

DRAFT COMPROMISE A

Article 12 - Small and non-interconnected investment firms + Recitals 16, 19, 23

Bold/italics text represents changes to the Commission proposal.

COVERING AMs 2, 3, 5, 10 to 16, 40 to 43, 49, 50 and 86 to 112

Article 12

Small and non-interconnected investment firms

1. An investment firm shall be deemed a small and non-interconnected investment firm for the purposes of this Regulation where it meets all of the following conditions:
 - (a) AUM (or assets under management) calculated in accordance with Article 17 is less than EUR 1.2 billion;
 - (b) COH (or client orders handled) calculated in accordance with Article 20 is less than either:
 - i) EUR 100 million/day for cash trades or
 - ii) EUR 1 billion/day for derivatives.
 - (c) ASA (or assets safeguarded and administered) calculated in accordance with Article 19 is **EUR 75 50 000 000 zero**;
(AM 10 Rapporteur, AM 91 Lucke, AM 92 Kofod, AM 93 Torvalds/Nagtegaal)
 - (d) CMH (or client money held) calculated in accordance with Article 18 is **EUR 7.55 000 000 zero**;
(AM 11 Rapporteur, AM 94 Lucke, AM 95 Torvalds/Nagtegaal, AM 96 Kofod, AM 97 Delvaux)
 - (e) DTF (daily trading flow) calculated in accordance with Article 32 is zero;
 - (f) NPR (net position risk) or CMG (clearing member guarantee) calculated in accordance with Articles 22 and 23 is zero;
 - (g) TCD (trading counterparty default) calculated in accordance with Article 26 is zero;
 - (h) the balance sheet total of the investment firm is less than EUR 100 million;
 - (i) the total annual gross revenue from investment services and activities of by the investment firm is less than EUR 30 million.

For the purposes of points (a), (b), (c), (e), (f), and (g), end-of day levels shall apply.

For the purposes of point (d), intra-day levels shall apply.

For the purposes of points (h) and (i), the levels applicable at the end of the last financial year shall apply.

2. The conditions set out in points (a), (b), (h) and (i) of paragraph 1 shall apply on a combined basis for all investment firms that are part of a group.

The conditions set out in points (c), (d), (e), (f) and (g) shall apply to each investment firm on an individual basis.

~~Where an investment firm no longer meets all the conditions set out in paragraph 1, it shall not be considered a small and non-interconnected investment firm three months after the condition was not met with immediate effect.~~

- 2a. For the purposes of points (a) to (d) of paragraph 1, an investment firm shall not be considered to be a small and non-interconnected investment firm in the event that the investment firm exceeds, on an average rolling basis, the applicable threshold during the preceding ~~12~~ **six** month period.

(AM 13 Rapporteur, AM 208 Lucke)

- 2b. For the purposes of points (e), (f) and (g) of paragraph 1, an investment firm shall not be considered to be a small and non-interconnected investment firm after a period of three months from the date on which the threshold was not met. (AM 14 Rapporteur AM 107 Lucke)

3. For the purposes of points (h) and (i) of paragraph 1, an investment firm shall not be considered to be a small and non-interconnected investment firm in the event that the relevant threshold ~~is~~ **was** exceeded **at the end of the previous financial year, for two consecutive years.**

(AM 15 Rapporteur)

- ~~3. Where an investment firm no longer meets the conditions set out in points (a) or (b) of paragraph 1 but continues to meet the conditions set out in points (c) to (i) of paragraph 1, it shall not be considered a small and non-interconnected investment firm after a period of 3 months, calculated from the date when the threshold has been exceeded.~~

4. Where an investment firm, which has not met all of the conditions set out in paragraph 1, subsequently meets those conditions, it shall be considered, subject to approval by the competent authority, a small and non-interconnected investment firm after a period of ~~6~~ **3** months from the date when those conditions are met.

(AM 111 Lucke).

- ~~5. In order to take account of developments in financial markets, the Commission shall be empowered to adopt delegated acts in accordance with Article 54 in order to adjust the conditions for investment firms to qualify as small and non-interconnected firms in accordance with this Article.~~

(AM 16 Rapporteur, AM 112 Torvalds/Nagtegaal)

Recital 16 adapted to revised Articles 12 and 15:

Investment firms should be considered 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 whose size means they are less likely to cause widespread negative impacts for clients and markets in case risks inherent in their business materialise or in case 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, have ~~no limited~~ client assets or money under their control, have assets under ~~both~~ discretionary portfolio management ~~and non-discretionary (advisory) arrangements~~ of less than EUR 1.2 billion, handle fewer than EUR 100 million per day of client orders in cash trades or EUR 1 billion per day in derivatives, and have a balance sheet smaller than EUR 100 million and total gross annual revenues from the performance of their investment services of less than EUR 30 million.

Recital 19 adapted to revised Articles 12 and 15:

All investment firms should calculate their capital requirement with reference to a set of K-factors which capture Risk-To-Customer ('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), assets safeguarded and administered (K-ASA), client money held (K-CMH), and customer orders handled (K-COH).

Recital 23 adapted to revised Articles 12 and 15:

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 customer portfolios or poor execution and provides reassurance and customer benefits in terms of the continuity of service of ongoing portfolio management ~~and advice~~. K-ASA captures the risk of safeguarding and administering customer assets, and ensures that investment firms hold capital in proportion to such balances, regardless of whether they are on its own balance sheet or segregated in other accounts. K-CMH captures the risk of potential for harm where an investment firm holds the money of its customers, ~~taking into account whether regardless of~~ they are on its own balance sheet or segregated in other accounts. K-COH captures the potential risk to clients of a firm which executes its orders (in the name of the client, and not in the name of the firm itself), for example as part of execution-only services to clients or when a firm is part of a chain for client orders.

DRAFT COMPROMISE B

Article 13 - Fixed Overheads

Bold/italics text represents changes to the Commission proposal.

COVERING AMs 113 to 116

Article 13 *Fixed overheads requirement*

1. For the purposes of Article 11(1)(a), the fixed overheads requirement shall amount to at least one quarter of the fixed overheads of the preceding year.
2. Where the competent authority considers that there has been ***a an exceptional material*** change in the activity of an investment firm, the competent authority may adjust the amount of capital referred to in paragraph 1.
3. Subject to approval by the competent authorities, where an investment firm has no fixed overheads from the previous year, it shall have capital amounting to at least one quarter of the fixed overheads which have been projected in its business plan for the year following the year of commencement of its activities.
4. EBA, in consultation with ESMA, and taking into account Commission Delegated Regulation (EU) 2015/488 shall develop draft regulatory technical standards to:

(a) further specify the calculation of the requirement referred to in paragraph 1 ***and;***
(b) define for the purpose of this Regulation the notion of "material changes" referred to in paragraph 2.

EBA shall submit those draft regulatory technical standards to the Commission by [*nine month from the date of entry into force of this Regulation*].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

DRAFT COMPROMISE C

Article 15 - K-Factor and Capital Requirements

Bold/italics text represents changes to the Commission proposal.

