

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 THREE

CAPITAL REQUIREMENTS

TITLE II

K-FACTOR REQUIREMENT

CHAPTER 3

RtM K#Factors

Article 23

Calculating K#CMG

1 For the purposes of Article 21, the competent authority shall allow an investment firm to calculate K#CMG for all positions that are subject to clearing, or on a portfolio basis, where the whole portfolio is subject to clearing or margining, under the following conditions:

- a the investment firm is not part of a group containing a credit institution;
- b the clearing and settlement of these transactions take place under the responsibility of a clearing member of a QCCP and that clearing member is a credit institution or an investment firm referred to in Article 1(2) of this Regulation, and the transactions are either centrally cleared in a QCCP or otherwise settled on a delivery versus payment basis under the responsibility of that clearing member;
- c the calculation of the total margin required by the clearing member is based on a margin model of the clearing member;
- d the investment firm has demonstrated to the competent authority that the choice of calculating RtM with K#CMG is justified by certain criteria, which may include the nature of the main activities of the investment firm which shall essentially be trading activities subject to clearing and margining under the responsibility of a clearing member, and the fact that other activities performed by the investment firm are immaterial in comparison to those main activities; and
- e the competent authority has assessed that the choice of the portfolio(s) subject to K#CMG has not been made with a view to engaging in regulatory arbitrage of the own funds requirements in a disproportionate or prudentially unsound manner.

For the purpose of point (c) of the first subparagraph, the competent authority shall carry out a regular assessment to confirm that the margin model leads to margin requirements that reflect the risk characteristics of the products the investment firms trade in and takes

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into account the interval between margin collections, market liquidity and the possibility of changes over the duration of the transaction.

The margin requirements shall be sufficient to cover losses that may result from at least 99 % of the exposures movements over an appropriate time horizon with at least a two# business days holding period. The margin models used by that clearing member to call the margin referred to in point (c) of the first subparagraph of this paragraph shall always be designed to achieve a level of prudence similar to that required in the provisions on margin requirements in Article 41 of Regulation (EU) No 648/2012.

2 K#CMG shall be the third highest amount of total margin required on a daily basis by the clearing member from the investment firm over the preceding three months, multiplied by a factor of 1,3.

3 EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify the calculation of the amount of the total margin required and the method of calculation of K#CMG as referred to in paragraph 2, in particular where K#CMG is applied on a portfolio basis, and the conditions for the fulfilment of the provisions in point (e) of paragraph 1.

EBA shall submit those draft regulatory technical standards to the Commission by 26 December 2020.

Power is delegated to the Commission to supplement this Regulation by adopting 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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