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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 TWO

OWN FUNDS

TITLE I

ELEMENTS OF OWN FUNDS

CHAPTER 3

Additional Tier 1 capital

Section 1

Additional tier 1 items and instruments

Article 51

Additional Tier 1 items

Additional Tier 1 items shall consist of the following:

- (a) capital instruments, where the conditions laid down in Article 52(1) are met;
- (b) the share premium accounts related to the instruments referred to in point (a).

Instruments included under point (a) shall not qualify as Common Equity Tier 1 or Tier 2 items.

Article 52

Additional Tier 1 instruments

1 Capital instruments shall qualify as Additional Tier 1 instruments only if the following conditions are met:

- a the instruments are issued and paid up;
- b the instruments are not purchased by any of the following:
 - (i) the institution or its subsidiaries;
 - (ii) an undertaking in which the institution has a participation in the form of ownership, direct or by way of control, of 20 % or more of the voting rights or capital of that undertaking;

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- c the purchase of the instruments is not funded directly or indirectly by the institution;
- d the instruments rank below Tier 2 instruments in the event of the insolvency of the institution;
- e the instruments are not secured, or subject to a guarantee that enhances the seniority of the claims by any of the following:
 - (i) the institution or its subsidiaries;
 - (ii) the parent undertaking of the institution or its subsidiaries;
 - (iii) the parent financial holding company or its subsidiaries;
 - (iv) the mixed activity holding company or its subsidiaries;
 - (v) the mixed financial holding company or its subsidiaries;
 - (vi) any undertaking that has close links with entities referred to in points (i) to (v);
- f the instruments are not subject to any arrangement, contractual or otherwise, that enhances the seniority of the claim under the instruments in insolvency or liquidation;
- g the instruments are perpetual and the provisions governing them include no incentive for the institution to redeem them;
- h where the provisions governing the instruments include one or more call options, the option to call may be exercised at the sole discretion of the issuer;
- i the instruments may be called, redeemed or repurchased only where the conditions laid down in Article 77 are met, and not before five years after the date of issuance except where the conditions laid down in Article 78(4) are met;
- j the provisions governing the instruments do not indicate explicitly or implicitly that the instruments would or might be called, redeemed or repurchased and the institution does not otherwise provide such an indication, except in the following cases:
 - (i) the liquidation of the institution;
 - (ii) discretionary repurchases of the instruments or other discretionary means of reducing the amount of Additional Tier 1 capital, where the institution has received the prior permission of the competent authority in accordance with Article 77;
- k the institution does not indicate explicitly or implicitly that the competent authority would consent to a request to call, redeem or repurchase the instruments;
- l distributions under the instruments meet the following conditions:
 - (i) they are paid out of distributable items;
 - (ii) the level of distributions made on the instruments will not be amended on the basis of the credit standing of the institution or its parent undertaking;
 - (iii) the provisions governing the instruments give the institution full discretion at all times to cancel the distributions on the instruments for an unlimited period and on a non-cumulative basis, and the institution may use such cancelled payments without restriction to meet its obligations as they fall due;
 - (iv) cancellation of distributions does not constitute an event of default of the institution;
 - (v) the cancellation of distributions imposes no restrictions on the institution;

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- m the instruments do not contribute to a determination that the liabilities of an institution exceed its assets, where such a determination constitutes a test of insolvency under applicable national law;
- n the provisions governing the instruments require that, upon the occurrence of a trigger event, the principal amount of the instruments be written down on a permanent or temporary basis or the instruments be converted to Common Equity Tier 1 instruments;
- o the provisions governing the instruments include no feature that could hinder the recapitalisation of the institution;
- p where the instruments are not issued directly by an institution, both the following conditions shall be met:
 - (i) the instruments are issued through an entity within the consolidation pursuant to Chapter 2 of Title II of Part One;
 - (ii) the proceeds are immediately available to the institution without limitation and in a form that satisfies the conditions laid down in this paragraph.

