

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 II

CAPITAL REQUIREMENTS FOR CREDIT RISK

CHAPTER 6

Counterparty credit risk

Section 9

Own funds requirements for exposures to a central counterparty

Article 300

Definitions

For the purposes of this Section, the following definitions shall apply:

- (1) 'bankruptcy remote', in relation to client assets, means that effective arrangements exist which ensure that those assets will not be available to the creditors of a CCP or of a clearing member in the event of the insolvency of that CCP or clearing member respectively, or that the assets will not be available to the clearing member to cover losses it incurred following the default of a client or clients other than those that provided those assets;
- (2) 'CCP-related transaction' means a contract or a transaction listed in Article 301(1) between a client and a clearing member that is directly related to a contract or a transaction listed in that paragraph between that clearing member and a CCP;
- (3) 'clearing member' means a clearing member as defined in point (14) of Article 2 of Regulation (EU) No 648/2012;
- (4) 'client' means a client as defined in point (15) of Article 2 of Regulation (EU) No 648/2012 or an undertaking that has established indirect clearing arrangements with a clearing member in accordance with Article 4(3) of that Regulation.

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Changes to legislation: There are currently no known outstanding effects for the Regulation (EU) No 575/2013 of the European Parliament and of the Council, Section 9. (See end of Document for details)

Article 301

Material scope

1 This Section applies to the following contracts and transactions for as long as they are outstanding with a CCP:

- a the contracts listed in Annex II and credit derivatives;
- b repurchase transactions;
- c securities or commodities lending or borrowing transactions;
- d long settlement transactions;
- e margin lending transactions.

2 Institutions may choose whether to apply one of the following two treatments to the contracts and transactions outstanding with a Q_{CCP} listed in paragraph 1:

- a the treatment for trade exposures and exposures from default fund contributions set out in Article 306, except for the treatment set out in paragraph 1(b) of that Article, and in Article 307, respectively;
- b the treatment set out in Article 310.

3 Institutions shall apply the treatment set out in Article 306, except for the treatment set out in paragraph (1)(a) of that Article, and in Article 309, as applicable, to the contracts and transactions outstanding with a non-qualifying CCP listed in paragraph 1 of this Article.

Article 302

Monitoring of exposures to CCPs

1 Institutions shall monitor all their exposures to CCPs and shall lay down procedures for the regular reporting of information on those exposures to senior management and appropriate committee or committees of the management body.

2 Institutions shall assess, through appropriate scenario analysis and stress testing, whether the level of own funds held against exposures to a CCP, including potential future credit exposures, exposures from default fund contributions and, where the institution is acting as a clearing member, exposures resulting from contractual arrangements as laid down in Article 304, adequately relates to the inherent risks of those exposures.

Article 303

Treatment of clearing members' exposures to CCPs

1 Where an institution acts as a clearing member, either for its own purposes or as a financial intermediary between a client and a CCP, it shall calculate the own funds requirements for its exposures to a CCP in accordance with Article 301(2) and (3).

2 Where an institution acts as a clearing member and, in that capacity, acts as a financial intermediary between a client and a CCP, it shall calculate the own funds requirements for its CCP-related transactions with the client in accordance with the Sections 1 to 8 of this Chapter, as applicable.

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3 Where an institution is a client of a clearing member, it shall calculate the own funds requirements for its CCP-related transactions with the clearing member in accordance with the Sections 1 to 8 of this Chapter, as applicable.

4 As an alternative to the approach specified in paragraph 3, where an institution is a client, it may calculate the own funds requirements for its CCP-related transactions with the clearing member in accordance with Article 305(2) provided that both of the following conditions are met:

- a the positions and assets of that institution related to those transactions are distinguished and segregated within the meaning of Article 39 of Regulation (EU) No 648/2012, at the level of both the clearing member and the CCP, from the positions and assets of both the clearing member and the other clients of that clearing member and as a result of that segregation those positions and assets are bankruptcy remote in the event of the default or insolvency of the clearing member or one or more of its other clients;
- b relevant laws, regulations, rules and contractual arrangements applicable to or binding that institution or the CCP ensure that in the event of default or insolvency of the clearing member, the transfer of the institution's positions relating to those contracts and transactions and of the corresponding collateral to another clearing member within the relevant margin period of risk.