COVERING AMs 17-18, AM 117-127

Article 15

K-factor requirement and applicable coefficients

1. For the purposes of Article 11(1)(c), the K-factor requirement shall amount to at least the sum of the following:
 - (j) Risk-to-Customer (RtC) K-factors calculated in accordance with Chapter 2;
 - (k) Risk-to-Market (RtM) K-factors calculated in accordance with Chapter 3;
 - (l) 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 <i>both</i> discretionary portfolio management <i>and non-discretionary</i> <i>arrangements</i> <i>(advisory)</i>	K-AUM	0.02%
Client money held	K-CMH <i>(on segregated accounts)</i>	0.23%
	K-CMH <i>(on non-segregated accounts)</i>	0.545%
Assets under safekeeping and administration	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%
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(AM 17, 18 Rapporteur, AM 117 Lucke)

3. An investment firm shall monitor the value of its K-factors for any trends that could leave it with a materially different capital requirement for the next reporting period and shall notify its competent authority of that materially different capital requirement.
4. Where competent authorities consider that there has been **an exceptional 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 Article 36(2)(a) of Directive (EU) ----/[IFD].

(AM 123 Lucke)

5. In order to ensure the uniform application of this Regulation and to take account of developments in financial markets, ~~the Commission shall be empowered to adopt delegated acts in accordance with Article 54 in order to:~~ **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) adjust the coefficients specified in paragraph 2 of this Article;
 - (c) **define the notion of “segregated account” for the purpose of this Regulation by specifying the conditions that ensure the protection of client’s money in the event of the failure of an investment firm;**
 - (d) **assess whether advice activities should be included in K-AUM and specify the methods for the potential inclusion.**

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010. (AM 124 Tang)

6. **ESMA shall be empowered to adjust the K-DTF coefficients referred to in Table 1 of paragraph 2 in the event that, in situations of market stress as referred to in Commission Delegated Regulation (EU) 2017/578, the K-DTF requirements seem overly restrictive and detrimental to financial stability.**

DRAFT COMPROMISE D

Articles 16 to 20 - Risk to customers K factors

Bold/italics text represents changes to the Commission proposal.

COVERING AM 19-21 and 128-144

Article 16 remains as in the Commission proposal (no amendments tabled).

Article 17

Measuring AUM for the purposes of calculating K-AUM

1. For the purposes 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 calendar months ***converted into the entities' functional currency at that time***, excluding the 3 most recent monthly values.
AUM shall be the average or simple arithmetic mean of the remaining 12 monthly measurements.
K-AUM shall be calculated within the first 14 days of each calendar month.
(AM 128 Ferber)
2. Where the investment firm has formally delegated the assets under management to another financial entity, those delegated assets shall be included in the total amount of AUM measured in accordance with paragraph 1.
Where another financial entity has formally delegated the assets under management to the investment firm, those delegated assets shall not be included in the total amount of assets under management measured in accordance with paragraph 1.
3. Where an investment firm has been managing assets for less than 15 months, it may use business projections of AUM to calculate K-AUM, subject to the following cumulative requirements:
 - (a) historical data is used as soon as it becomes available;
 - (b) the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU have been positively assessed by the competent authority.

Article 18

Measuring CMH for the purposes of calculating K-CMH

1. For the purposes 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 ~~3~~ **12** calendar months.

CMH shall be the average or simple arithmetic mean of the daily measurements in the ~~3~~ **12** calendar months.

K-CMH shall be calculated by the end of business day following the measurement referred to in the first subparagraph.

2. Where an investment firm has been holding client money for less than ~~3~~ **12** months, it may use business projections to calculate K-CMH, subject to the following cumulative requirements:
 - (a) historical data is used as soon as it becomes available;
 - (b) the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU have been positively assessed by the competent authority.

(AM 130, 133, 136 Torvalds/Nagtegaal, AM 131, 132, 137 Lucke, 135 Kofod, 139 Ferber)

Article 19

Measuring ASA for the purposes of calculating K-ASA

1. For the purposes 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 ~~6~~ **15** calendar months, excluding the 3 most recent calendar months.

ASA shall be the average or simple arithmetic mean of the daily measurements from the remaining ~~3~~ **12** calendar months.

K-ASA shall be calculated within the first 14 days of each calendar month.

2. Where an investment firm has been in operation for less than ~~3~~ **15** months, it may use business projections to calculate K-ASA, subject to the following cumulative requirements:
 - (a) historical data is used as soon as it becomes available;
 - (b) the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU have been positively assessed by the competent authority.

(AM 140 Ferber, AM 141 Sander)

Article 20

Measuring COH for the purposes of calculating K-COH

1. For the purposes of calculating K-COH, COH shall be the rolling average of the value of the total daily client orders handled, measured at the end of each business day over the previous 6 calendar months, excluding the 3 most recent calendar months.

COH shall be the average or simple arithmetic mean of the daily measurements for the remaining 3 calendar months.

K-COH shall be calculated within the first 14 days of each quarter.

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.

~~COH shall include transactions executed by investment firms providing portfolio management services on behalf of investment funds.~~

COH shall exclude transactions handled by the investment firm that arise from the servicing of a client's investment portfolio ~~under one of the following conditions:~~

~~(a) where the firm already calculates K-AUM in respect of the client's investments~~

~~or~~

~~(b) where this activity relates to the delegation of assets under management to the firm, not contributing to AUM of this firm by virtue of Art. 17(2).~~

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

~~COH shall exclude orders, which have not been executed, neither by the firm itself, nor by a third party to which the order has been transmitted.~~

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

(AM 143, 144 Ferber)

3. Where an investment firm has been in operation for less than 3 months, it may use business projections to calculate K-COH, subject to the following cumulative requirements:
 - (a) historical data is used as soon as it becomes available;
 - (b) the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU have been positively assessed by the competent authority.

DRAFT COMPROMISE E

Articles 21 to 23 - Risk-to-Market K-Factors

Bold/italics text represents changes to the Commission proposal.

COVERING AMs 145 to 168

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 K-NPR calculated in accordance with Article 22.***
2. ***By derogation from paragraph 1, a competent authority shall allow an investment firm to determine the RtM K-factor requirement by using K-CMG calculated in accordance with Article 23,*** for positions that are centrally cleared where the following conditions have been fulfilled:
 - (a) the investment firm is not part of a group containing a credit institution;
 - (b) the execution and settlement of the transactions of the investment firm that are centrally cleared take place under the responsibility of a clearing member and are either guaranteed by that clearing member or otherwise settled on a delivery-versus-payment basis;
 - (c) the calculation of the initial margin posted by the investment firm to the clearing member is based on an internal model of the clearing member that complies with the requirements set out in Article 41 of Regulation (EU) No 648/2012;
 - ~~(d) the clearing member is a credit institution.~~
(AM 162 Ferber, 163 Delvaux, 164 Lucke)

Article 22

Calculating K-NPR

1. For the purposes of K-NPR, the capital 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 [simplified standardised] approach set out in Chapters 2 to 4 of Title IV of Part Three of Regulation (EU) No 575/2013 ~~where the~~

~~investment firm's trading book business is equal to or less than EUR 300 million;~~

(b) the standardised approach set out in [Chapter 1(a) of Title IV of Part Three of the Regulation No (EU) No 575/2013, in accordance with Article 1(84) of the Proposal for a Regulation of the European Parliament and of the Council 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 amending Regulation (EU) No 648/2012];

(c) the internal model approach set out in [Chapter 1(b) of Title IV of Part Three of the Regulation No (EU) No 575/2013 in accordance with Article 1(84) of the Proposal for a Regulation of the European Parliament and of the Council 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 amending Regulation (EU) No 648/2012].

Kommentiert [BF1]: Compromise proposal as follow-up of shadows meeting on 12 September 2018

K-NPR calculated under the approaches specified under points (b) and (c) shall be multiplied by a factor of 65%.

