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 1

General principles

Article 15

K#factor requirement and applicable coefficients

1   For the purposes of point (c) of Article 11(1), the K#factor requirement shall amount
to at least the sum of the following:
   a   Risk#to#Client (RtC) K#factors calculated in accordance with Chapter 2;
   b   Risk#to#Market (RtM) K#factors calculated in accordance with Chapter 3;
   c   Risk#to#Firm (RtF) K#factors calculated in accordance with Chapter 4.

2   The following coefficients shall apply to the corresponding K#factors:

TABLE 1

K#FACTORS		COEFFICIENT
Assets under management under both discretionary portfolio management and nondiscretionary advisory arrangements of an ongoing nature	K#AUM	0,02 %
Client money held	K#CMH (on segregated accounts)	0,4 %
	K#CMH (on non# segregated accounts)	0,5 %
Assets safeguarded and administered	K#ASA	0,04 %
Client orders handled	K#COH cash trades	0,1 %

	K#COH derivatives	0,01 %
Daily trading flow	K#DTF cash trades	0,1 %
	K#DTF derivatives	0,01 %

3   Investment firms shall monitor the value of their K#factors for any trends that could leave them with a materially different own funds requirement for the purposes of Article 11 for the following reporting period under Part Seven and shall notify their competent authority of that materially different own funds requirement.

4   Where competent authorities consider that there has been a material change in the business activities of an investment firm that impacts the amount of a relevant K#factor, they may adjust the corresponding amount in accordance with point (a) of Article 39(2) of Directive (EU) 2019/2034.

5   In order to ensure the uniform application of this Regulation and to take account of developments in financial markets, EBA shall, in consultation with ESMA, develop draft regulatory technical standards to:

   a   specify the methods for measuring the K#factors in Title II of Part Three;
   b   specify the notion of segregated accounts for the purposes of this Regulation for the conditions that ensure the protection of client money in the event of the failure of an investment firm;
   c   specify adjustments to the K#DTF coefficients referred to in Table 1 of paragraph 2 of this Article in the event that, in stressed market condition as referred to in Commission Delegated Regulation (EU) 2017/578[(1)], the K#DTF requirements seem overly restrictive and detrimental to financial stability.

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.

CHAPTER 2

RtC K#factors

Article 16

RtC K#factor requirement

The RtC K#factor requirement is determined by the following formula:

K#AUM + K#CMH + K#ASA + K#COH

where:

K#AUM is equal to AUM measured in accordance with Article 17, multiplied by the corresponding coefficient in Article 15(2);

K#CMH is equal to CMH measured in accordance with Article 18, multiplied by the corresponding coefficient in Article 15(2);

Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27...
PART THREE TITLE II CHAPTER 2
Document Generated: 2023-09-15

3

K#ASA is equal to ASA measured in accordance with Article 19, multiplied by the corresponding coefficient in Article 15(2);

K#COH is equal to COH measured in accordance with Article 20, multiplied by the corresponding coefficient in Article 15(2).

Article 17

Measuring AUM for the purpose of calculating K#AUM

1   For the purpose of calculating K#AUM, AUM shall be the rolling average of the value of the total monthly assets under management, measured on the last business day of each of the previous 15 months converted into the entities' functional currency at that time, excluding the three most recent monthly values.

AUM shall be the arithmetic mean of the remaining 12 monthly values.

K#AUM shall be calculated on the first business day of each month.

2   Where the investment firm has formally delegated the management of assets to another financial entity, those assets shall be included in the total amount of AUM measured in accordance with paragraph 1.

Where another financial entity has formally delegated the management of assets to the investment firm, those assets shall be excluded from the total amount of assets under management measured in accordance with paragraph 1.

Where an investment firm has been managing assets for less than 15 months, or where it has done so for a longer period as a small and non#interconnected investment firm and now exceeds the threshold for AUM, it shall use historical data for AUM for the period specified under paragraph 1 as soon as such data becomes available to calculate K# AUM. The competent authority may replace missing historical data points by regulatory determinations based on the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU.

Article 18

Measuring CMH for the purpose of calculating K#CMH

1   For the purpose of calculating K#CMH, CMH shall be the rolling average of the value of total daily client money held, measured at the end of each business day for the previous nine months, excluding the three most recent months.

CMH shall be the arithmetic mean of the daily values from the remaining six months.

K#CMH shall be calculated on the first business day of each month.