The condition set out in point (d) of the first subparagraph shall be deemed to be met notwithstanding the instruments are included in Additional Tier 1 or Tier 2 by virtue of Article 484(3), provided that they rank *pari passu*.

- 2 EBA shall develop draft regulatory technical standards to specify all the following:
- a the form and nature of incentives to redeem;
 - b the nature of any write up of the principal amount of an Additional Tier 1 instrument following a write down of its principal amount on a temporary basis;
 - c the procedures and timing for the following:
 - (i) determining that a trigger event has occurred;
 - (ii) writing up the principal amount of an Additional Tier 1 instrument following a write down of its principal amount on a temporary basis;
 - d features of instruments that could hinder the recapitalisation of the institution;
 - e the use of special purposes entities for indirect issuance of own funds instruments.

EBA shall submit those draft regulatory technical standards to the Commission by 1 February 2015.

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 53

Restrictions on the cancellation of distributions on Additional Tier 1 instruments and features that could hinder the recapitalisation of the institution

For the purposes of points (l)(v) and (o) of Article 52(1), the provisions governing Additional Tier 1 instruments shall, in particular, not include the following:

- (a) a requirement for distributions on the instruments to be made in the event of a distribution being made on an instrument issued by the institution that ranks to the same degree as, or more junior than, an Additional Tier 1 instrument, including a Common Equity Tier 1 instrument;

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- (b) a requirement for the payment of distributions on Common Equity Tier 1, Additional Tier 1 or Tier 2 instruments to be cancelled in the event that distributions are not made on those Additional Tier 1 instruments;
- (c) an obligation to substitute the payment of interest or dividend by a payment in any other form. The institution shall not otherwise be subject to such an obligation.

Article 54

Write down or conversion of Additional Tier 1 instruments

1 For the purposes of point (n) of Article 52(1), the following provisions shall apply to Additional Tier 1 instruments:

- a a trigger event occurs when the Common Equity Tier 1 capital ratio of the institution referred to in point (a) of Article 92(1) falls below either of the following:
 - (i) 5,125 %;
 - (ii) a level higher than 5,125 %, where determined by the institution and specified in the provisions governing the instrument;
- b institutions may specify in the provisions governing the instrument one or more trigger events in addition to that referred to in point (a);
- c where the provisions governing the instruments require them to be converted into Common Equity Tier 1 instruments upon the occurrence of a trigger event, those provisions shall specify either of the following:
 - (i) the rate of such conversion and a limit on the permitted amount of conversion;
 - (ii) a range within which the instruments will convert into Common Equity Tier 1 instruments;
- d where the provisions governing the instruments require their principal amount to be written down upon the occurrence of a trigger event, the write down shall reduce all the following:
 - (i) the claim of the holder of the instrument in the insolvency or liquidation of the institution;
 - (ii) the amount required to be paid in the event of the call or redemption of the instrument;
 - (iii) the distributions made on the instrument.

2 Write down or conversion of an Additional Tier 1 instrument shall, under the applicable accounting framework, generate items that qualify as Common Equity Tier 1 items.

3 The amount of Additional Tier 1 instruments recognised in Additional Tier 1 items is limited to the minimum amount Common Equity Tier 1 items that would be generated if the principal amount of the Additional Tier 1 instruments were fully written down or converted into Common Equity Tier 1 instruments.

4 The aggregate amount of Additional Tier 1 instruments that is required to be written down or converted upon the occurrence of a trigger event shall be no less than the lower of the following:

- a the amount required to restore fully the Common Equity Tier 1 ratio of the institution to 5,125 %;

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b the full principal amount of the instrument.

5 When a trigger event occurs institutions shall do the following:

- a immediately inform the competent authorities;
- b inform the holders of the Additional Tier 1 instruments;
- c write down the principal amount of the instruments, or convert the instruments into Common Equity Tier 1 instruments without delay, but no later than in one month, in accordance with the requirement laid down in this Article.