- For the purposes of the second sentence of point (a) of paragraph 1, an investment firm shall calculate the size of on- and off- balance sheet business in accordance with [paragraphs 2 to 7 of Article 325a of Regulation No (EU) No 575/2013].

Recitals

(20) The K-factor under RtM captures net position risk (K-NPR) in accordance with the market risk provisions of CRR or, ~~simultaneously~~, where permitted by the competent authority for specific types of investment firms which deal on own account through clearing members, ~~positions which are centrally cleared~~, based on margins posted with an investment firm's clearing member (K-CMG). ~~A firm has the option to apply K-NPR and K-CMG simultaneously to different positions.~~

(24) 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 as amended³⁰. This allows investment firms to choose to apply either the standardised approach under Regulation (EU) No 575/2013 (simplified standardised approach under Regulation (EU) No 575/2013 as amended) if their assets are below EUR 300 million or the revised standardised approach under Regulation (EU) No 575/2013 as amended as well as the option to use internal models. In the two last cases, the resulting capital requirement may be decreased to 65%, making permanent the possibility under Regulation (EU)

No 575/2013 as amended to apply this on a temporary basis for three years, in order to take account of investment firms' overall lower prudential relevance. Alternatively, the capital requirement of trading firms whose business is centrally cleared positions should, subject to the approval of the competent authority, be equal to the margins posted with their clearing member

Kommentiert [BF2]: Reinstatement of COM proposal following the reintroduction of FRTB + adjustment.

~~(24a) The application to credit institutions of the Basel standards on the Fundamental Review of the Trading Book should enhance the risk sensitivity of the market risk framework and should clarify the definition of the boundary between banking and trading books. However, due to their nature and activities, such standards should not apply to investment firms.~~

Kommentiert [BF3]: Compromise proposal as follow-up of shadows' meeting on 12 September 2018

Article 23 Calculating K-CMG

~~1. By way of derogation from Article 22, The competent authority may allow an investment firm to calculate K-CMG for positions that are centrally cleared subject to the following conditions: (AM 160 Delvaux)~~

- ~~(a) the investment firm is not part of a group containing a credit institution;~~
- ~~(b) the execution and settlement of the transactions of the investment firm that are centrally cleared take place under the responsibility of a clearing member and are either guaranteed by that clearing member or otherwise settled on a delivery versus payment basis;~~
- ~~(c) the calculation of the initial margin posted by the investment firm to the clearing member is based on an internal model of the clearing member that complies with the requirements set out in Article 41 of Regulation (EU) No 648/2012;~~

~~(a) the clearing member is a credit institution. (AM 162 Ferber, 163 Delvaux, 164 Lucke)~~

[REORGANISED AND MOVED UP TO ARTICLE 21]

1. K-CMG shall be the highest total amount of initial margin posted to the clearing member by the investment firm over the preceding 3 months.

2. EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify the calculation of the amount of the initial margin referred to in paragraph 1(c).

The EBA shall submit those draft regulatory technical standards to the Commission by [nine months from the date of entry into force of this Regulation].

Power is delegated to the Commission to adopt the revised regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

DRAFT COMPROMISE F

Articles 24 to 32 - Risk-to-Firm K-Factors

Bold/italics text represents changes to the Commission proposal.

COVERING AM 22 and 169 to 210

Articles 24 and 26 to 31 remain as in the Commission proposal.

SECTION I

TRADING COUNTER PARTY DEFAULT

Article 25

Scope

1. The following transactions shall be subject to this Section:
 - (a) derivative instruments listed in Annex II of Regulation (EU) No 575/2013, with the exception of the following:
 - (i) OTC derivatives traded with central governments and central banks of Member States;
 - (ii) OTC derivatives **directly or indirectly** cleared through a qualifying central counterparty (QCCP) ~~or through a clearing bank, which is a clearing member of a QCCP; (AM 176 Lucke, AM 177 Sander/Lamassoure)~~
 - (iii) OTC derivatives cleared through a clearing member, where transactions are subject to a clearing obligation pursuant to Article 4 of Regulation (EU) No 648/2012 or to an equivalent requirement to clear that contract in a third country, or where all of the following conditions are met:
 - aa. the positions and assets of the investment firm related to those transactions are distinguished and segregated, at the level of both the clearing member and the QCCP, 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;
 - bb. laws, regulations and contractual arrangements applicable to or binding the clearing member facilitate the transfer of the client's positions relating to those contracts and transactions 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;
cc. the investment firm has obtained an independent, written and reasoned legal opinion which concludes that, in the event of 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.

- (iv) exchange-traded derivatives;
 - (v) derivatives held for hedging a position of the 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.
2. By way of derogation from this Section, an investment firm may calculate its capital requirement for the transactions referred to in paragraph 1 by applying one of the methods set out in [Sections 3, 4 or 5, Title II, Part 3 of Regulation (EU) No 575/2013] and shall immediately inform the competent authority thereof.

Article 32
Measuring DTF for the purposes of calculating K-DTF

1. For the purposes of calculating K-DTF, DTF shall be the rolling average of the value of the total daily trading flow, measured at the end of each business day over the previous ~~6~~ 15 calendar months, excluding the 3 most recent calendar months.

(AM 195, 196 Delvaux)

DTF shall be the average or simple arithmetic mean of the daily measurements for the remaining ~~3~~ 12 calendar months, ~~excluding the ten days with the lowest trading flow and the ten days with the highest trading flow.~~

(AM 22 Rapporteur, AM 194 Torvalds, AM 197 Nagtegaal)

K-DTF shall be calculated within the first 14 days of each ~~year~~ **quarter**.

2. DTF shall be measured as the sum of the absolute value of buys and the absolute value 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.

~~2a (new) EBA, in consultation with ESMA, and taking into account Commission Delegated Regulation (EU) 2015/488, shall develop draft regulatory technical standards to review and further specify the calculation of the derivatives exposures as referred to in Paragraph 2 of this article.~~

~~EBA shall submit those draft regulatory technical standards to the Commission by [nine month from the date of entry into force of this Regulation].~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.~~

NOTE: MOVED TO REVIEW CLAUSE

3. DTF shall exclude transactions executed by an investment firm providing portfolio management services on behalf of *collective investment undertakings* ~~investment funds~~. (AM 206 Ferber, AM 207 Delvaux)
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 been in operation for less than ~~3~~**15** months, it may use business projections to calculate K-DTF subject to the following cumulative requirements:
 - (a) historical data is used as soon as it becomes available;
 - (b) the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU have been positively assessed by the competent authority.

DRAFT COMPROMISE FA

Article 32a (new) - ESG Factors

Bold/italics text represents changes to the Commission proposal. [NOTE: formally not a compromise but an oral amendment]

Chapter 4a (new, adapted from ECON Final Report (CRR), Article 501da)

Article 32a (new)

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

The EBA, after consulting the ESRB, shall assess on the basis of available data and the findings of the High Level Expert Group on Sustainable Finance of the Commission whether a dedicated prudential treatment of assets exposed to activities associated substantially with environmental and / 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 investigate:

i. methodological options for assessing exposures of asset classes to activities associated substantially with environmental and/or social objectives;

ii. specific risk profiles of assets exposed to activities which are associated substantially with environmental and/or social objectives;

iii risks related to the depreciation of assets due to regulatory changes such as climate change mitigation;

iv. the potential effects of a dedicated prudential treatment of assets exposed to activities which are associated substantially with environmental and/or social objectives on financial stability.