2   Where an investment firm has been holding client money for less than nine months, it shall use historical data for CMH for the period specified under paragraph 1 as soon as such data becomes available to calculate K#CMH.

The competent authority may replace missing historical data points by regulatory determinations based on the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU.

Article 19

Measuring ASA for the purpose of calculating K#ASA

1   For the purpose of calculating K#ASA, ASA shall be the rolling average of the value of the total daily assets safeguarded and administered, measured at the end of each business day for the previous nine months, excluding the three most recent months.

ASA shall be the arithmetic mean of the daily values from the remaining six months.

K#ASA shall be calculated on the first business day of each month.

2   Where an investment firm has formally delegated the tasks of safeguarding and administration of assets to another financial entity, or where another financial entity has formally delegated such tasks to the investment firm, those assets shall be included in the total amount of ASA which is measured in accordance with paragraph 1.

3   Where an investment firm has been safeguarding and administering assets for less than six months, it shall use historical data for ASA for the period specified under paragraph 1 as soon as such data becomes available to calculate K#ASA. The competent authority may replace missing historical data points by regulatory determinations based on the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU.

Article 20

Measuring COH for the purpose of calculating K#COH

1   For the purpose of calculating K#COH, COH shall be the rolling average of the value of the total daily client orders handled, measured throughout each business day over the previous six months, excluding the three most recent months.

COH shall be the arithmetic mean of the daily values from the remaining three months.

K#COH shall be calculated on the first business day of each month.

2   COH shall be measured as the sum of the absolute value of buys and the absolute value of sells for both cash trades and derivatives in accordance with the following:
     a   for cash trades, the value is the amount paid or received on each trade;
     b   for derivatives, the value of the trade is the notional amount of the contract.

The notional amount of interest rate derivatives shall be adjusted for the time to maturity (in years) of those contracts. The notional amount shall be multiplied by the duration set out in the following formula:

Duration = time to maturity(in years) / 10

Without prejudice to the fifth subparagraph, COH shall include transactions executed by investment firms providing portfolio management services on behalf of investment funds.

COH shall include transactions which arise from investment advice in respect of which an investment firm does not calculate K#AUM.

COH shall exclude transactions handled by the investment firm that arise from the servicing of a client's investment portfolio where the investment firm already calculates K#AUM in respect of that client's investments or where that activity relates to the delegation of management of assets to the investment firm not contributing to the AUM of that investment firm by virtue of Article 17(2).

COH shall exclude transactions executed by the investment firm in its own name either for itself or on behalf of a client.

Investment firms may exclude from the measurement of COH any orders which have not been executed, where such non#execution is due to the timely cancellation of the order by the client.

3   Where an investment firm has been handling client orders for less than six months, or has done so for a longer period as a small and non#interconnected investment firm, it shall use historical data for COH for the period specified under paragraph 1 as soon as such data becomes available to calculate K#COH. The competent authority may replace missing historical data points by regulatory determinations based on the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU.

CHAPTER 3

RtM K#Factors

Article 21

RtM K#factor requirement

1   The RtM K#factor requirement for the trading book positions of an investment firm dealing on own account, whether for itself or on behalf of a client shall be either K#NPR calculated in accordance with Article 22 or K#CMG calculated in accordance with Article 23.

2   Investment firms shall manage their trading book in accordance with Chapter 3 of Title I of Part Three of Regulation (EU) No 575/2013.

3   The RtM K#factor requirement applies to all trading book positions, which include in particular positions in debt instruments (including securitisation instruments), equity instruments, collective investment undertakings (CIUs), foreign exchange and gold, and commodities (including emission allowances).

4   For the purpose of calculating the RtM K#factor requirement, an investment firm shall include positions other than trading book positions where those give rise to foreign exchange risk or commodity risk.

Article 22

Calculating K#NPR

For the purpose of calculating K#NPR, the own funds requirement for the trading book positions of an investment firm dealing on own account, whether for itself or on behalf of a client, shall be calculated using one of the following approaches:

(a)   the standardised approach set out in Chapters 2, 3 and 4 of Title IV of Part Three of Regulation (EU) No 575/2013;

(b)   the alternative standardised approach set out in Chapter 1a of Title IV of Part Three of the Regulation No (EU) No 575/2013;

(c)   the alternative internal model approach set out in Chapter 1b of Title IV of Part Three of the Regulation No (EU) No 575/2013.

