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)

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)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank[(1)],

Having regard to the opinion of the European Economic and Social Committee[(2)],

Acting in accordance with the ordinary legislative procedure[(3)],

Whereas:

(1) Robust prudential requirements are an integral part of the regulatory conditions under which financial institutions provide services within the Union. Investment firms are, together with credit institutions, subject to Regulation (EU) No 575/2013 of the European Parliament and of the Council[(4)] and to Directive 2013/36/EU of the European Parliament and of the Council[(5)] as regards their prudential treatment and supervision, while their authorisation and other organisational and conduct requirements are set out in Directive 2014/65/EU of the European Parliament and of the Council[(6)].

(2) The existing prudential regimes under Regulation (EU) No 575/2013 and Directive 2013/36/EU are largely based on successive iterations of the international regulatory standards set for large banking groups by the Basel Committee on Banking Supervision and only partially address the specific risks inherent to the diverse activities of a large number of investment firms. The specific vulnerabilities and risks inherent to those investment firms should therefore be specifically addressed by means of appropriate and proportionate prudential arrangements at Union level.

(3) The risks which investment firms themselves incur and pose for their clients and the wider markets in which they operate depend on the nature and volume of their activities,

including whether investment firms act as agents for their clients and are not party to the resulting transactions themselves, or whether they act as principals to the trades.

(4) Sound prudential requirements should ensure that investment firms are managed in an orderly way and in the best interests of their clients. They should take into account the potential for investment firms and their clients to engage in excessive risk#taking and the different degrees of risk assumed and posed by investment firms. Equally, such prudential requirements should aim to avoid imposing an undue administrative burden on investment firms.

(5) Many of the prudential requirements that stem from the framework of Regulation (EU) No 575/2013 and Directive 2013/36/EU are designed to address common risks faced by credit institutions. Accordingly, the existing requirements are largely calibrated to preserve the lending capacity of credit institutions through economic cycles and to protect depositors and taxpayers from possible failure, and are not designed to address all of the different risk profiles of investment firms. Investment firms do not have large portfolios of retail and corporate loans and do not take deposits. The likelihood that their failure can have a detrimental impact on overall financial stability is lower than in the case of credit institutions. The risks faced and posed by most investment firms are thus substantially different to the risks faced and posed by credit institutions and such differences should be clearly reflected in the prudential framework of the Union.

(6) The prudential requirements to which investment firms are subject under Regulation (EU) No 575/2013 and Directive 2013/36/EU are based on those of credit institutions. Investment firms the scope of whose authorisation is limited to specific investment services which are not targeted by the current prudential framework are subject to numerous exemptions from those requirements. Those exemptions recognise that those investment firms do not incur risks of the same nature as credit institutions. Investment firms which carry out activities that are targeted by the current prudential framework and that involve trading in financial instruments on a limited basis are subject to corresponding requirements of the framework in terms of capital but are eligible for exemptions in other areas, such as liquidity, large exposures and leverage. Investment firms the scope of whose authorisation is not subject to those limitations are subject to the same prudential requirements as credit institutions.

(7) The trading of financial instruments, whether for the purposes of risk management, hedging or liquidity management or for taking directional positions on the value of the instruments over time, is an activity in which both credit institutions and investment firms authorised for dealing on own account may engage and which is already addressed by the prudential framework under Regulation (EU) No 575/2013 and Directive 2013/36/EU. In order to avoid an unlevel playing field which could lead to regulatory arbitrage between credit institutions and investment firms in this area, the own funds requirements resulting from those rules that address the risk should therefore also continue to apply to those investment firms. The exposures of those investment firms to their trading counterparties in specific transactions and corresponding own funds requirements are also covered by the rules and should therefore also continue to apply to investment firms in a simplified way. Finally, the rules on large exposures in

the current prudential framework are also relevant when the trading exposures of those investment firms to specific counterparties are particularly large and thereby generate an excessively concentrated source of risk for an investment firm from the default of the counterparty. Those rules should therefore also continue to apply to investment firms in a simplified way.

(8) Differences in the application of the existing prudential framework in different Member States threaten the level playing field for investment firms within the Union. Those differences stem from the overall complexity of the application of the framework to different investment firms based on the services that they provide, where some national authorities adjust or streamline such application in national law or practice. Given that the existing prudential framework does not address all the risks faced and posed by some types of investment firms, large capital add#ons have been applied to certain investment firms in some Member States. Uniform provisions addressing those risks should be established in order to ensure harmonised prudential supervision of investment firms across the Union.