The EBA shall submit a report on its findings to the Commission, the European Parliament and the Council by [two years after entry into force of this regulation].

On the basis of this report, the Commission shall, if appropriate, submit to the European Parliament and the Council a legislative proposal.

DRAFT COMPROMISE G

Articles 33 to 41 - Concentration Risk

Bold/italics text represents changes to the Commission proposal.

COVERING AMs 211 to 218

Articles 33 to 39 and 41 remain as in Commission proposal.

Article 40 Exclusions

1. The following exposures shall be excluded from the requirements set out in Article 38(1):
 - (a) exposures not arising in the trading book;
 - (b) exposures which are entirely deducted from an investment firm's own funds;
 - (c) certain exposures incurred in the ordinary course of settlement of payment services, foreign currency transactions, securities transactions and provision of money transmission;
 - (d) asset items constituting claims on central governments:
 - (i) exposures to central governments, central banks, public sector entities, international organisations or multilateral development banks (MDBs) and exposures guaranteed by or attributable to such persons;
 - (ii) exposures to central governments or central banks (other than those referred to under point (i) which are denominated and, where applicable, funded in the national currency of the borrower;
 - (iii) exposures to, or guaranteed by European Economic Area (EEA) states' regional governments and local authorities.
 - (e) exposures and default fund contributions to central counterparties.
2. Competent authorities may fully or partially exempt the following exposures from the application of Article 38(1):
 - (a) covered bonds;
 - (b) exposures to, or guaranteed by EEA states' regional governments and local authorities;
 - (c) liquidity requirements held in government securities, provided that, at the discretion of the competent authority they are assessed as investment grade;
 - (d) exposures to recognised exchanges as defined in Article 4(1)(72) of Regulation (EU) 575/2013, ~~to qualifying central counterparties (QCCP) or to clearing members.~~
(AM 217 Lucke, AM 218 Sander/Lamassoure)

DRAFT COMPROMISE Ga

Articles 42 to 44 - Liquidity Requirements

Bold/italics text represents changes to the Commission proposal.

COVERING AM 23 and 219 to 223

PART FIVE LIQUIDITY

Article 42 *Liquidity requirement*

1. An investment firm shall hold an amount of liquid assets equivalent to at least one third of the fixed overhead requirements calculated in accordance with Article 13(1).
For the purposes of the first subparagraph, liquid assets shall be any of the following:
 - (a) the assets referred to in Articles 10 to 13 ***and 15*** of Commission Delegated Regulation (EU) 2015/61; *(AM 23 Rapporteur)*
 - (b) unencumbered cash;
 - (ba) unencumbered short term deposits at a credit institution giving the firm ready access to liquidity; (AM 219 Ferber)***
 - (bb) shares, depositary receipts, ETFs, certificates and other similar financial instruments, for which there is a liquid market within the meaning of Article 14 of Regulation (EU) No 600/2014 on markets in financial instruments, subject to a haircut of 50%. (AM 221 Ferber)***
 - (bc) other financial instruments, for which there is a liquid market within the meaning of Article 14 of Regulation (EU) No 600/2014 on markets in financial instruments, subject to a haircut of 50%. (AM 222 Ferber)***

2. For the purposes of paragraph 1, an investment firm that meets the conditions set out in Article 12(1) may also include receivables from trade debtors and fees or commissions receivable within 30 days in their liquid assets, where those receivables comply with the following conditions:
 - (a) they account for up to one third of the minimum liquidity requirements as referred to in paragraph 1;
 - (b) they are not to be counted towards any additional liquidity requirements required by the competent authority for firm-specific risks in accordance with Article 36(2)(k) of Directive (EU) ----/[IFD];
 - (c) they are subject to a haircut of 50%.

Article 43
Temporary reduction of the liquidity requirement

1. An investment firm may, in exceptional circumstances, reduce the amount of liquid assets held. Where such reduction occurs, the investment firm shall notify the competent authority without delay.
2. Compliance with the liquidity requirement set out in Article 42(1) shall be restored within 30 days of the original reduction.
- 2a. ***EBA, in consultation with ESMA, shall issue guidelines to specify what constitutes exceptional circumstances for the purpose of paragraph 1. (AM 223 Viegas)***

Article 44
Customer guarantees

An investment firm shall increase their liquid assets by 1.6% of the total amount of guarantees provided to customers.

DRAFT COMPROMISE H

Articles 45 to 53 - Disclosure and reporting

Bold/italics text represents changes to the Commission proposal.

COVERING AMs 24 and 224 to 259.

Articles 45, 46 (no AM tabled), 47, 48 (no AM tabled) 49, 50, ~~52~~ and 53 (no AM tabled) remain as in COM proposal.

Article 51

Remuneration policy and practices

Investment firms shall disclose the following information regarding their remuneration policy and practices, ***including aspects related to gender neutrality*** (AM 233, AM 234), for those categories of staff whose professional activities have a material impact on investment firm's risk profile, in accordance with Article 45;

- (a) the most important design characteristics of the remuneration system, including the level of variable remuneration and criteria for its award, pay out in instruments policy, deferral policy and vesting criteria;
- (b) the ratios between fixed and variable remuneration set by the investment firms in accordance with Article 28(2) of Directive (EU) ~~2014/59~~ [IFD];
- (c) aggregate quantitative information on remuneration, broken down by senior management and members of staff whose actions have a material impact on the risk profile of the investment firm, indicating the following:
 - i) the amounts of remuneration awarded in the financial year, split into fixed remuneration including a description of the fixed components, and variable remuneration, and the number of beneficiaries;
 - ii) the amounts and forms of awarded variable remuneration, split into cash, shares, share-linked instruments and other types separately for the part paid upfront and the deferred part;
 - iii) the amounts of deferred remuneration awarded for previous performance periods, split into the amount due to vest in the financial year and the amount due to vest in subsequent years:
 - a) ~~the~~ the amount of deferred remuneration due to vest in the financial year, and that is reduced through performance adjustments;
 - b) ~~the~~ the guaranteed variable remuneration awards during the financial year, and the number of beneficiaries of those awards;
 - c) ~~the~~ the severance payments awarded in previous periods, that have been paid out during the financial year;

Kommentiert [BF4]: Reinstatement of COM proposal

d) ~~vii)~~ the amounts of severance payments awarded during the financial year, split into paid upfront and deferred, the number of beneficiaries of those payments and highest payment that has been awarded to a single person;

~~(d) the number of individuals that have been remunerated EUR 1 million or more per financial year, with the remuneration between EUR 1 million and EUR 5 million broken down into pay bands of EUR 500 000 and with the remuneration of EUR 5 million and above broken down into pay bands of EUR 1 million;~~

~~(e) upon demand from the competent authority, the total remuneration for each member of the management body or senior management;~~

~~(AM 240, 241, 242, 243, 244, 247 Ferber, AM 232 Lucke)~~

(f) information on whether the investment firm benefits from a derogation laid down in Article 30(4) of Directive (EU) ----/[IFD].

For the purposes of point (f), investment firms that benefit from such a derogation shall indicate whether that derogation has been granted on the basis of point (a) or point (b) of Article 30(4) of Directive (EU) ----/[IFD], or both. They shall also indicate for which of the remuneration principles they apply the derogation(s), the number of staff members that benefit from the derogation(s) and their total remuneration, split into fixed and variable remuneration.