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 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

Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27...
PART THREE TITLE II CHAPTER 4 Section 1
Document Generated: 2023-09-15

7

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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.

CHAPTER 4

RtF K#factors

Article 24

RtF K#factor requirement

The RtF K#factor requirement is determined by the following formula:

K-TCD + K-DTF + K-CON

where:

K#TCD is equal to the amount calculated in accordance with Article 26;

K#DTF is equal to DTF measured in accordance with Article 33, multiplied by the corresponding coefficient established in Article 15(2) and

K#CON is equal to the amount calculated in accordance with Article 39.

K#TCD and K#CON shall be based on the transactions recorded in the trading book of an investment firm dealing on own account, whether for itself or on behalf of a client.

K#DTF shall be based on the transactions recorded in the trading book of an investment firm dealing on own account, whether for itself or on behalf of a client, and the transactions that an investment firm enters into through the execution of orders on behalf of clients in its own name.

Section 1

Trading counterparty default

Article 25

Scope

1   This Section applies to the following contracts and transactions:
  a   derivative contracts listed in Annex II to Regulation (EU) No 575/2013, with the exception of the following:

     (i)   derivative contracts directly or indirectly cleared through a central counterparty (CCP) where all of the following conditions are met:

> — the positions and assets of the investment firm related to those contracts 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 under national law in the event of the default or insolvency of the clearing member or one or more of its other clients,
>
> — laws, regulations, rules and contractual arrangements applicable to or binding the clearing member facilitate the transfer of the client's positions relating to those contracts 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,
>
> — the investment firm has obtained an independent, written and reasoned legal opinion which concludes that, in the event of a legal challenge, the investment firm would bear no losses on account of the insolvency of its clearing member or of any of its clearing member's clients;

  (ii)   exchange#traded derivative contracts;

  (iii) derivative contracts held for hedging a position of the investment firm resulting from a non#trading book activity;

b long settlement transactions;

c repurchase transactions;

d securities or commodities lending or borrowing transactions;

e margin lending transactions;

f any other type of SFTs;

g credits and loans referred to in point (2) of Section B of Annex I to Directive 2014/65/EU, if the investment firm is executing the trade in the name of the client or receiving and transmitting the order without executing it.

For the purposes of point (a)(i) of the first subparagraph, derivative contracts directly or indirectly cleared through a QCCP shall be deemed to meet the conditions set out in that point.

2   Transactions with the following types of counterparties shall be excluded from the calculation of K#TCD:

a central governments and central banks, where the underlying exposures would receive a 0 % risk weight under Article 114 of Regulation (EU) No 575/2013;

b multilateral development banks listed in Article 117(2) of Regulation (EU) No 575/2013;

c international organisations listed in Article 118 of Regulation (EU) No 575/2013.

3   Subject to the prior approval of the competent authorities, an investment firm may exclude from the scope of the calculation of K#TCD transactions with a counterparty which is its parent undertaking, its subsidiary, a subsidiary of its parent undertaking or an undertaking linked by a relationship within the meaning of Article 22(7) of Directive 2013/34/EU. Competent authorities shall grant approval if the following conditions are fulfilled:

a the counterparty is a credit institution, an investment firm, or a financial institution, subject to appropriate prudential requirements;

b   the counterparty is included in the same prudential consolidation as the investment firm on a full basis in accordance with Regulation (EU) No 575/2013 or Article 7 of this Regulation, or the counterparty and the investment firm are supervised for compliance with the group capital test in accordance with Article 8 of this Regulation;

c   the counterparty is subject to the same risk evaluation, measurement and control procedures as the investment firm;

d   the counterparty is established in the same Member State as the investment firm;

e   there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities from the counterparty to the investment firm.

4   By way of derogation from this Section, an investment firm may, subject to the approval of the competent authority, calculate the exposure value of derivative contracts listed in Annex II to Regulation (EU) No 575/2013 and for the transactions referred to in points (b) to (f) of paragraph 1 of this Article by applying one of the methods set out in Section 3, 4 or 5, Chapter 6, Title II, Part Three of Regulation (EU) No 575/2013 and calculate the related own funds requirements by multiplying the exposure value by the risk factor defined per counterparty type as set out in Table 2 in Article 26 of this Regulation.