(9) A specific prudential regime is therefore required for investment firms which are not systemic by virtue of their size and interconnectedness with other financial and economic actors. Systemic investment firms should, however, remain subject to the existing prudential framework under Regulation (EU) No 575/2013 and Directive 2013/36/EU. Those investment firms are a subset of investment firms to which the framework laid down in Regulation (EU) No 575/2013 and Directive 2013/36/EU currently applies and which do not benefit from dedicated exemptions from any of their principle requirements. The largest and most interconnected investment firms have business models and risk profiles that are similar to those of significant credit institutions. They provide 'bank#like' services and underwrite risks on a significant scale. Furthermore, systemic investment firms are large enough to, and have business models and risk profiles which, represent a threat for the stable and orderly functioning of financial markets on a par with large credit institutions. Therefore it is appropriate that those investment firms remain subject to the rules set out in Regulation (EU) No 575/2013 and Directive 2013/36/EU.

(10) The specific prudential regime for investment firms which, by virtue of their size and interconnectedness with other financial and economic actors, are not considered to be systemic should address the specific business practices of different types of investment firms. Investment firms with the highest possibility of generating risks to clients, markets or the orderly functioning of the investment firms themselves should, in particular, be subject to clear and effective prudential requirements tailored to those specific risks. Those prudential requirements should be calibrated in a manner proportionate to the type of investment firm, the best interests of the clients of that type of investment firm and the promotion of the smooth and orderly functioning of the markets in which that type of investment firm operates. They should mitigate identified areas of risk and help ensure that, if an investment firm fails, it can be wound down in an orderly manner with minimal disruption to the stability of financial markets.

(11) The regime provided for in this Regulation should not affect the obligations of designated market makers at trading venues pursuant to Directive 2014/65/EU to provide quotes and be present in the market on a continuous basis.

(12) The prudential regime for investment firms which, by virtue of their size and interconnectedness with other financial and economic actors, are not considered to be systemic should apply to each investment firm on an individual basis. However, in order to facilitate the application of prudential requirements for investment firms in the Union which are part of banking groups, to avoid disrupting certain business models the risks of which are already covered by the application of prudential rules, investment firms should be allowed to apply the requirements of Regulation (EU) No 575/2013 and Directive 2013/36/EU where appropriate, subject to approval by the competent authorities, provided that their decision to do so is not driven by regulatory arbitrage purposes. Further, since the risks incurred by small and non#interconnected investment firms are limited for the most part, they should be allowed to avail themselves of an exemption from the specific prudential requirements for investment firms where they are part of a banking group or investment firm group headquartered and subject to consolidated supervision under Regulation (EU) No 575/2013 and Directive 2013/36/EU or under this Regulation and Directive (EU) 2019/2034 of the European Parliament and of the Council[(7)], as applicable, in the same Member State, as those prudential frameworks should adequately cover those risks in such cases. In order to mirror the existing treatment of investment firm groups under Regulation (EU) No 575/2013 and Directive 2013/36/EU, for groups consisting only of investment firms, or where consolidation under Regulation (EU) No 575/2013 does not apply, the parent undertaking in such groups should be required to comply with the requirements of this Regulation based on the consolidated situation of the group. Alternatively, instead of prudential consolidation, where such investment firm groups reflect simpler structures and risk profiles, competent authorities may allow the parent undertaking in the group to have sufficient capital to support the book value of its holdings in the subsidiaries. Where they are part of an insurance group, small and non#interconnected investment firms should also be allowed to avail themselves of an exemption from disclosure requirements.

(13) In order to allow investment firms to continue to rely on their existing own funds to meet their own funds requirements under the prudential framework specific to investment firms, the definition and composition of own funds should be aligned with Regulation (EU) No 575/2013. This includes full deductions of balance#sheet items from own funds in accordance with Regulation (EU) No 575/2013, such as deferred tax assets and holdings of capital instruments of other financial sector entities. However, investment firms should be able to exempt non#significant holdings of capital instruments in financial sector entities from deductions if held for trading purposes in order to support market making in those instruments. In order to align the composition of own funds with Regulation (EU) No 575/2013, the corresponding ratios of the types of own funds have been mirrored in the context of this Regulation. To ensure that the requirements are proportionate to the nature, scope and complexity of the activities of the investment firms and that they are readily accessible to the investment firms within this Regulation,

the Commission should review the appropriateness of continuing to align the definition and composition of own funds with that of Regulation (EU) No 575/2013.