This Article shall be without prejudice to the provisions set out in Regulation (EU) 2016/679.

Article 51a - Investment policy

1. Investment firms shall disclose the following information regarding their investment policy, in accordance with Article 45:

(a) the participation rate for all direct and indirect holdings where beneficial ownership exceeds 5% of any class of voting equity securities, broken down by Member State and sector;

(b) the complete voting behaviour at shareholders' meetings, in particular the percentage of approval of proposals put forward by the management of the entities held in accordance with (a);

(c) the recurrence to proxy advisor firms;

(d) the voting guidelines regarding the entities held according to (a).

The disclosure requirement referred to in point (b) shall not apply if the contractual arrangements of all shareholders represented by the investment firm at the shareholders' meeting do not authorize the investment firm to vote on their behalf unless express voting orders are given by the shareholders after receiving the meeting's agenda.

2. Paragraph 1 shall not apply to investment firms which meet the criteria referred to in paragraph 4 of Article 30 of Directive (EU) ----/[IFD].

3. EBA, in consultation with ESMA, shall develop draft implementing technical standards to specify templates for disclosure under paragraph 1. In order to avoid divergence of application between this Regulation and Directive (EU) 2017/828, EBA shall, when developing these technical standards, take into account Article 3g of that Directive

EBA shall submit those draft implementing technical standards to the Commission by [nine months from the date of entry into force of this Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010. (AM 257 Giegold)

**Article 51b - ESG-related risks
(new, adapted from ECON Final Report (CRR), Article 449a)**

From ... [3 years after entry into force of this Regulation], investment firms which do not meet the criteria referred to in paragraph 4 of Article 30 of Directive (EU) ----/[IFD] shall disclose information on ESG-related risks, physical risks and transition risks as defined in the report referred to in [Article 32a (new) Directive (EU) ----/[IFD] Article 98(7e) of Directive 2013/36/EU

For the purpose of the first subparagraph, the information shall be disclosed annually the first year and biannually the second year and thereafter. (AM 227 Giegold)

**Article 52
Reporting requirements**

1. An investment firm shall submit an annual report to the competent authorities including all of the following information:
 - (f) level and composition of own funds;
 - (g) capital requirements;
 - (h) capital requirement calculations;
 - (i) the level of activity in respect of the conditions set out in Article 12(1), including the balance sheet and revenue breakdown by investment service and applicable K-factor;
 - (j) concentration risk;
 - (k) liquidity requirements.
2. By way of derogation from paragraph 1, an investment firm that meets the conditions in Article 12(1) shall not be required to report the information specified in points (e) and (f).

2.a (new) Upon request from the competent authority, an investment firm shall report to the competent authority the total remuneration for each member of the management

Kommentiert [BF5]:

NOTE: This has been added following COM technical suggestion to ensure consistency with the shareholders right directive (EU) 2017/828 (See in particular Article 3g and Article 1(7)).

<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1537440051802&uri=CELEX:02007L0036-20170609>

body or senior management (AM 240, 241, 242, 243, 244, 247 Ferber, AM 232 Lucke, moved from disclosure requirements to reporting requirements as per discussion in shadows' meeting on 10 July 2018, slightly redrafted)

3. EBA, in consultation with ESMA, shall develop draft implementing technical standards to specify the formats, reporting dates, definitions and the IT solutions to be applied for the reporting referred to in paragraph 1, which take into account the difference in granularity of information submitted by an investment firm that meets the conditions in Article 12(1).

EBA shall develop the implementing technical standards referred to in the first subparagraph by [nine months from the date of entry into force of this Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in this paragraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

DRAFT COMPROMISE I

Articles 57 to 59 - Transitional provisions and Review Clause

Bold/italics text represents changes to the Commission proposal.

COVERING AMs 26, 260 to 272

Article 57 - Transitional provisions

1. Articles 42 to 44 and 45 to 51 shall apply to commodity and emission allowance dealers from *[five years from the date of application of this Regulation]*.
2. ***Until five years from the date of application of this Regulation or the date of application of the provisions referred to in Article 22(1)(b) and (c) pursuant to [Chapters 1(a) and 1(b) of Title IV of Part Three of the Regulation No (EU) No 575/2013, in accordance with Article 1(84) of the Proposal for a Regulation of the European Parliament and of the Council 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 amending Regulation (EU) No 648/2012], whichever is the earlier, an investment firm shall apply the requirements set out in Title IV of Part Three of Regulation (EU) No 575/2013.***
3. By way of derogation from Article 11, investment firms may limit their capital requirements for a period of five years from *[the date of application of this Regulation]* as follows:
 - (a) twice the relevant capital requirement pursuant to Chapter 1 of Title 1 of Part Three of Regulation (EU) No 575/2013 had it continued to be subject to that Regulation;
 - (b) twice the applicable fixed overhead requirement set out in Article 13 of this Regulation where an investment firm was not in existence on or before *[date of application of this Regulation]*;
 - (c) twice the applicable initial capital requirement set out in Title IV of Directive 2013/36/EU on *[date of application of this Regulation]* where an undertaking was subject only to an initial capital requirement until that point in time.

Article 58

Derogation for undertakings referred to in Article 4(1)(1)(b) of Regulation (EU) 575/2013

Investment firms which on the date of entry into force of this Regulation meet the conditions of Article 4(1)(1)(b) of Regulation (EU) 575/2013 and have not yet obtained authorisation as

Kommentiert [BF6]: Reinstating FRTB

credit institutions in accordance with Article 8 of Directive 2013/36/EU shall continue to be subject to Regulation (EU) 575/2013 and to Directive 2013/36/EU.

TITLE II REPORTS AND REVIEWS

Article 59 Review ~~clause~~

1. By [3 years ~~from the date of~~ *from the date of entry into force* ~~entry into force application of this Regulation~~], the Commission *shall carry out a review and submit a report, together with a legislative proposal if appropriate,* ~~of the application of~~ on the following:

(AM 261 Langen, AM 262 Sander/Lamassoure)

- (a) the conditions for investment firms to qualify as small and non-interconnected firms in accordance with Article 12;
- (b) the methods for measuring the K-factors in Title II of Part Three and in Article 38;
- (c) the coefficients in Article 15(2);
- (d) the provisions set out in Articles 42 to 44;
- (e) the provisions set out in Section 1 of Chapter 4 of Title II of Part Three;
- (f) the application of Part Three to commodity and emission allowance dealers.

(fa) the modification of the definition of "credit institution" in Regulation (EU) No 575/2013 through Article 60 (2) (a) of this Regulation and potential unintended negative consequences;

(AM 263 Delvaux, AM 271 Sander/Lamassoure)

(fb) the provisions set out in Article 46 and 47 of Regulation (EU) No 600/2014 and their alignment with a consistent framework for equivalence in financial services;

(AM 264 Lucke)

~~*(fc) the non-inclusion of a dedicated K factor for advice activities;*~~

~~(AM 26 Rapporteur and 266 Delvaux)~~

~~*(fd) the distinction between segregated and non-segregated accounts for the purpose of this Regulation and the requirements in terms of harmonisation of insolvency law in the Union to guarantee an appropriate degree of harmonisation of provisions for segregated accounts;*~~ (AM 269 Delvaux) ~~(deleted in the follow-up of the shadows meeting of 12 September 2018 to avoid duplication with existing EBA mandates in Article 15(5))~~

Kommentiert [BF7]: AM to better distinguish between the review (para 1) of the Regulation and the application report (para 2) following shadow meeting of 12 September.