Investment firms included in the supervision on a consolidated basis in accordance with Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013 may calculate the related own funds requirement by multiplying the risk weighted exposure amounts, calculated in accordance with Section 1 of Chapter 2 of Title II of Part Three of Regulation (EU) No 575/2013, by 8 %.

5   When applying the derogation in paragraph 4 of this Article, investment firms shall also apply a credit valuation adjustment (CVA) factor by multiplying the own funds requirement, calculated in accordance with paragraph 2 of this Article, by the CVA calculated in accordance with Article 32.

Rather than applying the CVA factor multiplier, investment firms included in the supervision on a consolidated basis in accordance with Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013 may calculate own funds requirements for credit valuation adjustment risk in accordance with Title VI of Part Three of Regulation (EU) No 575/2013.

Article 26

Calculating K#TCD

For the purpose of calculating K#TCD, the own funds requirement shall be determined by the following formula:

Own funds requirement = $\alpha \cdot EV \cdot RF \cdot CVA$

where:

$\alpha = 1,2$;

EV = the exposure value calculated in accordance with Article 27;

RF = the risk factor defined per counterparty type as set out in Table 2; and

CVA = the credit valuation adjustment calculated in accordance with Article 32.

TABLE 2

Counterparty type	Risk factor
Central governments, central banks and public sector entities	1,6 %
Credit institutions and investment firms	1,6 %
Other counterparties	8 %

Article 27

Calculation of exposure value

The calculation of the exposure value shall be determined in accordance with the following formula:

Exposure value = Max(0; RC + PFE – C)

where:

RC = replacement cost as determined in Article 28;

PFE = potential future exposure as determined in Article 29; and

C = collateral as determined in Article 30.

The replacement cost (RC) and collateral (C) shall apply to all transactions referred to in Article 25.

The potential future exposure (PFE) applies only to derivative contracts.

An investment firm may calculate a single exposure value at netting level for all the transactions covered by a contractual netting agreement, subject to the conditions laid down in Article 31. Where any of those conditions is not met, the investment firm shall treat each transaction as if it was its own netting set.

Article 28

Replacement cost (RC)

The replacement cost referred to in Article 27 shall be determined as follows:

(a)   for derivative contracts, RC is determined as the CMV;

(b)   for long settlement transactions, RC is determined as the settlement amount of cash to be paid or to be received by the investment firm upon settlement; a receivable is to be treated as a positive amount and a payable is to be treated as a negative amount;

(c)   for repurchase transactions and securities or commodities lending or borrowing transactions, RC is determined as the amount of cash lent or borrowed; cash lent by the investment firm is to be treated as a positive amount and cash borrowed by the investment firm is to be treated as a negative amount;

Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27...
PART THREE TITLE II CHAPTER 4 Section 1
Document Generated: 2023-09-15

11

(d)   for securities financing transactions, where both legs of the transaction are securities, RC is determined by the CMV of the security lent by the investment firm; the CMV shall be increased using the corresponding volatility adjustment in Table 4 of Article 30;

(e)   for margin lending transactions and credits and loans referred to in point (g) of Article 25(1), RC is determined by the book value of the asset in accordance with the applicable accounting framework.

Article 29

Potential future exposure

1   The potential future exposure (PFE) referred to in Article 27 shall be calculated for each derivative as the product of:
   a   the effective notional (EN) amount of the transaction set in accordance with paragraphs 2 to 6 of this Article; and
   b   the supervisory factor (SF) set in accordance with paragraph 7 of this Article.

2   The effective notional (EN) amount shall be the product of the notional amount calculated in accordance with paragraph 3, its duration calculated in accordance with paragraph 4, and its supervisory delta calculated in accordance with paragraph 6.

3   The notional amount, unless clearly stated and fixed until maturity, shall be determined as follows:
   a   for foreign exchange derivative contracts, the notional amount is defined as the notional amount of the foreign currency leg of the contract, converted to the domestic currency; if both legs of a foreign exchange derivative are denominated in currencies other than the domestic currency, the notional amount of each leg is converted to the domestic currency and the leg with the larger domestic currency value is the notional amount;
   b   for equity and commodity derivatives contracts and emission allowances and derivatives thereof, the notional amount is defined as the product of the market price of one unit of the instrument and the number of units referenced by the trade;
   c   for transactions with multiple payoffs that are state contingent including digital options or target redemption forwards, an investment firm shall calculate the notional amount for each state and use the largest resulting calculation;
   d   where the notional is a formula of market values, the investment firm shall enter the CMVs to determine the trade notional amount;
   e   for variable notional swaps such as amortising and accreting swaps, investment firms shall use the average notional over the remaining life of the swap as the trade notional amount;
   f   leveraged swaps shall be converted to the notional amount of the equivalent unleveraged swap so that where all rates in a swap are multiplied by a factor, the stated notional amount is multiplied by the factor on the interest rates to determine the notional amount;
   g   for a derivative contract with multiple exchanges of principal, the notional amount shall be multiplied by the number of exchanges of principal in the derivative contract to determine the notional amount.