(14) In order to ensure that investment firms always operate on the basis of the level of own funds required for their authorisation, all investment firms should, at all times, meet a permanent minimum capital requirement equal to the initial capital required for authorisation to conduct the relevant investment services set in accordance with Directive (EU) 2019/2034.

(15) In order to ensure a simple application of the minimum own funds requirement for small and non#interconnected investment firms, they should have own funds equal to the higher of their permanent minimum capital requirement or a quarter of their fixed overheads measured on the basis of their activity of the preceding year. Small and non#interconnected investment firms that prefer to exercise further caution and avoid cliff effects in the case of reclassification should not be prevented from holding own funds in excess of, or applying measures stricter than, those required by this Regulation.

(16) To account for the higher risks of investment firms which are not small and non#interconnected, the minimum own funds requirement for such firms should be the higher of their permanent minimum capital requirement, a quarter of their fixed overheads for the preceding year, or the sum of their requirement under the set of risk factors tailored to investment firms ('K#factors') which sets capital in relation to the risks in specific business areas of investment firms.

(17) Investment firms should be considered to be small and non#interconnected for the purposes of the specific prudential requirements for investment firms where they do not conduct investment services which carry a high risk for clients, markets or themselves and where their size means they are less likely to cause widespread negative impacts for clients and markets if risks inherent in their business materialise or if they fail. Accordingly, small and non#interconnected investment firms should be defined as those that do not deal on own account or incur risk from trading financial instruments, hold no client assets or money, have assets under both discretionary portfolio management and non#discretionary (advisory) arrangements of less than EUR 1,2 billion, handle less than EUR 100 million per day of client orders in cash trades or less than EUR 1 billion per day of client orders in derivatives, and have a balance sheet smaller than EUR 100 million including off#balance#sheet items and total gross annual revenues from the performance of their investment services of less than EUR 30 million.

(18) In order to prevent regulatory arbitrage and to reduce the incentives for investment firms to restructure their operations to avoid exceeding the thresholds above which they do not qualify as small and non#interconnected investment firms, the thresholds for assets under management, client orders handled, balance sheet size and total gross annual revenues should be applied on a combined basis for all investment firms that are part of the same group. The other conditions, namely whether an investment firm holds client money, administers or safeguards client assets, or trades financial instruments and incurs market or counterparty risk, are binary and leave no scope for such restructuring, and should therefore be assessed on an individual basis. In order to capture evolving business models and the risks they represent on an ongoing basis, those conditions and

thresholds should be assessed on an end#of#day basis with the exception of holding client money, which should be assessed on an intraday basis, and balance sheet size and total annual gross revenues, which should be assessed based on the situation of the investment firm at the end of the previous financial year.

(19) An investment firm that exceeds the regulatory thresholds or fails to meet the other conditions should not be considered small and non#interconnected and should be subject to the requirements for other investment firms, subject to the specific transitional provisions set out in this Regulation. This should encourage investment firms to plan their business activities so as to clearly qualify as small and non#interconnected investment firms. For an investment firm which does not satisfy the requirements to be considered small and non#interconnected to qualify for such treatment, a monitoring phase should be provided where that investment firm meets the conditions and remains below the relevant thresholds for at least six consecutive months.

(20) All investment firms should calculate their own funds requirement by reference to a set of K#factors which capture Risk#To#Client (‘RtC’), Risk#to#Market (‘RtM’) and Risk#to#Firm (‘RtF’). The K#factors under RtC capture client assets under management and ongoing advice (K#AUM), client money held (K#CMH), assets safeguarded and administered (K#ASA), and client orders handled (K#COH).

(21) The K#factor under RtM captures net position risk (K#NPR) in accordance with the market risk provisions of Regulation (EU) No 575/2013 or, where permitted by the competent authority for specific types of investment firms which deal on own account through clearing members, based on the total margins required by an investment firm’s clearing member (K#CMG). Investment firms should have an option to apply K#NPR and K#CMG simultaneously on a portfolio basis.

(22) The K#factors under RtF capture an investment firm’s exposure to the default of their trading counterparties (K#TCD) in accordance with simplified provisions for counterparty credit risk based on Regulation (EU) No 575/2013, concentration risk in an investment firm’s large exposures to specific counterparties based on the provisions of that Regulation that apply to large exposures in the trading book (K#CON), and operational risks from an investment firm’s daily trading flow (K#DTF).