Kommentiert [BF8]: Deleted in the follow-up of the shadows meeting of 12 September 2018 to avoid duplication with existing EBA mandates

Kommentiert [BF9]: Deleted in the follow-up of the shadows meeting of 12 September 2018 to avoid duplication with existing EBA mandates

- (fe) *the thresholds set out in Article 12(1) of this Regulation;*
- (ff) *the application of the standards of the Fundamental Review of the Trading Book to investment firms;*
- (fg) *the method of measuring the value of a derivative in Article 32 (2) (b) and Article 20 (2) (b), and the appropriateness of introducing an alternative metric and/or calibration;* (AM 268, Delvaux, Tang)
- (fh) *the appropriateness of not applying restrictions to ancillary services undertakings as defined in Article 4(1)(18) of Regulation (EU) No 575/2013;* (AM 267 Giegold)
- (fi) *the need to develop macro-prudential tools to address specific risks that investment firms could pose to financial stability*

2. By [3 years from the date of ~~entry into force~~ application of this Regulation], the Commission shall submit a comprehensive report of application of this Regulation to the European Parliament and the Council. ~~referred to in paragraph, together with legislative proposals where appropriate.~~

(AM 272 Delvaux)

DRAFT COMPROMISE J

Article 60 - Change to CRD/CRR

Bold/italics text represents changes to the Commission proposal.

COVERING AMs 273 to 290

Article 60 Amendments of Regulation (EU) No 575/2013

Regulation (EU) No 575/2013 is amended as follows:

1. In the title, the words ‘and investment firms’ are deleted.
2. Article 4(1) is amended as follows:
 - (a) point (1) is replaced by the following:

“(1) ‘credit institution’ means an undertaking the business of which consists of any of the following:

 - (a) to take deposits or other repayable funds from the public and to grant credits for its own account;
 - (b) to carry out any of the activities referred to in points (3) and (6) of Section A of Annex I of Directive 2014/65/EU, where one of the following applies, but the undertaking is not a commodity and emission allowance dealer, a collective investment undertaking or an insurance undertaking:
 - i) the total value of the assets of the undertaking exceeds EUR 30 billion, or
 - ii) the total value of the assets of the undertaking **does not exceed is below** EUR 30 billion, and the undertaking is part of a group in which the **combined consolidated** total value of the assets of all undertakings in the group that carry out any of the activities referred to in points (3) and (6) of Section A of Annex I of Directive 2014/65/EU and have total assets **that do not exceed is below** EUR 30 billion exceeds EUR 30 billion, or
 - iii) the total value of the assets of the undertaking **does not exceed is below** EUR 30 billion, and the undertaking is part of a group in which the **combined consolidated** total value of the assets of all undertakings in the group that carry out any of the activities referred to in points (3) and (6) of Section A of Annex I of Directive 2014/65/EU exceed EUR 30 billion,

where the supervisors that would be responsible for the authorisation under Article 8a of Directive 2013/36/EU and the consolidating supervisor in consultation with the supervisory college so decides in order to address potential risks of circumvention and potential risks for the financial stability of the Union.

For the purpose of points (ii) and (iii), when the undertaking is part of a third country group, the total assets of each branch of the third country group authorised in the Union are included in the combined total value of the assets of all undertakings in the group.

For the purposes of this article, all thresholds are calculated at the highest level of consolidation.

(AM 287 Ferber)

Kommentiert [BF10]: Note: Taking over of ECB AM 2 as discussed during shadow meeting of 11 September.

TO BE SEEN IN CONJUNCTION WITH COMPROMISE A IN THE INVESTMENT FIRMS DIRECTIVE (Article 4a new) - Empowerment to subject certain investment firms to the requirements of Regulation (EU) 575/2013

[...] Points 3 to 12 of Article 60 remain as in COM proposal

12a. In Article 119, paragraph 5 is replaced by the following:

"5. Exposures to financial institutions authorised and supervised by the competent authorities and subject to prudential requirements comparable to those applied to institutions in terms of robustness shall be treated as exposures to institutions. **For the purpose of this paragraph, the prudential requirements defined in Regulation (EU) ---/-- [IFR] shall be considered comparable to those applied to institutions in terms of robustness.**"

(AM 289 Delvaux, AM 290 Sander/Lamassoure)

Points 13 to 19 of Article 60 remain as in COM proposal.

DRAFT COMPROMISE K

Article 61 - Changes to MiFIR/ Systematic Internalisers

Bold/italics text represents changes to the Commission proposal.

COVERING AMs 27, 57, 58, 291 to 293 and 335 to 337

Article 61 - paragraph 1 - point - 1 (new)

The title of Title III is replaced by the following:

"TRANSPARENCY FOR SYSTEMATIC INTERNALISERS AND INVESTMENT FIRMS TRADING OTC AND TICK SIZE REGIME FOR SYSTEMATIC INTERNALISERS"

Article 61 - paragraph 1 - point - 1a (new)

The following Article 17a is inserted:

*Article 17a
Tick sizes*

Systematic internalisers' quotes, price improvements on those quotes and execution prices shall comply with tick sizes set in accordance with Article 49 of Directive 2014/65/EU.

(AM 27 Rapporteur, AM 291, 292 Giegold, AM 293 Delvaux/Berès)

Article 63 - paragraph 2a (new)

Notwithstanding paragraph 2, Article 61(1), point -1 (new) shall apply 20 days after publication of this Regulation in the Official Journal of the European Union.

(AM 336 Ferber, AM 337 Delvaux)

Recital 42a (new):

*(42a) 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 executions 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 its extended scope.***

(AM 57 Ferber, Am 58 Delvaux/Bérès)

DRAFT COMPROMISE L

Article 61 - Change to Articles 46 and 47 MiFIR/ Third Country Regime

Bold/italics text represents changes to Commission proposal.

COVERING AMs 28 to 36 and 296 to 333

Article 61

Amendment to Regulation (EU) No 600/2014

Regulation (EU) No 600/2014 is amended as follows:

(21) Article 46 is amended as follows:

(-a) paragraph 1 is replaced by the following:

"1. A third-country firm may provide investment services or perform investment activities ***listed in points (1), (2), (4), (5), (7), (8) or (9) of Section A of Annex I to Directive 2014/65/EU (AM 28 Rapporteur)*** with or without any ancillary services to eligible counterparties and to professional clients within the meaning of Section I of Annex II to Directive 2014/65/EU established throughout the Union without the establishment of a branch where it is registered in the register of third-country firms kept by ESMA in accordance with Article 47."

(a) in paragraph 2, the following point (d) is added:

"(d) the firm has established the necessary arrangements and procedures to report the information set out in paragraph 6a.";

(b) the following paragraph 6a is added:

"6a. Third-country firms providing services or performing activities listed in points (1), (2), (4), (5), (7), (8) or (9) of Section A of Annex I to Directive 2014/65/EU in accordance with this Article shall, on an annual basis, inform ESMA about the following:

(a) the scale and scope of the services and activities carried out by the firms in the Union;

(b) the turnover and the aggregated value of the assets corresponding to the services and activities referred to in point (a);

(c) whether investor protection arrangements have been taken, and a detailed description thereof;

(d) the risk management policy and arrangements applied by the firm to the carrying out of the services and activities referred to in point (a).";

(c) paragraph 7 is replaced by the following:

"7. ESMA, in consultation with EBA, shall develop draft regulatory technical standards to specify the information that the applicant third-country firm is to

provide in the application for registration referred to in paragraph 4 and the information to be reported in accordance with paragraph 6a.

