accordance with Title III for operational risk;
 - f the risk weighted exposure amounts determined in accordance with Title II for counterparty risk arising from the trading book business of the institution for the following types of transactions and agreements:
 - (i) contracts listed in Annex II and credit derivatives;
 - (ii) repurchase transactions, securities or commodities lending or borrowing transactions based on securities or commodities;
 - (iii) margin lending transactions based on securities or commodities;
 - (iv) long settlement transactions.
- 4 The following provisions shall apply in the calculation of the total exposure amount referred to in paragraph 3:
- a the own funds requirements referred to in points (c), (d) and (e) of that paragraph shall include those arising from all the business activities of an institution;
 - b institutions shall multiply the own funds requirements set out in points (b) to (e) of that paragraph by 12,5.

Article 93

Initial capital requirement on going concern

1 The own funds of an institution may not fall below the amount of initial capital required at the time of its authorisation.

2 Credit institutions that were already in existence on 1 January 1993, the amount of own funds of which do not attain the amount of initial capital required may continue to carry out their activities. In that event, the amount of own funds of those institutions may not fall below the highest level reached with effect from 22 December 1989.

3 Authorised investment firms and firms that were covered by Article 6 of Directive 2006/49/EC which were in existence before 31 December 1995, the amount of own funds of which do not attain the amount of initial capital required may continue to carry out their activities. The own funds of such firms or investment firms shall not fall below the highest reference level calculated after the date of notification contained in Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions⁽¹⁾.

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That reference level shall be the average daily level of own funds calculated over a six month period preceding the date of calculation. It shall be calculated every six months in respect of the corresponding preceding period.

4 Where control of an institution falling within the category referred to in paragraph 2 or 3 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 or 3, 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 5 shall not apply.

Article 94

Derogation for small trading book business

1 Institutions may replace the capital requirement referred to in point (b) of Article 92(3) by a capital requirement calculated in accordance with point (a) of that paragraph in respect of their trading-book business, provided that the size of their on- and off-balance sheet trading-book business meets both the following conditions:

- a is normally less than 5 % of the total assets and EUR 15 million;
- b never exceeds 6 % of total assets and EUR 20 million.

2 In calculating the size of on- and off-balance sheet business, institutions shall apply the following:

- a debt instruments shall be valued at their market prices or their nominal values, equities at their market prices and derivatives according to the nominal or market values of the instruments underlying them;
- b the absolute value of long positions shall be summed with the absolute value of short positions.

3 Where an institution fails to meet the condition in point (b) of paragraph 1 it shall immediately notify the competent authority. If, following assessment by the competent authority, the competent authority determines and notifies the institution that the requirement in point (a) of paragraph 1 is not met, the institution shall cease to make use of paragraph 1 from the next reporting date.

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Section 2

Own funds requirements for investment firms with limited authorisation to provide investment services

Article 95

Own funds requirements for investment firms with limited authorisation to provide investment services

1 For the purposes of Article 92(3), investment firms that are not authorised to provide the investment services and activities listed in points (3) and (6) of Section A of Annex I to Directive 2004/39/EC shall use the calculation of the total risk exposure amount specified in paragraph 2.

2 Investment firms referred to in paragraph 1 of this Article and firms referred to in point (2)(c) of Article 4(1) that provide the investment services and activities listed in points (2) and (4) of Section A of Annex I to Directive 2004/39/EC shall calculate the total risk exposure amount as the higher of the following:

- a the sum of the items referred to in points (a) to (d) and (f) of Article 92(3) after applying Article 92(4);
- b 12,5 multiplied by the amount specified in Article 97.

Firms referred to in point (2)(c) of Article 4(1) that provide the investment services and activities listed in points (2) and (4) of Section A of Annex I to Directive 2004/39/EC shall meet the requirements in Article 92(1) and (2) based on the total risk exposure amount referred to in the first subparagraph.