4   The notional amount of interest rate contracts and credit derivative contracts for the time to maturity (in years) of those contracts shall be adjusted according to the duration set out in the following formula:

Duration = $(1 - \exp(-0,05 \cdot \text{time to maturity})) / 0,05$

For derivative contracts other than interest rate contracts and credit derivative contracts the duration shall be 1.

5   The maturity of a contract shall be the latest date on which the contract may still be executed.

If the derivative references the value of another interest rate or credit instrument, the time period shall be determined on the basis of the underlying instrument.

For options, the maturity shall be the latest contractual exercise date as specified by the contract.

For a derivative contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the fair value of the contract is zero, the remaining maturity shall equal the time until the next reset date.

6   The supervisory delta of options and swaptions may be calculated by the investment firm itself, using an appropriate model subject to the approval of competent authorities. The model shall estimate the rate of change of the value of the option with respect to small changes in the market value of the underlying. For transactions other than options and swaptions or where no model has been approved by the competent authorities, the delta shall be 1.

7   The supervisory factor (SF) for each asset class shall be set in accordance with the following table:

TABLE 3

Asset class	Supervisory factor
Interest rate	0,5 %
Foreign exchange	4 %
Credit	1 %
Equity single name	32 %
Equity index	20 %
Commodity and emission allowance	18 %
Other	32 %

8   The potential future exposure of a netting set is the sum of the potential future exposure of all transactions included in the netting set, multiplied by:
   a   0,42, for netting sets of transactions with financial and non#financial counterparties for which collateral is exchanged bilaterally with the counterparty, if required, in accordance with the conditions laid down in Article 11 of Regulation (EU) No 648/2012;
   b   1, for other netting sets.

Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27...
PART THREE TITLE II CHAPTER 4 Section 1
Document Generated: 2023-09-15

13

Article 30

Collateral

1   All collateral for both bilateral and cleared transactions referred to in Article 25 shall be subject to volatility adjustments in accordance with the following table:

TABLE 4

Asset class		Volatility adjustment repurchase transactions	Volatility adjustment other transactions
Debt securities issued by central governments or central banks	≤ 1 year	0,707 %	1 %
	> 1 year ≤ 5 years	2,121 %	3 %
	> 5 years	4,243 %	6 %
Debt securities issued by other entities	≤ 1 year	1,414 %	2 %
	> 1 year ≤ 5 years	4,243 %	6 %
	> 5 years	8,485 %	12 %
Securitisation positions	≤ 1 year	2,828 %	4 %
	> 1 year ≤ 5 years	8,485 %	12 %
	> 5 years	16,970 %	24 %
Listed equities and convertibles		14,143 %	20 %
Other securities and commodities		17,678 %	25 %
Gold		10,607 %	15 %
Cash		0 %	0 %

For the purposes of Table 4, securitisation positions shall not include re#securitisation positions.

Competent authorities may change the volatility adjustment for certain types of commodities for which there are different levels of volatility in prices. They shall notify EBA of such decisions together with the reasons for the changes.

2   The value of collateral shall be determined as follows:

   a   for the purposes of points (a), (e) and (g) of Article 25(1), by the amount of collateral received by the investment firm from its counterparty decreased in accordance with Table 4;

   b   for the transactions referred to in points (b), (c), (d) and (f) of Article 25(1), by the sum of the CMV of the security leg and the net amount of collateral posted or received by the investment firm.

For securities financing transactions, where both legs of the transaction are securities, collateral is determined by the CMV of the security borrowed by the investment firm.

14

Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27...
PART THREE TITLE II CHAPTER 4 Section 1
Document Generated: 2023-09-15

Where the investment firm is purchasing or has lent the security, the CMV of the security shall be treated as a negative amount and shall be decreased to a larger negative amount, using the volatility adjustment in Table 4. Where the investment firm is selling or has borrowed the security, the CMV of the security shall be treated as a positive amount and be decreased using the volatility adjustment in Table 4.