(23) The overall own funds requirement under the K#factors is the sum of the requirements of the K#factors under RtC, RtM and RtF. K#AUM, K#ASA, K#CMH, K#COH and K#DTF relate to the volume of activity referred to by each K#factor. The volumes for K#CMH, K#ASA, and K#DTF are calculated on the basis of a rolling average from the previous nine months. The volume for K#COH is calculated on the basis of a rolling average from the previous six months, while for K#AUM it is based on the previous 15 months. The volumes are multiplied by the corresponding coefficients set out in this Regulation in order to determine the own funds requirement. The own funds requirements for K#NPR are derived from Regulation (EU) No 575/2013, while the own funds requirements for K#CON and K#TCD use a simplified application of the corresponding requirements under that Regulation for, respectively, the treatment of large exposures in the trading book and of counterparty credit risk. The amount of a K# factor is zero if an investment firm does not undertake the relevant activity.

(24) The K#factors under RtC are proxies covering the business areas of investment firms from which harm to clients can conceivably be generated in case of problems. K#AUM captures the risk of harm to clients from an incorrect discretionary management of client portfolios or poor execution and provides reassurance and client benefits in terms of the continuity of service of ongoing portfolio management and investment advice. K#ASA captures the risk of safeguarding and administering client assets, and ensures that investment firms hold capital in proportion to such balances, regardless of whether they are on its own balance sheet or in third#party accounts. K#CMH captures the risk of potential for harm where an investment firm holds the money of its clients, taking into account whether they are on its own balance sheet or in third#party accounts and arrangements under applicable national law provide that client money is safeguarded in the event of bankruptcy, insolvency, or entry into resolution or administration of the investment firm. K#CMH excludes client money that is deposited on a (custodian) bank account in the name of the client itself, where the investment firm has access to the client money via a third#party mandate. K#COH captures the potential risk to clients of an investment firm which executes orders (in the name of the client, and not in the name of the investment firm itself), for example as part of execution#only services to clients or when an investment firm is part of a chain for client orders.

(25) The K#factor for RtM for investment firms which deal on own account is based on the rules for market risk for positions in financial instruments, in foreign exchange, and in commodities in accordance with Regulation (EU) No 575/2013. This allows investment firms to choose to apply the standardised approach, the alternative standardised approach under Regulation (EU) No 575/2013, or the option to use internal models, once those latter two approaches become applicable to credit institutions not only for reporting purposes but also for own funds requirements purposes. In the meantime, and at least during the five years after the date of application of this Regulation, investment firms should apply the market risk framework (standardised approach or, if applicable, internal models) of Regulation (EU) No 575/2013 for the purpose of calculating their K#NPR. If the provisions set out in Chapters 1a and 1b of Title IV of Part Three of Regulation (EU) No 575/2013 as amended by Regulation (EU) 2019/876 of the European Parliament and of the Council[8] do not become applicable to credit institutions for own funds requirements purposes, investment firms should continue to apply the requirements set out in Title IV of Part Three of Regulation (EU) No 575/2013 for the purpose of calculating K#NPR. Alternatively, the own funds requirement of investment firms trading financial instruments with positions that are subject to clearing may, subject to the approval of the competent authority and certain conditions, be equal to the amount of total margins required by their clearing member, multiplied by a fixed multiplier. The use of K#CMG should be predicated primarily on an investment firm's trading activity falling entirely or substantially under this approach. However, the investment firm's competent authority may also allow the investment firm to make partial use of the K#CMG approach, provided that this approach is used for all positions that are subject to clearing or margining and one of the three alternative methods for K# NPR is applied to portfolios that are not subject to clearing. In order to ensure that the requirements are proportionate to the nature, scope and complexity of the activities of

the investment firms and that they are readily accessible to the investment firms within this Regulation, any review that subsequently takes place concerning the application of the methods for calculating the K#factors should include the appropriateness of continuing to align the calculation of K#NPR with the rules for market risk for trading book positions in financial instruments, in foreign exchange, and in commodities in accordance with Regulation (EU) No 575/2013.