5 Where an institution acting as a clearing member enters into a contractual arrangement with a client of another clearing member in order to ensure that client the portability of assets and positions referred to in point (b) of paragraph 4, that institution may attribute an exposure value of zero to the contingent obligation that is created due to that contractual arrangement.

Article 304

Treatment of clearing members' exposures to clients

1 Where an institution acts as a clearing member and, in that capacity, acts as a financial intermediary between a client and a CCP, it shall calculate the own funds requirements for its CCP-related transactions with the client in accordance with Sections 1 to 8 of this Chapter and with Title VI of Part Three, as applicable.

2 Where an institution acting as a clearing member enters into a contractual arrangement with a client of another clearing member that facilitates, in accordance with Article 48(5) and (6), of Regulation (EU) No 648/2012, the transfer of positions and collateral referred to in Article 305(2)(b) of this Regulation for that client, and that contractual agreement gives rise to a contingent obligation for that institution, that institution may attribute an exposure value of zero to that contingent obligation.

3 An institution acting as a clearing member may apply a shorter margin period of risk when calculating the own fund requirement for its exposures to a client in accordance with the Internal Model Method. The margin period of risk applied by the institution shall not be less than five days.

4 An institution acting as a clearing member may multiply its EAD by a scalar when calculating the own fund requirement for its exposures to a client in accordance with the Mark-to-Market Method, the Standardised Method or the Original Exposure Method. The scalars that the institutions may apply are the following:

- a 0,71 for a margin period of risk of five days;
- b 0,77 for a margin period of risk of six days;
- c 0,84 for a margin period of risk of seven days;

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- d 0,89 for a margin period of risk of eight days;
- e 0,95 for a margin period of risk of nine days;
- f 1 for a margin period of risk of ten days or more.

5 EBA shall develop draft regulatory technical standards to specify the margin periods of risk that institutions may use for the purposes of paragraphs 3 and 4.

When developing those draft regulatory technical standards, EBA shall apply the following principles:

- a it shall define the margin period of risk for each of the types of contracts and transactions listed in Article 301(1);
- b the margin periods of risk to be defined in point (a) shall reflect the close-out period of the contracts and transactions referred to in that point.

EBA shall submit those draft regulatory technical standards to the Commission by 30 June 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.

Article 305

Treatment of clients' exposures

1 Where an institution is a client, it shall calculate the own funds requirements for its CCP-related transactions with its clearing member in accordance with Sections 1 to 8 of this Chapter and with Title VI of Part Three, as applicable.

2 Without prejudice to the approach specified in paragraph 1, where an institution is a client, it may calculate the own funds requirements for its trade exposures for CCP-related transactions with its clearing member in accordance with Article 306 provided that all the following conditions are met:

- a the positions and assets of that institution related to those transactions are distinguished and segregated, at the level of both the clearing member and the CCP, 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 in the event of the default or insolvency of the clearing member or one or more of its other clients;
- b laws, regulations, rules and contractual arrangements applicable to or binding that institution or the CCP 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. In such circumstance, the client's positions and the collateral shall be transferred at market value unless the client requests to close out the position at market value;
- c the institution has available an independent, written and reasoned legal opinion that concludes that, in the event of legal challenge, the relevant courts and administrative authorities would find that the client would bear no losses on account of the insolvency of its clearing member or of any of its clearing member's clients under the laws of the jurisdiction of the institution, its clearing member and the CCP, the law governing the transactions and contracts the institution clears through the CCP, the law governing

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the collateral, and the law governing any contract or agreement necessary to meet the condition in point (b);

d the CCP is a Q_{CCP}.

3 Without prejudice to the conditions specified in paragraph 2, where an institution that is a client is not protected from losses in the case that the clearing member and another client of the clearing member jointly default, but all the other conditions set out in paragraph 2 are met, the client may calculate the own funds requirements for its trade exposures for CCP-related transactions with its clearing member in accordance with Article 306, subject to replacing the 2 % risk weight in paragraph 1(a) of that Article with a 4 % risk weight.

4 Where an institution that is a client accesses the services of a CCP through indirect clearing arrangements, in accordance with Article 4(3) of Regulation (EU) No 648/2012, that institution may apply the treatment set out in paragraph 2 or 3 only where the conditions in each paragraph are met at every level of the chain of intermediaries.