6 An institution issuing Additional Tier 1 instruments that convert to Common Equity Tier 1 on the occurrence of a trigger event shall ensure that its authorised share capital is at all times sufficient, for converting all such convertible Additional Tier 1 instruments into shares if a trigger event occurs. All necessary authorisations shall be obtained at the date of issuance of such convertible Additional Tier 1 instruments. The institution shall maintain at all times the necessary prior authorisation to issue the Common Equity Tier 1 instruments into which such Additional Tier 1 instruments would convert upon occurrence of a trigger event.

7 An institution issuing Additional Tier 1 instruments that convert to Common Equity Tier 1 on the occurrence of a trigger event shall ensure that there are no procedural impediments to that conversion by virtue of its incorporation or statutes or contractual arrangements.

Article 55

Consequences of the conditions for Additional Tier 1 instruments ceasing to be met

The following shall apply where, in the case of an Additional Tier 1 instrument, the conditions laid down in Article 52(1) cease to be met:

- (a) that instrument shall immediately cease to qualify as an Additional Tier 1 instrument;
- (b) the part of the share premium accounts that relates to that instrument shall immediately cease to qualify as an Additional Tier 1 item.

Section 2

Deductions from additional tier 1 items

Article 56

Deductions from Additional Tier 1 items

Institutions shall deduct the following from Additional Tier 1 items:

- (a) direct, indirect and synthetic holdings by an institution of own Additional Tier 1 instruments, including own Additional Tier 1 instruments that an institution could be obliged to purchase as a result of existing contractual obligations;
- (b) direct, indirect and synthetic holdings of the Additional Tier 1 instruments of financial sector entities with which the institution has reciprocal cross holdings that the competent authority considers to have been designed to inflate artificially the own funds of the institution;

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- (c) the applicable amount determined in accordance with Article 60 of direct, indirect and synthetic holdings of the Additional Tier 1 instruments of financial sector entities, where an institution does not have a significant investment in those entities;
- (d) direct, indirect and synthetic holdings by the institution of the Additional Tier 1 instruments of financial sector entities where the institution has a significant investment in those entities, excluding underwriting positions held for five working days or fewer;
- (e) the amount of items required to be deducted from Tier 2 items pursuant to Article 66 that exceed the Tier 2 capital of the institution;
- (f) any tax charge relating to Additional Tier 1 items foreseeable at the moment of its calculation, except where the institution suitably adjusts the amount of Additional Tier 1 items insofar as such tax charges reduce the amount up to which those items may be applied to cover risks or losses.

Article 57

Deductions of holdings of own Additional Tier 1 instruments

For the purposes of point (a) of Article 56, institutions shall calculate holdings of own Additional Tier 1 instruments on the basis of gross long positions subject to the following exceptions:

- (a) institutions may calculate the amount of holdings of own Additional Tier 1 instruments on the basis of the net long position provided that both the following conditions are met:
 - (i) the long and short positions are in the same underlying exposure and the short positions involve no counterparty risk;
 - (ii) either both the long and the short positions are held in the trading book or both are held in the non-trading book;
- (b) institutions shall determine the amount to be deducted for direct, indirect or synthetic holdings of index securities by calculating the underlying exposure to own Additional Tier 1 instruments in those indices;
- (c) institutions may net gross long positions in own Additional Tier 1 instruments resulting from holdings of index securities against short positions in own Additional Tier 1 instruments resulting from short positions in the underlying indices, including where those short positions involve counterparty risk, provided that both the following conditions are met:
 - (i) the long and short positions are in the same underlying indices;
 - (ii) either both the long and the short positions are held in the trading book or both are held in the non-trading book;

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Article 58

Deduction of holdings of Additional Tier 1 instruments of financial sector entities and where an institution has a reciprocal cross holding designed artificially to inflate own funds

Institutions shall make the deductions required by points (b), (c) and (d) of Article 56 in accordance with the following:

- (a) holdings of Additional Tier 1 instruments shall be calculated on the basis of the gross long positions;
- (b) Additional Tier 1 own-fund insurance items shall be treated as holdings of Additional Tier 1 instruments for the purposes of deduction.