(26) For investment firms which deal on own account, the K#factors for K#TCD and K#CON under RtF constitute a simplified application of the rules laid down in Regulation (EU) No 575/2013 on counterparty credit risk and large exposure risk, respectively. K#TCD captures the risk to an investment firm by counterparties to over#the#counter (OTC) derivatives, repurchase transactions, securities and commodities lending or borrowing transactions, long settlement transactions, margin lending transactions, or any other securities financing transactions, as well as by recipients of loans granted by the investment firm on an ancillary basis as part of an investment service that fail to fulfil their obligations, by multiplying the value of the exposures, based on replacement cost and an add#on for potential future exposure, by risk factors based on Regulation (EU) No 575/2013, accounting for the mitigating effects of effective netting and the exchange of collateral. In order to further align the treatment of counterparty credit risk with Regulation (EU) No 575/2013, a fixed multiplier of 1,2 and a multiplier for credit valuation adjustment (CVA) to reflect the current market value of the credit risk of the counterparty to the investment firm in specific transactions should also be added. K#CON captures concentration risk in relation to individual or highly connected private sector counterparties with whom firms have exposures above 25 % of their own funds, or specific alternative thresholds in relation to credit institutions or other investment firms, by imposing a capital add#on in line with Regulation (EU) No 575/2013 for excess exposures above those limits. Finally, K#DTF captures the operational risks to an investment firm in large volumes of trades concluded for its own account or for clients in its own name in one day which could result from inadequate or failed internal processes, people and systems or from external events, based on the notional value of daily trades, adjusted for the time to maturity of interest rate derivatives in order to limit increases in own funds requirements, in particular for short#term contracts where perceived operational risks are lower.

(27) All investment firms should monitor and control their concentration risk, including in respect of their clients. However, only investment firms which are subject to a minimum own funds requirement under the K#factors should report to competent authorities on their concentration risks. For investment firms specialised in commodity derivatives or emission allowances or derivatives thereof with large concentrated exposures to non#financial counterparties, the limits for concentration risk may be exceeded without additional capital under K#CON as long as they serve commercial, treasury or risk management purposes.

(28) All investment firms should have internal procedures to monitor and manage their liquidity requirements. Those procedures are intended to help ensure that investment firms can function in an orderly manner over time, without the need to set aside liquidity specifically for times of stress. To that end, all investment firms should hold

a minimum of one third of their fixed overheads requirement in liquid assets at all times. However, competent authorities should be allowed to exempt small and non#interconnected investment firms from that requirement. Those liquid assets should be of high quality and aligned with those listed in Commission Delegated Regulation (EU) 2015/61[(9)], together with the haircuts which apply to those assets under that Delegated Regulation. To account for the difference in liquidity profiles of investment firms compared to credit institutions, the list of appropriate liquid assets should be supplemented by the unencumbered own cash and short#term deposits of the investment firm (which should not include any client money or financial instruments belonging to clients), and certain financial instruments for which there is a liquid market. If not exempt from liquidity requirements, small and non#interconnected investment firms, as well as investment firms which are not licensed to carry out trading or underwriting activities, could further include items related to trade debtors and fees or commissions receivable within 30 days as liquid assets, provided that these items do not exceed one#third of the minimum liquidity requirement, that they do not count towards any additional liquidity requirements imposed by the competent authority, and that they are subject to a haircut of 50 %. In exceptional circumstances, investment firms should be permitted to fall below the required threshold by monetising their liquid assets to cover liquidity requirements, provided that they notify their competent authority immediately. All financial guarantees provided to clients which can give rise to increased liquidity needs if triggered should reduce the amount of available liquid assets by at least 1,6 % of the total value of such guarantees. To ensure that the requirements are proportionate to the nature, scope and complexity of the activities of the investment firms and that they are readily accessible to the investment firms within the scope of this Regulation, a review should subsequently take place regarding the appropriateness of the liquid assets which are eligible for meeting the minimum liquidity requirement, including the continued alignment with those listed in Delegated Regulation (EU) 2015/61, together with the haircuts applying to those assets under that Delegated Regulation.

(29) A proportionate corresponding regulatory reporting framework should be developed in conjunction with the new prudential regime and should be carefully tailored to the business of investment firms and the requirements of the prudential framework. Reporting requirements for investment firms should concern the level and composition of their own funds, their own funds requirements, the basis for the calculation of their own funds requirements, their activity profile and size in relation to the parameters for considering investment firms to be small and non#interconnected, their liquidity requirements and their adherence to the provisions on concentration risk. Small and non#interconnected investment firms should be exempt from reporting on concentration risk and should be required to report on liquidity requirements only where such requirements apply to them. The European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council[(10)] (EBA) should develop draft implementing technical standards to further specify the detailed templates and arrangements for that regulatory reporting and to specify the templates for own funds disclosures. Those standards should be proportionate to the scale and complexity of different investment firms and should, in

particular, take account of whether investment firms are considered to be small and non#interconnected.

(30) In order to provide transparency to their investors and the wider markets, investment firms which are not considered to be small and non#interconnected should publicly disclose their levels of own funds, own funds requirements, governance arrangements, and remuneration policies and practices. Small and non#interconnected investment firms should not be subject to public disclosure requirements, except where they issue Additional Tier 1 instruments in order to provide transparency to the investors in those instruments.