Competent authorities may set the own fund requirements for firms referred to in point (2)(c) of Article 4(1) that provide the investment services and activities listed in points (2) and (4) of Section A of Annex I to Directive 2004/39/EC as the own fund requirements that would be binding on those firms according to the national transposition measures in force on 31 December 2013 for Directives 2006/49/EC and 2006/48/EC.

3 Investment firms referred to in paragraph 1 are subject to all other provisions regarding operational risk laid down in Title VII, Chapter 3, Section II, Sub-section 1 of Directive 2013/36/EU.

Article 96

Own funds requirements for investment firms which hold initial capital as laid down in Article 28(2) of Directive 2013/36/EU

1 For the purposes of Article 92(3), the following categories of investment firm which hold initial capital in accordance with Article 28(2) of Directive 2013/36/EU shall use the calculation of the total risk exposure amount specified in paragraph 2 of this Article:

- a investment firms that deal on own account only for the purpose of fulfilling or executing a client order or for the purpose of gaining entrance to a clearing and settlement system or a recognised exchange when acting in an agency capacity or executing a client order;
- b investment firms that meet all the following conditions:
 - (i) that do not hold client money or securities;

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- (ii) that undertake only dealing on own account;
- (iii) that have no external customers;
- (iv) for which the execution and settlement whose transactions takes place under the responsibility of a clearing institution and are guaranteed by that clearing institution.

2 For investment firms referred to in paragraph 1, total risk exposure amount shall be calculated as the sum of the following:

- a points (a) to (d) and (f) of Article 92(3) after applying Article 92(4);
- b the amount referred to in Article 97 multiplied by 12,5.

3 Investment firms referred to in paragraph 1 are subject to all other provisions regarding operational risk laid down in Title VII, Chapter 3, Section II, Sub-section 1 of Directive 2013/36/EU.

Article 97

Own Funds based on Fixed Overheads

1 In accordance with Articles 95 and 96, an investment firm and firms referred to in point (2)(c) of Article 4(1) that provide the investment services and activities listed in points (2) and (4) of Section A of Annex I to Directive 2004/39/EC shall hold eligible capital of at least one quarter of the fixed overheads of the preceding year.

2 Where there is a change in the business of an investment firm since the preceding year that the competent authority considers to be material, the competent authority may adjust the requirement laid down in paragraph 1.

3 Where an investment firm has not completed business for one year, starting from the day it starts up, an investment firm shall hold eligible capital of at least one quarter of the fixed overheads projected in its business plan, except where the competent authority requires the business plan to be adjusted.

4 EBA in consultation with ESMA shall develop draft regulatory technical standards to specify in greater detail the following:

- a the calculation of the requirement to hold eligible capital of at least one quarter of the fixed overheads of the previous year;
- b the conditions for the adjustment by the competent authority of the requirement to hold eligible capital of at least one quarter of the fixed overheads of the previous year;
- c the calculation of projected fixed overheads in the case of an investment firm that has not completed business for one year.

EBA shall submit those draft regulatory technical standards to the Commission by 1 March 2014.

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.

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Article 98

Own funds for investment firms on a consolidated basis

1 In the case of the investment firms referred to in Article 95(1) in a group, where that group does not include credit institutions, a parent investment firm in a Member State shall apply Article 92 at a consolidated level as follows:

- a using the calculation of total risk exposure amount specified in Article 95(2);
- b own funds calculated on the basis of the consolidated situation of the parent investment firm or that of the financial holding company or mixed financial holding company, as applicable.

2 In the case of investment firms referred to in Article 96(1) in a group, where that group does not include credit institutions, a parent investment firm in a Member State and an investment firm controlled by a financial holding company or mixed financial holding company shall apply Article 92 on a consolidated basis as follows:

- a it shall use the calculation of total risk exposure amount specified in Article 96(2);
- b it shall use own funds calculated on the basis of the consolidated situation of the parent investment firm or that of the financial holding company or mixed financial holding company, as applicable, and in compliance with Chapter 2 of Title II of Part One.

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(1) OJ L 141, 11.6.1993, p. 1.