ESMA shall submit those draft regulatory technical standards to the Commission by [*date to be inserted*].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.’’;

(d) the following paragraph 8 is added:

‘‘8. ESMA shall develop draft implementing technical standards to specify the format in which the application for registration referred to in paragraph 4 is to be submitted and the information referred to in paragraph 6a is to be reported.

ESMA shall submit those draft implementing technical standards to the Commission by [*date to be inserted*].

Power is delegated to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’’.

(2) Article 47 is amended as follows:

(a) the first subparagraph of paragraph 1 is replaced by the following:

‘‘The Commission may adopt a decision in accordance with the ~~examination~~ procedure referred to in Article ~~50~~ ~~51(2)~~ in relation to a third country stating that the legal and supervisory arrangements of that third country ensure all of the following: (*AM 29 Rapporteur, AM 306 Giegold*)

(a) that firms authorised in that third country comply with legally binding prudential **organisational, internal control** and business conduct requirements which have equivalent effect to the requirements set out in this Regulation, in Directive 2013/36/EU, in Regulation (EU) No 575/2013, in Directive (EU) ----/[IFD] and in Regulation (EU)----/[IFR] and in Directive 2014/65/EU and in the implementing measures adopted under those Regulations and Directives;

(*AM 30 Rapporteur, AM 307 Giegold, AM 308 Bérès, AM 309 Lamassoure/Sander, AM 310 Cornillet*)

(b) that firms authorised in that third country are subject to effective supervision and enforcement ensuring compliance with the applicable legally binding prudential **organisational, internal control** and business conduct requirements; and

(*AM 31 Rapporteur, AM 311 Giegold, AM 312 Bérès, AM 313 Cornillet, AM 314 Lamassoure/Sander*)

(c) that the legal framework of that third country provides for an effective equivalent system for the recognition of investment firms authorised under third-country legal regimes;

Where the services provided and the activities performed by third-country firms in the Union following the adoption of the decision referred to in the first subparagraph are likely to be of systemic importance for the Union, the legally

binding prudential *organisational, internal control* and business conduct requirements referred to in the first subparagraph may only be considered to have equivalent effect to the requirements set out in the acts referred to in that subparagraph after a detailed and granular assessment. ~~For these purposes~~ For the purpose of this assessment, the Commission shall also assess and take into account the supervisory convergence between the third country concerned and the Union.

(AM 315 Lamassoure/Sander, AM 316 Cornillet, AM 318 Lucke)

When adopting the decision referred to in the first subparagraph, the Commission shall 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.”;

- (b) in paragraph 2, point (c) is replaced by the following:

“(c) the procedures concerning the coordination of supervisory activities including investigations and on-site inspections.”;

- (ba) *the following paragraph 2a is inserted:*

“The Commission is empowered to adopt delegated acts in accordance with Article 50 clarifying the conditions that the provision of services or performance of activities are required to fulfil in order to be considered as likely to be of systemic importance for the Union.”

(AM 33 Rapporteur, AM 322 Giegold)

- (bb) *paragraph 4 is replaced by the following:*

A third-country firm may no longer use the rights under Article 46(1) where the Commission adopts a decision in accordance with the examination procedure referred to in Article 50 ~~51(2)~~ withdrawing its decision under paragraph 1 of this Article in relation to that third country.

(AM 34 Rapporteur)

- (c) the following paragraph 5 is added:

“5. ESMA shall monitor the regulatory and supervisory developments, the enforcement practices and other relevant market developments in third countries for which equivalence decisions have been adopted by the Commission pursuant to paragraph 1 in order to verify whether the conditions on the basis of which those decisions have been taken are still fulfilled. The Authority shall submit a ~~confidential~~ report on its findings to the Commission, *the European Parliament and the Council* on an annual basis.”

(AM 35 Rapporteur, 323 Delvaux 324 Lucke, 325 Giegold)

- ~~(ca) the following paragraph 5a is added:~~

~~“5a. The Commission shall regularly review the decisions adopted pursuant to paragraph 1 of this Article and, where appropriate, withdraw a decision in accordance with the procedure referred to in Article 50.”~~

~~(AM 36 Rapporteur)~~

(ca) *the following paragraph 5a is added:*

“5a. The Commission shall, on an annual basis, provide the European Parliament with a list of the decisions on equivalence granted, suspended or withdrawn, including an explanation on the rationale supporting those decisions.”

(AM 326 Delvaux/Fernandez)

DRAFT COMPROMISE M

Article 4 - Definitions

Bold/italics text represents changes to the Commission proposal.

COVERING AMs 6-8, 59-65

Definitions 1 to 24; 28 to 30, and 32 to 51 remain as in COM proposal.

- (25) 'K-AUM' or 'K-factor in relation to assets under management (AUM)' means the capital requirement relative to the value of assets that an investment firm manages for its clients under ~~both~~ discretionary portfolio management ~~and non-discretionary arrangements constituting investment advice~~, including assets delegated to another undertaking and excluding assets that another undertaking has delegated to the investment firm. **The calculation shall exclude assets that are already accounted for under K-ASA;** (AM 6 Rapporteur, AM 59 Lucke)
- (26) 'K-CMH' or 'K-factor in relation to client money held (CMH)' means the capital requirement relative to the amount of client money that an investment firm holds **or controls, regardless of any** ~~taking into account the~~ legal arrangements in relation to asset segregation and irrespective of the national accounting regime applicable to client money held by the investment firm; (AM 7 Rapporteur)
- (27) 'K-ASA' or 'K-factor in relation to assets safeguarded and administered (ASA)' means the capital requirement relative to the value of assets that an investment firm safeguards and administers for clients, including assets delegated to another undertaking and assets that another undertaking has delegated to the investment firm, ~~irrespective of whether~~ **when those** assets appear on the investment firm's own balance sheet or are segregated in other accounts. **The calculation shall exclude assets that are already accounted for under K-AUM;** (AM 60 Ferber)
- (3031) 'K-DTF' or 'K-factor in relation to daily trading flow (DTF)' means the capital requirement relative to the daily value of transactions that an investment firm enters through dealing on own account or the execution of orders on behalf of clients in its own name, **excluding the value of orders that an investment firm handles for clients through the reception and transmission of client orders and through the execution of orders on behalf of clients as already reflected in COH;** (AM 8 Rapporteur)

DRAFT COMPROMISE N

Article 6 - Exemptions

Bold/italics text represents changes to the Commission proposal.

COVERING AMs 66-74

Article 6 Exemptions

1. Competent authorities may exempt an investment firm from the application of Article 5 in respect of Parts Two to Four, Six and Seven, where all of the following apply:
 - (a) the investment firm is a subsidiary and is included in the supervision on a consolidated basis of a credit institution, a financial holding company or a mixed financial holding company, in accordance with the provisions of Chapter 2, Title II, Part One of Regulation (EU) No 575/2013; ~~*or the investment firm is a subsidiary and included in the supervision on a consolidated basis of an insurance or reinsurance undertaking in accordance with Article 228 of Directive 2009/138/EC^{1a}; ^{1^a} Solvency II (AM 68 Ferber)*~~
 - (b) both the investment firm and its parent undertaking are subject to authorisation and supervision by the same Member State;
 - (c) the authorities competent for the supervision on consolidated basis in accordance with Regulation (EU) No 575/2013 agree to such an exemption;
 - (d) own funds are distributed adequately between the parent undertaking and the investment firm and all of the following conditions are satisfied:
 - (i) the investment firm meets the conditions set out in Article 12(1);
 - (ii) there is no current or foreseen material practical or legal impediment to the prompt transfer of capital or repayment of liabilities by the parent undertaking;
 - (iii) upon prior approval by the competent authority, the parent undertaking declares that it guarantees the commitments entered into by the investment firm or that the risks in the investment firm are of negligible interest;
 - (iv) the risk evaluation, measurement and control procedures of the parent undertaking include the investment firm; and
 - (v) the parent undertaking holds more than 50% of the voting rights attached to shares in the capital of the investment firm or has the right to appoint or remove a majority of the members of the investment firm's management body.