Article 306

Own funds requirements for trade exposures

1 An institution shall apply the following treatment to its trade exposures with CCPs:

- a it shall apply a risk weight of 2 % to the exposure values of all its trade exposures with QCCPs;
- b it shall apply the risk weight used for the Standardised Approach to credit risk as set out in Article 107(2)(b) to all its trade exposures with non-qualifying CCPs;
- c where an institution is acting as a financial intermediary between a client and a CCP and the terms of the CCP-related transaction stipulate that the institution is not obligated to reimburse the client for any losses suffered due to changes in the value of that transaction in the event that the CCP defaults, the exposure value of the transaction with the CCP that corresponds to that CCP-related transaction is equal to zero.

2 Notwithstanding paragraph 1, where assets posted as collateral to a CCP or a clearing member are bankruptcy remote in the event that the CCP, the clearing member or one or more of the other clients of the clearing member becomes insolvent, an institution may attribute an exposure value of zero to the counterparty credit risk exposures for those assets.

3 An institution shall calculate exposure values of its trade exposures with a CCP in accordance with Sections 1 to 8 of this Chapter, as applicable.

4 An institution shall calculate the risk weighted exposure amounts for its trade exposures with CCPs for the purposes of Article 92(3) as the sum of the exposure values of its trade exposures with CCPs, calculated in accordance with paragraphs 2 and 3 of this Article, multiplied by the risk weight determined in accordance with paragraph 1 of this Article.

Article 307

Own funds requirements for pre-funded contributions to the default fund of a CCP

An institution acting as a clearing member shall apply the following treatment to its exposures arising from its contributions to the default fund of a CCP:

(a) it shall calculate the own funds requirement for its pre-funded contributions to the default fund of a Q_{CCP} in accordance with the approach set out in Article 308;

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- (b) it shall calculate the own funds requirement for its pre-funded contributions to the default fund of a non-qualifying CCP in accordance with the approach set out in Article 309.

Article 308

Own funds requirements for pre-funded contributions to the default fund of a Q_{CCP}

1 The exposure value for an institution's pre-funded contribution to the default fund of a Q_{CCP} (DF_i) shall be the amount paid in or the market value of the assets delivered by that institution reduced by any amount of that contribution that the Q_{CCP} has already used to absorb its losses following the default of one or more of its clearing members.

2 An institution shall calculate the own funds requirement (K_i) to cover the exposure arising from its pre-funded contribution (DF_i) as follows:

$$K_i = \left(1 + \beta \cdot \frac{N}{N-2}\right) \cdot \frac{DF_i}{DF_{CM}} \cdot K_{CM}$$

where:

- β = the concentration factor communicated to the institution by the CCP;
N = the number of clearing members communicated to the institution by the CCP;
DF_{CM} = the sum of pre-funded contributions of all clearing members of the CCP

- $\left(\sum_i DF_i\right)$
K_{CM} = the sum of the own funds requirements of all clearing members of the CCP calculated in accordance with the applicable formula specified in paragraph 3
 $\left(\sum_i K_i\right)$

3 An institution shall calculate K_{CM} as follows:

- (a) where K_{CCP} ≤ DF_{CCP}, the institution shall use the following formula:

$$K_{CM} = c_1 \cdot DF_{CCP}^{CM}$$

;

- (b) where DF_{CCP} < K_{CCP} ≤ DF*, the institution shall use the following formula:

$$K_{CM} = c_2 \cdot (K_{CCP} - DF_{CCP}) + c_1 \cdot (DF^* - K_{CCP})$$

;

- (c) where DF* < K_{CCP}, the institution shall use the following formula:

$$K_{CM} = c_2 \cdot \mu \cdot (K_{CCP} - DF^*) + c_2 \cdot DF_{CCP}^{CM}$$

where:

- DF_{CCP} = the pre-funded financial resources of the CCP communicated to the institution by the CCP;

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K_{CCP}	=	the hypothetical capital of the CCP communicated to the institution by the CCP;
DF^*	=	$DF_{CCP} + DF_i^{CM}$
	=	$DF_{CM} - 2 \cdot \bar{DF}_i$;
DF_i^{CM}	=	the average pre-funded contribution,
\bar{DF}_i	=	$\frac{1}{N} \cdot DF_{CM}$, communicated to the institution by the CCP;
c_1	=	a capital factor equal to $\max \left\{ \frac{1.6\%}{\left(\frac{DF^*}{K_{CCP}} \right)^{0.3}}, 0.16\% \right\}$
c_2	=	a capital factor equal to 100 %;
μ	=	1,2.