Where different types of transactions are covered by a contractual netting agreement, subject to the conditions laid down in Article 31, the applicable volatility adjustments for 'other transactions' of Table 4 shall be applied to the respective amounts calculated under points (a) and (b) of the first subparagraph on an issuer basis within each asset class.

3   Where there is a currency mismatch between the transaction and the collateral received or posted, an additional currency mismatch volatility adjustment of 8 % shall apply.

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 mark#to#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;

(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;

Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27...
PART THREE TITLE II CHAPTER 4 Section 2
Document Generated: 2023-09-15

15

      (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.

Article 32

Credit valuation adjustment

For the purposes of this Section, CVA means an adjustment to the mid#market valuation of the portfolio of transactions with a counterparty which reflects the CMV of the credit risk of the counterparty to the investment firm, but does not reflect the CMV of the credit risk of the investment firm to the counterparty.

CVA shall be 1,5 for all transactions other than the following transactions, for which CVA shall be 1:

(a)   transactions with non#financial counterparties as defined in point (9) of Article 2 of Regulation (EU) No 648/2012, or with non#financial counterparties established in a third country, where those transactions do not exceed the clearing threshold as specified in Article 10(3) and (4) of that Regulation;

(b)   intragroup transactions as provided for in Article 3 of Regulation (EU) No 648/2012;

(c)   long settlement transactions;

(d)   SFTs, including margin lending transactions, unless the competent authority determines that the investment firm's CVA risk exposures arising from those transactions are material; and

(e)   credits and loans referred to in point (g) of Article 25(1).

Section 2

Daily trading flow

Article 33

Measuring DTF for the purpose of calculating K#DTF

1   For the purpose of calculating K#DTF, DTF shall be the rolling average of the value of the total daily trading flow, measured throughout each business day over the previous nine months, excluding the three most recent months.

DTF shall be the arithmetic mean of the daily values from the remaining six months.

K#DTF shall be calculated on the first business day of each month.

2   DTF shall be measured as the sum of the absolute value of buys and the absolute value of sells for both cash trades and derivatives in accordance with the following:
    a   for cash trades, the value is the amount paid or received on each trade;
    b   for derivatives, the value of the trade is the notional amount of the contract.

The notional amount of interest rate derivatives shall be adjusted for the time to maturity (in years) of those contracts. The notional amount shall be multiplied by the duration set out in the following formula:

Duration = time to maturity(in years) / 10

3   DTF shall exclude transactions executed by an investment firm for the purpose of providing portfolio management services on behalf of investment funds.

DTF shall include transactions executed by an investment firm in its own name either for itself or on behalf of a client.

4   Where an investment firm has had a daily trading flow for less than nine months, it shall use historical data for DTF for the period specified under paragraph 1 as soon as such data becomes available to calculate K#DTF. The competent authority may replace missing historical data points by regulatory determinations based on the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU.

CHAPTER 5

Environmental and social objectives

Article 34

Prudential treatment of assets exposed to activities associated with environmental or social objectives

1   EBA, after consulting the European Systemic Risk Board, shall assess, on the basis of available data and the findings of the Commission's High#Level Expert Group on Sustainable Finance, whether dedicated prudential treatment of assets exposed to activities associated substantially with environmental or social objectives, in the form of adjusted K#factors or adjusted K#factor coefficients, would be justified from a prudential perspective. In particular, EBA shall assess the following:
   a   methodological options for assessing the exposures of asset classes to activities substantially associated with environmental or social objectives;
   b   specific risk profiles of assets exposed to activities associated substantially with environmental or social objectives;
   c   risks related to the depreciation of assets due to regulatory changes such as climate change mitigation;
   d   potential effects of dedicated prudential treatment of assets exposed to activities associated substantially with environmental or social objectives on financial stability.

2   EBA shall submit a report on its findings to the European Parliament, to the Council and to the Commission by 26 December 2021.

3   On the basis of the report referred to in paragraph 2, the Commission shall, if appropriate, submit a legislative proposal to the European Parliament and the Council.

(**1**)   Commission Delegated Regulation (EU) 2017/578 of 13 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying the requirements on market making agreements and schemes (OJ L 87, 31.3.2017, p. 183).