Kommentiert [BF11]: Reinstatement of COM proposal

1a. Competent authorities may exempt investment firms from the application of Article 5 in respect of Parts Four, Six and Seven, where all of the following apply:

- (a) the investment firm is a subsidiary and included in the supervision on a consolidated basis of an insurance or reinsurance undertaking in accordance with Article 228 of Directive 2009/138/EC^{1a};
- (b) both the investment firm and its parent undertaking are subject to authorisation and supervision by the same Member State;
- (c) the authorities competent for the supervision on consolidated basis in accordance with Directive 2009/138/EC agree to such an exemption;
- (d) own funds are distributed adequately between the parent undertaking and the investment firm and all of the following conditions are satisfied:
 - (i) the investment firm meets the conditions set out in Article 12(1);
 - (ii) there is no current or foreseen material practical or legal impediment to the prompt transfer of capital or repayment of liabilities by the parent undertaking;
 - (iii) upon prior approval by the competent authority, the parent undertaking declares that it guarantees the commitments entered into by the investment firm or that the risks in the investment firm are of negligible interest;
 - (iv) the risk evaluation, measurement and control procedures of the parent undertaking include the investment firm; and
 - (v) the parent undertaking holds more than 50% of the voting rights attached to shares in the capital of the investment firm or has the right to appoint or remove a majority of the members of the investment firm's management body.

(AM 68 Ferber)

2. Competent authorities may exempt investment firms from the application of Article 5 in respect of Part Five where all of the following conditions are satisfied:

- (a) the investment firm is included in the supervision on a consolidated basis in accordance with Chapter 2, Title II of Part One of Regulation (EU) No 575/2013 ~~or with Article 228 of Directive 2009/138/EC~~;
- (b) the group has established centralised liquidity management functions; and
- (c) the authorities competent for the supervision on consolidated basis in accordance with Regulation (EU) No 575/2013 ~~or Directive 2009/138/EC~~ agree to such an exemption.

Recital 11:

(11) The prudential regime for investment firms which, by virtue of their size and interconnectedness with other financial and economic actors, are not considered systemic should apply to each investment firm on an individual basis. However, 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 **except for the liquidity requirements**, where they are part of a banking group, ~~or insurance group~~ *[changed to reflect agreement in shadows' meetings on 11/12 September 2018]* headquartered and subject to consolidated supervision under Regulation (EU) No 575/2013/Directive 2013/36/EU in the same Member State, as in such cases the consolidated application of Regulation (EU) No 575/2013/ Directive 2013/36/EU to the group should adequately cover those risks. In order to mirror the possible existing treatment of groups of investment firms under the Regulation (EU) No 575/2013/ Directive 2013/36/EU, the parent undertaking in such groups should be required to have sufficient capital to support the book value of its holdings in the subsidiaries. Further, in order to account for cases where such investment firm groups carry a higher degree of risk or interconnectedness, they could be subject to capital requirements based on the consolidated situation of the group. **Where they are part of an insurance group, these small and non-interconnected investment firms should also avail themselves of an exemption of concentration, disclosure and reporting requirements.**

DRAFT COMPROMISE O

Articles 7 and 8 - Group Capital Test and K-factor Consolidation

Bold/italics text represents changes to the Commission proposal.

COVERING AMs 75-83

No changes to COM proposal.

Article 7

The group capital test

1. A Union parent investment firm, a Union parent investment holding company, a Union parent mixed financial holding company shall hold at least enough own funds to cover the sum of the following:
 - (a) the sum of the full book value of any holdings, subordinated claims and instruments referred to in points (h) and (i) of Article 36(1), points (c) and (d) of Article 56, and points (c) and (d) of Article 66 of Regulation (EU) No 575/2013 in investment firms, financial institutions, ancillary services undertakings and tied agents in the investment firm group; and
 - (b) the total amount of any contingent liability in favour of investment firms, financial institutions, ancillary services undertakings and tied agents.
2. Competent authorities may allow a Union parent investment holding company or a Union parent mixed financial holding company to hold a lower amount of own funds than the amount calculated under paragraph 1, provided that this amount is no lower than the sum of the own funds requirements imposed on an individual basis on investment firms, financial institutions, ancillary services undertakings and tied agents in the group, and the total amount of any contingent liabilities in favour of these entities.

For the purposes of paragraph 1, where no Union or national prudential legislation applies for any of the entities referred to in paragraph 1, a notional own funds requirement shall apply.
3. A Union parent investment firm, a Union parent investment holding company, a Union parent mixed financial holding company shall have systems in place to monitor and control the sources of capital and funding of all investment firms, investment holding companies, mixed financial holding companies, financial institutions, ancillary services undertakings and tied agents within the investment firm group.

Article 8

K-factor consolidation

The competent authorities of a Union parent investment firm or the competent authorities determined in accordance with Article 42(2) of Directive (EU)----/[IFD] may require a Union parent investment firm, a Union parent investment holding company or a Union parent mixed

financial holding company to comply with the requirements set out in Article 15 on the basis of the K-factor consolidated situation where either of the following conditions applies:

- (b) there are significant material risks to customers or to market, stemming from the group as a whole which are not fully captured by the capital requirements applicable to the investment firms in the group on an individual basis; or
- (c) for investment firm groups with a high degree of inter-connectedness in terms of risk management, the application of requirements to the investment firm on an individual basis may lead to a duplication of the requirements for those firms.

DRAFT COMPROMISE P

Article 11 - Capital requirement

Bold/italics text represents changes to the Commission proposal.

COVERING AMs 84-85

Article 11
Capital requirement

1. An investment firm shall at all times have capital which amounts to the highest of the following:
 - (a) its fixed overheads requirement calculated according to Article 13.
 - (b) its permanent minimum requirement according to Article 14.
 - (c) its K-factor requirement calculated according to Article 15.
2. ***By way of derogation from paragraph 1***, an investment firm that meets the conditions set out in Article 12(1) shall at all times only have capital which amounts to the highest of the amounts specified in points (a) and (b) of paragraph 1.
(Lucke AM 84)
3. Where competent authorities consider that there has been a material change in the business activities of an investment firm, they may require the investment firm to be subject to a different capital requirement referred to in this Article, in accordance with Title IV, Chapter 2, section IV of Directive (EU) ----/[IFD].

DRAFT COMPROMISE Q

Recital 4a (new - based on ECB AM 5)

Bold/italics text represents changes to the Commission proposal. [NOTE: formally not a compromise but an oral amendment]

(4a) Undertakings should take deposits or other repayable funds from the public and grant loans for their own account only once they have obtained the authorisation for those activities in accordance with Directive 2013/36/EU.