4 An institution shall calculate the risk weighted exposure amounts for exposures arising from an institution's pre-funded contribution for the purposes of Article 92(3) as the own funds requirement (K_i) determined in accordance with paragraph 2 multiplied by 12,5.

5 Where K_{CCP} is equal to zero, institutions shall use the value for c_1 of 0,16 % for the purpose of the calculation in paragraph 3.

Article 309

Own funds requirements for pre-funded contributions to the default fund of a non-qualifying CCP and for unfunded contributions to a non-qualifying CCP

1 An institution shall apply the following formula to calculate the own funds requirement (K_i) for the exposures arising from its pre-funded contributions to the default fund of a non-qualifying CCP (DF_i) and from unfunded contributions (UC_i) to such CCP:

$$K_i = c_2 \cdot \mu \cdot (DF_i + UC_i)$$

where c_2 and μ are defined as in Article 308(3).

2 For the purpose of paragraph 1, unfunded contributions means contributions that an institution acting as a clearing member has contractually committed to provide to a CCP after the CCP has depleted its default fund to cover the losses it incurred following the default of one or more of its clearing members.

3 An institution shall calculate the risk weighted exposure amounts for exposures arising from an institution's pre-funded contribution for the purposes of Article 92(3) as the own funds requirement (K_i) determined in accordance with paragraph 1 multiplied by 12,5.

Article 310

Alternative calculation of own funds requirement for exposures to a Q_{CCP}

An institution shall apply the following formula to calculate the own funds requirement (K_i) for the exposures arising from its trade exposures and the trade exposures of its clients (TE_i) and pre-funded contributions (DF_i) to the default fund of a Q_{CCP} :

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$$K_i = 8\% \cdot \min \left[2\% \cdot TE_i + 1.250\% \cdot DF_i; 20\% \cdot TE_i \right]$$

Article 311

Own funds requirements for exposures to CCPs that cease to meet certain conditions

1 An institution shall apply the treatment set out in this Article where one or both of the following conditions have been met:

- a the institution has received from a CCP a notification required by point (j)(ii) of Article 50b of Regulation (EU) No 648/2012 that the CCP has stopped calculating K_{CCP} ;
- b it has become known to the institution, following a public announcement or notification from the competent authority of a CCP used by the institution or from that CCP itself, that the CCP will no longer comply with the conditions for authorisation or recognition, as applicable.

2 Where only the condition in point (a) of paragraph 1 has been met, the competent authority of the institution shall verify the reasons why the CCP has stopped calculating K_{CCP} .

Where the competent authority considers that the reasons referred to in the first subparagraph are valid, it may permit institutions in its Member State to apply the treatment set out in Article 310 to their trade exposures and default fund contributions to that CCP. Where it grants such permission, it shall disclose the reasons for its decision.

Where the competent authority considers that the reasons referred to in the first subparagraph are not valid, all institutions in its Member State, irrespective of the treatment they chose in accordance with Article 301(2), shall apply the treatment set out in points (a) to (d) of paragraph 3 of this Article.

3 Where the condition in point (b) of paragraph 1 has been met, irrespective of whether the condition in point (a) of that paragraph has been met or not, an institution shall, within three months of the circumstance set out in point (b) of that paragraph arising, or earlier where the competent authority of the institution requires it, do the following with respect to its exposures to that CCP:

- a cease to apply the treatment it chose in accordance with Article 301(2);
- b apply the treatment set out in point (b) of Article 306(1) to its trade exposures to that CCP;
- c apply the treatment set out in Article 309 to its pre-funded contributions to the default fund of that CCP and to its unfunded contributions to that CCP;
- d treat exposures other than those listed in points (b) and (c) to that CCP as exposures to a corporate in accordance with the Standardised Approach for credit risk as set out in Chapter 2.

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