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European Banking Authority

EBA-CP-2013-17@eba.europa.eu

Comments on consultation on draft technical standards for own funds - part III

The Swedish Bankers' Association would like to make following comments to the consultation.

Q01: Are the provisions of Article 14a sufficiently clear? Are there issues which need to be elaborated further?

Indirect holdings of capital instruments pursuant to Article 33(1) (f) (h) and (i) of Regulation 575/2013/EU (CRR), shall include but are not limited to, any exposure, including senior exposures, to an intermediate entity that has an exposure to Common Equity Tier 1 instruments issued by a financial sector entity where, in the event the Common Equity Tier 1 instruments issued by the financial sector entity were permanently written off, the loss that the institution would incur as a result would not be materially different from the loss the institution would incur from a direct holding of those Common Equity Tier 1 instruments issued by the financial sector entity.

Paragraph 1 in general

We are concerned that the RTS has gone further than the mandate in the CRR allows with regards to what can be included in the technical standard in question. The mandate in the CRR only refers to holdings. A holding should normally equal either some form of ownership (or potentially some other form of direct control or influence over the entity in question). We find it hard to see how providing funding, senior or otherwise, to an entity would qualify as a holding unless it also needs to be included in the accounting consolidation due to the fact that the institution is deemed to have control over the entity in question even in the absence of ownership. A potential economic risk linked to the financial position of the entity is not enough, this risk also holds true for providing direct senior funding provided to financial institutions, and that's certainly not included in the mandate. Moreover, funding of own funds instruments, directly or indirectly is clearly and separately regulated in the CRR, consequently we find it hard to see also on these grounds, how a mandate referring to holdings could also be construed to include exposures to any own funds instrument through funding.



Regarding clarity of article 14a; the wording of the scope seems unnecessarily wide (disregarding our hesitations regarding mandate above). It would be helpful if it could be clarified what could be a holding that isn't actually included in "any exposure, including senior exposures" and "where the loss is not materially different from a direct holding".

Q02: Provisions included in paragraph 1 of the following Article 14a refer in particular to pension funds. These provisions have to be read in conjunction with the deductions referred to in Article 33(e) of the CRR. Would you see any cases where there might be an overlap between the two types of deductions? Please describe precisely these situations and the nature of the problem.

CRR contains explicit requirements for how to treat defined benefit pension fund assets and defined benefit pension fund liabilities in the calculation of Common Equity Tier 1 capital (CET 1). According to Article 33 (e) shall defined benefit pension fund assets on the balance sheet be deducted from CET 1. A net defined benefit pension fund liabilities on the other hand shall not be adjusted for and hence have a full negative effect on CET 1. This asymmetrical treatment could be questioned but will be dealt with in a separate context.

A requirement to carve-out individual investments in a defined benefit pension fund will certainly lead to an overlap with these provisions, since these investments have already affected the amounts that have either been deducted or had a full negative effect on CET 1. We are therefore of the opinion that treatment of defined benefit pension schemes already provided for under CRR is more than enough and that no further provisions for the treatment of defined benefit pension funds are needed.

Again, if the EBA in the end will go ahead with its proposal that investments in defined benefit pension funds should be regarded as indirect holdings it is essential that any overlap with for example Article 33 (e), is fully adjusted for in order to avoid a double deduction requirement.

Q03: Please provide also some input on the potential impact? What would be the size of the deduction of defined benefit pension funds under the treatment proposed in the following Article? Would the treatment cause a change in the investment policy of the pension fund with regard to such holdings, or have any other consequences for the operation of the defined benefit pension scheme?

According to Swedish Law (Pension Obligations Vesting Act/Tryggandelagen) there has to be a clear separation of control from the Institution and the defined benefit pension scheme, i.e. no company is allowed to have any influence whatsoever over a defined benefit pension scheme.



Consequently it is impossible for us to state whether or not it will have any influence over the operation of the defined benefit pension scheme, but it might in the long run influence how credit institutions choose to secure their pension obligations and/or on how pension plans are drawn up in the future. It could also have an impact of the capital planning since, even though not in control over the investments, the capital impact of changes in the value of the asset in a pension fund may have an impact on the regulatory capital position of the entity.

Q04: Do you agree with the examples of synthetic holdings provided in paragraph 2 of the following Article 14a? Should other examples be added to this list?

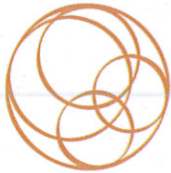
No, we do not agree. The proposed wording refers to capital instruments in general; this is going beyond the mandate in the CRR. According to 33 (i) deductions are only to be made for holdings in Common Equity Tier 1 instruments, not capital instruments in general. This should hold true irrespective of if the holding is direct or indirect.

Q05: Are the provisions contained regarding synthetic holdings in paragraph 2 of the following Article 14a and in Article 14e sufficiently clear? Do you agree that the amount to be deducted shall be the notional amount? Would you see any situations where another amount shall be used?

Yes in general, as long as notional should be interpreted as the amount of instruments that the institution can receive (or the value corresponding to that amount) and as long as the underlying exposure are CET1-instruments and not any capital instrument.

Q06: Are the provisions relating to the deduction of serial or parallel holdings through intermediate entities sufficiently clear? Do you see any unexpected consequences? Are there issues which need to be elaborated further?

We have the same issue here regarding the mandate from the CRR as has under Q1 above.



Q10: What would be the minimum number of contributors to ensure this absence of correlation? If a minimum representativeness of the market was chosen as an alternative route, how to ensure and calculate this representativeness? Would the percentage of 60% be sufficient?

The provisions have to take into account that countries using local market indices may have a low number of contributors in the panel. The suggestion of 6/4 different contributors might be a bit too narrow for small countries with a small currency . The criteria for banks who can participate in a interbank lending rate cooperation are strict, thus there is a maximum number of banks that can participate.

SWEDISH BANKERS' ASSOCIATION



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