(31) Investment firms should apply gender-neutral remuneration policies in accordance with the principle laid down in Article 157 of the Treaty on the Functioning of the European Union (TFEU). Some clarifications should be made to the remuneration disclosures. The disclosure requirements relating to remuneration set out in this Regulation should be compatible with the aims of the remuneration rules, namely to establish and maintain, for categories of staff whose professional activities have a material impact on the risk profile of investment firms, remuneration policies and practices that are consistent with effective risk management. Furthermore, investment firms benefitting from a derogation from certain remuneration rules should be required to disclose information concerning such derogation.

(32) In order to facilitate a smooth transition for investment firms from the requirements of Regulation (EU) No 575/2013 and Directive 2013/36/EU to the requirements under this Regulation and Directive (EU) 2019/2034, it is appropriate to provide for appropriate transitional measures. In particular, for a period of five years from the date of application of this Regulation, investment firms for which own funds requirements under this Regulation would more than double compared to their own funds requirement under Regulation (EU) No 575/2013 and Directive 2013/36/EU should be able to mitigate the effects of potential increases by limiting the own funds requirement to twice their relevant own funds requirement under Regulation (EU) No 575/2013 and Directive 2013/36/EU.

(33) In order not to disadvantage new investment firms with similar profiles to existing investment firms, investment firms which were never subject to own funds requirements under Regulation (EU) No 575/2013 and Directive 2013/36/EU should be able to limit their own funds requirements under this Regulation to twice their fixed overheads requirement for a period of five years from the date of application of this Regulation.

(34) Equally, investment firms which were subject only to a requirement for initial capital under Regulation (EU) No 575/2013 and Directive 2013/36/EU and for which own funds requirements under this Regulation would more than double compared to their situation under Regulation (EU) No 575/2013 and Directive 2013/36/EU should be able to limit their own funds requirement under this Regulation to twice their initial capital requirement under Regulation (EU) No 575/2013 and Directive 2013/36/EU for a period of five years from the date of application of this Regulation, with the exception of local firms referred to in point (2)(b) of Article 4(1) of Regulation (EU) No 575/2013, as amended by Regulation (EU) 2019/876, which should be subject to

a specific transitional own funds requirement reflecting their greater level of risk. For the purposes of proportionality, specific transitional own funds requirements should also be provided for smaller investment firms and those which provide a limited range of investment services where they would not benefit from a limitation of the own funds requirements under this Regulation to twice their initial capital requirements under Regulation (EU) No 575/2013, as amended by Regulation (EU) 2019/630 of the European Parliament and of the Council[(11)], and Directive 2013/36/EU, as amended by Directive (EU) 2019/878 of the European Parliament and of the Council[(12)], but whose binding own funds requirement under this Regulation would increase compared to their situation under Regulation (EU) No 575/2013, as amended by Regulation (EU) 2019/630.

(35) Those transitional measures should, where applicable, also be available to investment firms referred to in Article 498 of Regulation (EU) No 575/2013, which exempts those investment firms from own funds requirements under that Regulation, whereas the requirements for initial capital with respect to those investment firms depend on the investment services or activities they provide. For a period of five years from the date of application of this Regulation, their own funds requirements under the transitional provisions of this Regulation should be calculated in view of those applicable levels.

(36) For a period of five years from the date of application of this Regulation, or until the date of application of the changes adopted to Regulation (EU) No 575/2013 and Directive 2013/36/EU as regards own funds requirements for market risk pursuant to Chapters 1a and 1b of Title IV of Part Three of Regulation (EU) No 575/2013, as amended by Regulation (EU) 2019/876, whichever is later, investment firms subject to the corresponding provisions of this Regulation should continue to calculate their own funds requirement for the trading book in accordance with Regulation (EU) No 575/2013, as amended by Regulation (EU) 2019/630.

(37) The largest investment firms that provide key wholesale market and investment banking services (dealing on own account in financial instruments or underwriting financial instruments or placing financial instruments on a firm commitment basis) have business models and risk profiles that are similar to those of significant credit institutions. Their activities expose them to credit risk, mainly in the form of counterparty credit risk, as well as to market risk for positions they take on own account, client related or not. As such, they present a risk to financial stability, given their size and systemic importance.

