

Single Rulebook Q&A

Question ID	2022_6379
Status	Final Q&A
Legal act	Regulation (EU) No 575/2013 (CRR)
Topic	Own funds
Article	36
Paragraph	1
Subparagraph	f
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	n.a.
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Disclose name of institution / entity	No
Type of submitter	Credit institution
Subject matter	Interaction of Articles 36(1)(f) and 42 of CRR regarding equity-settled share-based payments
Question	How should be treated shares that are bought and specifically affected to hedge equity-settled share-based payments (payments in equity instruments)?
Background on the question	<p>From an accounting perspective, share-based payments systematically give rise to an operating expense recognized as “Personnel expenses” in the amount of the fair value of the share-based payments granted to employees and according to their terms of settlement. The fair value of these instruments, measured at the vesting date, is spread over the vesting period and recorded in shareholders’ equity. At each accounting date, the number of these instruments is revised to take into account performance and service conditions and adjust the overall cost of the plan as originally determined. Expenses recognised under “Personnel expenses” from the start of the plan are then adjusted accordingly. The question refers to situations where the hedging shares are specifically monitored and can’t be delivered for any other purpose than be delivered to employees. Consequently, there is a real contractual obligation to grant performance shares to its employees: Legal framework of the performance shares plan: It is governed and regulated by</p>

the local law It is validated by the Extraordinary General Shareholders' Meeting and the Board of Directors. The shares are specifically affected to employees. For example: The number of shares granted to each beneficiary can't be modified during the vesting period. In the event of death of the beneficiary, the Beneficiary's heirs or assigns may request the immediate delivery of the shares The beneficiaries ' rights are protected : in the event that during the vesting period, the institution carries out a restructuring, a merger, de-merger, a partial contribution of assets, a consolidation or division of shares, an exchange of shares, or any other similar transaction that could potentially have an impact on the rights the performance shares confer to Beneficiaries, the institution shall take all appropriate actions for the purpose of preserving the rights of Beneficiaries.

Final answer

The answer to this question on share-based payments applies to the specific case where all the related own shares have been already bought by the institution.

According to Article 36(1)(f) of Regulation (EU) No 575/2013 (CRR) the institution has to deduct own shares. The amount to be deducted can be calculated on the basis of a net long position instead of a gross long position only if all the conditions of Article 42(a) CRR are fulfilled. In order to apply Article 42 CRR a short position needs to exist.

In the case at hand, the contractual obligation to deliver the shares to employees cannot be considered a short position for the purposes of the netting under Article 42 CRR before the moment the vesting conditions are met. Until this moment, the bank has no obligation to deliver the shares to the employees and hence the short position simply does not exist because the bank continues to bear all the risks related to those shares. The fact that the shares are specifically monitored and can't be used for any other purposes than the employees' remuneration has no relevance for the assessment of whether a short position exists.

In accordance with Article 29(4) of the Commission Delegated Regulation (EU) No 241/2014 (RTS on own funds), a deduction on a corresponding basis is no longer required, where the expenses related to such repurchases are already included in own funds as a result of an interim or a year-end financial report. The remaining part of own shares that has not been expensed shall be deducted.

This would be applicable even after the vesting conditions are met and until the shares are delivered to the employees. Therefore, the provisions of Article 42 CRR are not relevant in the case at stake.

In addition, it should be noted that from an accounting perspective (i.e. according to IFRS 2), in case of equity-settled share-based payments, the amounts recognized as "Personnel expenses" during the vesting period result in a corresponding increase in equity.

	Therefore, the provisions of Article 29(4) of the RTS on own funds, only when increase in equity resulting from the abovementioned accounting treatment is not already included within CET1 items. This, in order to avoid any potential double counting effect in own funds.
Link	https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2022_6379

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