Article 59

Deduction of holdings of Additional Tier 1 instruments of financial sector entities

Institutions shall make the deductions required by points (c) and (d) of Article 56 in accordance with the following:

- (a) they may calculate direct, indirect and synthetic holdings of Additional Tier 1 instruments of the financial sector entities on the basis of the net long position in the same underlying exposure provided that both the following conditions are met:
 - (i) the maturity of the short position matches the maturity of the long position or has a residual maturity of at least one year;
 - (ii) either both the short position and the long position are held in the trading book or both are held in the non-trading book.
- (b) they shall determine the amount to be deducted for direct, indirect and synthetic holdings of index securities by calculating the underlying exposure to the capital instruments of the financial sector entities in those indices.

Article 60

Deduction of holdings of Additional Tier 1 instruments where an institution does not have a significant investment in a financial sector entity

1 For the purposes of point (c) of Article 56, institutions shall calculate the applicable amount to be deducted by multiplying the amount referred to in point (a) of this paragraph by the factor derived from the calculation referred to in point (b) of this paragraph:

- a the aggregate amount by which the direct, indirect and synthetic holdings by the institution of the Common Equity Tier 1, Additional Tier 1 and Tier 2 instruments of financial sector entities exceeds 10 % of the Common Equity Tier 1 items of the institution calculated after applying the following:
 - (i) Article 32 to 35;

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- (ii) points (a) to (g), points (k)(ii) to (v) and point (l) of Article 36(1), excluding deferred tax assets that rely on future profitability and arise from temporary differences;
 - (iii) Articles 44 and 45;
 - b the amount of direct, indirect and synthetic holdings by the institution of the Additional Tier 1 instruments of those financial sector entities in which the institution does not have a significant investment divided by the aggregate amount of all direct, indirect and synthetic holdings by the institution of the Common Equity Tier 1, Additional Tier 1 and Tier 2 instruments of those financial sector entities.
- 2 Institutions shall exclude underwriting positions held for five working days or fewer from the amount referred to in point (a) of paragraph 1 and from the calculation of the factor referred to in point (b) of paragraph 1.
- 3 The amount to be deducted pursuant to paragraph 1 shall be apportioned across all Additional Tier 1 instruments held. The amount to be deducted from each Additional Tier 1 instrument pursuant to paragraph 1 shall be calculated by multiplying the amount specified in point (a) of this paragraph by the proportion specified in point (b) of this paragraph:
 - a the amount of holdings required to be deducted pursuant to paragraph 1;
 - b the amount specified in point (i) divided by the amount specified in point (ii):
 - (i) the total amount of the Additional Tier 1 instrument;
 - (ii) the aggregate amount of direct, indirect and synthetic holdings by the institution of the Additional Tier 1 instruments of financial sector entities in which the institution does not have a significant investment.
- 4 The amount of holdings referred to in point (c) of Article 56 that is equal to or less than 10 % of the Common Equity Tier 1 items of the institution after applying the provisions laid down in points (a)(i), (ii) and (iii) of paragraph 1 shall not be deducted and shall be subject to the applicable risk weights in accordance with Chapter 2 or 3 of Title II of Part Three and the requirements laid down in Title IV of Part Three, as applicable.
- 5 Institutions shall determine the portion of holdings of own funds instruments that is risk weighted by dividing the amount specified in point (a) by the amount specified in point (b):
 - a the amount of holdings required to be risk weighted pursuant to paragraph 4;
 - b the amount specified in point (i) divided by the amount specified in point (ii):
 - (i) the total amount of the Common Equity Tier 1 instruments;
 - (ii) the aggregate amount of direct, indirect and synthetic holdings by the institution of the Common Equity Tier 1 instruments of financial sector entities in which the institution does not have a significant investment.

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Section 3

Additional Tier 1 capital

Article 61

Additional Tier 1 capital

The Additional Tier 1 capital of an institution shall consist of Additional Tier 1 items after the deduction of the items referred to in Article 56 and the application of Article 79.

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