(38) Those large investment firms present an additional challenge with regard to their effective prudential supervision by national competent authorities. Even though the largest investment firms provide cross#border investment banking services on a significant scale, as investment firms they are subject to prudential supervision by authorities designated under Directive 2014/65/EU, which are not necessarily the same competent authorities as those designated under Directive 2013/36/EU. This may result in an unlevel playing field in the application of Regulation (EU) No 575/2013 and Directive 2013/36/EU within the Union and prevents supervisors from obtaining an overall prudential perspective which is essential for effectively addressing the risks associated with large cross#border investment firms. As a consequence, prudential

supervision may become less effective and may also distort competition within the Union. The largest investment firms should therefore be given the status of credit institutions so as to create synergies with regard to the supervision of cross#border wholesale market activities in a peer group, promoting a level playing field, and allowing for consistent supervision across groups.

(39) Those investment firms, by virtue of becoming credit institutions, should therefore continue to be subject to Regulation (EU) No 575/2013 and Directive 2013/36/EU and to supervision by competent authorities, including by the European Central Bank in the framework of the Single Supervisory Mechanism, in charge of credit institutions. This would ensure that the prudential supervision of credit institutions is implemented in a coherent and effective manner, and that the single rulebook for financial services is applied in the same manner to all credit institutions in light of their systemic importance. In order to prevent regulatory arbitrage and reduce the risks of circumvention, competent authorities should endeavour to avoid situations where potentially systemic groups would structure their operations in such a way as to not exceed the thresholds set out in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013 and circumvent the obligation to seek authorisation as credit institutions pursuant to Article 8a of Directive 2013/36/EU.

(40) Large investment firms converted into credit institutions should be allowed to take deposits or other repayable funds from the public and to grant credits for their own account only once they have obtained the authorisation for those activities in accordance with Directive 2013/36/EU. Carrying out all such activities, including taking deposits or other repayable funds from the public and granting credits for their own account, should not be a necessary requirement for undertakings to be considered to be credit institutions. The change in the definition of credit institution introduced by this Regulation should therefore be without prejudice to the national authorisation regimes implemented by Member States in accordance with Directives 2013/36/EU and (EU) 2019/2034, including any provisions that Member States may consider to be appropriate for the purpose of clarifying the activities which large investment firms that fall within the amended definition of credit institutions are permitted to take up.

(41) In addition, the supervision of credit institutions on a consolidated basis aims to ensure, inter alia, the stability of the financial system and, in order to be effective, should be applied to all groups, including those the parent undertakings of which are not credit institutions or investment firms. Therefore, all credit institutions, including those that previously had the status of investment firms, should be subject to the rules on individual and consolidated supervision of the parent undertaking by the competent authorities pursuant to Section I of Chapter 3 of Title VII of Directive 2013/36/EU.

(42) Furthermore, it is possible that large investment firms which are not of systemic importance but which deal on own account, underwrite financial instruments or place financial instruments on a firm commitment basis have business models and risk profiles that are similar to those of other systemic institutions. Given their size and activities, it is possible that such investment firms present some risks to financial stability and, although their conversion into credit institutions is not deemed to be

appropriate in light of their nature and complexity, they should remain subject to the same prudential treatment as credit institutions. In order to prevent regulatory arbitrage and reduce the risks of circumvention, competent authorities should also endeavour to avoid situations where investment firms structure their operations in such a way as to not exceed the EUR 15 billion threshold related to the total value of the assets at individual or group level, or to unduly limit the discretion of competent authorities to subject investment firms to the requirements of Regulation (EU) No 575/2013 and to compliance with the prudential requirements laid down in Directive 2013/36/EU, in accordance with Article 5 of Directive (EU) 2019/2034.

(43) Regulation (EU) No 600/2014 of the European Parliament and of the Council[(13)] introduced a Union harmonised regime for granting access to third#country firms providing investment services or activities to eligible counterparties and professional clients that are established in the Union. Access to the internal market is conditional on the Commission adopting an equivalence decision and on the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council[(14)] (ESMA) registering the third#country firm. It is important that the assessment of equivalence is done on the basis of the relevant applicable Union law and that effective tools to monitor that the conditions under which equivalence is granted are in place. For those reasons, third#country registered firms should be required to report annually to ESMA information concerning the scale and scope of services provided, and activities carried out, in the Union. Supervisory cooperation in relation to monitoring, enforcement and the fulfilment of the equivalence conditions should also be improved.

