

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 4

RtF K#factors

Section 1

Trading counterparty default

Article 31

Netting

For the purposes of this Section, an investment firm may, first, treat perfectly matching contracts included in a netting agreement as if they were a single contract with a notional principal equivalent to the net receipts, second, net other transactions subject to novation under which all obligations between the investment firm and its counterparty are automatically amalgamated in such a way that the novation legally substitutes one single net amount for the previous gross obligations, and third, net other transactions where the investment firm ensures that the following conditions have been met:

- (a) a netting contract with the counterparty or other agreement which creates a single legal obligation covers all included transactions, such that the investment firm would have either a claim to receive or obligation to pay only the net sum of the positive and negative market values of included individual transactions in the event a counterparty fails to perform due to any of the following:
 - (i) default;
 - (ii) bankruptcy;
 - (iii) liquidation; or
 - (iv) similar circumstances;

Changes to legislation: There are currently no known outstanding effects for the Regulation (EU) 2019/2033 of the European Parliament and of the Council, Article 31. (See end of Document for details)

- (b) the netting contract does not contain any clause which, in the event of default of a counterparty, permits a non-defaulting counterparty to make limited payments only, or no payments at all, to the estate of the defaulting party, even if the defaulting party is a net creditor;
- (c) the investment firm has obtained an independent, written and reasoned legal opinion that, in the event of a legal challenge of the netting agreement, the investment firm's claims and obligations would be equivalent to those referred to in point (a) under the following legal regime:
 - (i) the law of the jurisdiction in which the counterparty is incorporated;
 - (ii) if a foreign branch of a counterparty is involved, the law of jurisdiction in which the branch is located;
 - (iii) the law that governs the individual transactions included in the netting agreement; or
 - (iv) the law that governs any contract or agreement necessary to effect the netting.

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