(44) With the aim of guaranteeing a level playing field and promoting the transparency of the Union market, Regulation (EU) No 600/2014 should be amended to subject systemic internalisers' quotes, price improvements and execution prices to the tick size regime when dealing in all sizes. Consequently, the currently applicable regulatory technical standards dealing with the tick size regime should also apply to the extended scope of Regulation (EU) No 600/2014.

(45) To ensure investor protection and the integrity and the stability of financial markets in the Union, the Commission, when adopting an equivalence decision, should take into account the potential risks posed by the services and the activities that firms from that third country could carry out in the Union following that decision. Their systemic importance should be considered based on criteria such as the likely scale and scope of service provision and performance of activities by firms from the third country concerned. For the same purpose, the Commission should be able to take into account whether the third country is identified as a non#cooperative jurisdiction for tax purposes under the relevant Union policy or as a high#risk third country pursuant to Article 9(2) of Directive (EU) 2015/849 of the European Parliament and of the Council[(15)]. The Commission should consider specific prudential, organisational or business conduct requirements to be equivalent only where the same effect is achieved. Furthermore, the Commission should be able, where appropriate, to adopt equivalence decisions limited to specific services and activities or categories of services and activities listed in Section A of Annex I to Directive 2014/65/EU.

(46) EBA, with the participation of ESMA, has issued a report based on thorough background analysis, data collection and consultation for a bespoke prudential regime for all non#systemic investment firms which serves as the basis for the revised prudential framework for investment firms.

(47) In order to ensure the harmonised application of this Regulation, EBA should develop draft regulatory technical standards to specify the scope and methods for prudential consolidation of investment firm groups, the calculation of fixed overheads, measuring the K#factors, specifying the notion of segregated accounts in relation to client money, adjusting the coefficients for K#DTF in the case of stressed market conditions, the calculation for setting own funds requirements equal to the total margin required by clearing members, the templates for the public disclosures including as regards investment firms' investment policy and regulatory reporting required under this Regulation and the information to be provided to competent authorities related to the thresholds for requiring authorisation as a credit institution. The Commission should be empowered to supplement this Regulation by adopting the regulatory technical standards developed by EBA by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010. The Commission and EBA should ensure that those regulatory technical standards can be applied by all investment firms concerned in a manner that is proportionate to the nature, scale and complexity of those investment firms and their activities.

(48) The Commission should also be empowered to adopt the implementing technical standards developed by EBA and by ESMA by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1093/2010 and Article 15 Regulation (EU) No 1095/2010.

(49) In order to ensure the uniform application of this Regulation and to take account of developments in financial markets, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to supplement this Regulation by clarifying the definitions in this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law#Making[16]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(50) In order to ensure legal certainty and avoid overlaps between the current prudential framework applicable to both credit institutions and investment firms and this Regulation, Regulation (EU) No 575/2013 and Directive 2013/36/EU should be amended in order to remove investment firms from their scope. However, investment firms which are part of a banking group should remain subject to those provisions in Regulation (EU) No 575/2013 and Directive 2013/36/EU which are relevant to the banking group, such as the provisions on the intermediate EU parent undertaking referred to in Article 21b of Directive 2013/36/EU and to the rules on prudential

consolidation set out in Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013.

(51) Since the objective of this Regulation, namely to set up an effective and proportionate prudential framework to ensure that investment firms which are authorised to operate within the Union operate on a sound financial basis and are managed in an orderly way including, where relevant, in the best interests of their clients, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

(**1**) OJ C 378, 19.10.2018, p. 5.

(**2**) OJ C 262, 25.7.2018, p. 35.

(**3**) Position of the European Parliament of 16 April 2019 (not yet published in the Official Journal) and decision of the Council of 8 November 2019.

(**4**) 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 (OJ L 176, 27.6.2013, p. 1).

(**5**) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

(**6**) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

(**7**) Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (see page 64 of this Official Journal).

(**8**) Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (OJ L 150, 7.6.2019, p. 1).

(**9**) Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions (OJ L 11, 17.1.2015, p. 1).

(**10**) Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

(**11**) Regulation (EU) 2019/630 of the European Parliament and of the Council of 17 April 2019 amending Regulation (EU) No 575/2013 as regards minimum loss coverage for non-performing exposures (OJ L 111, 25.4.2019, p. 4).

(**12**) Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (OJ L 150, 7.6.2019, p. 253).

(**13**) Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

(**14**) Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

(**15**) Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

(**16**) OJ L 123, 12.5.2016, p. 1.

Status:
Point in time view as at 31/01/2020.

Changes to legislation:
There are currently no known outstanding effects for the Regulation (EU) 2019/2033 of the European Parliament and of the Council, Introductory Text.