

Question ID	2013_31
Status	Final Q&A
Legal act	Regulation (EU) No 575/2013 (CRR)
Topic	Own funds
Article	489
Paragraph	-
Subparagraph	-
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	N/A
Date of submission	05/07/2013
Published as Final Q&A	15/11/2013
Disclose name of institution / entity	No
Type of submitter	Investment firm
Subject matter	Grandfathering of Tier 1 instruments
Question	<p>In your response to the following question "What will be the treatment of an Additional Tier 1 (AT1) instrument structured with a first call date and one step up after 5 years prior to 1 January 2013, callable quarterly thereafter at every interest payment date without any step up (subject to supervisory approval)? Is the instrument eligible for grandfathering if not called at the first call date? If the instrument is derecognized as AT1 on 1 January 2013, can it be included into Tier 2 and, if so, what amount will be eligible (full amount or gradually phased out amount)?", you mention that: "because in particular of the quarterly call, the instrument would not meet the eligibility criteria for inclusion in fully eligible Tier 2 capital. It would also not meet the eligibility criteria for inclusion in grandfathered Tier 2 capital as foreseen under Article 484 (5) of Regulation (EU) No 575/2013." Does that mean that an existing non-innovative (i.e. non-step) Tier 1 instrument with quarterly calls will also not be grandfathered in Tier 2 capital because of the quarterly calls?</p>
Background on the question	Further clarification regarding your response from 03/07/2013

<p>EBA answer</p>	<p>The eligibility for grandfathering of both innovative and non-innovative instruments is determined in accordance with the provisions of Regulation (EU) No. 575/2013 (CRR).</p> <p>For instruments issued under national transposition measures of Article 57(ca) of Directive 2006/48/EC, Article 484(4) of the CRR applies.</p> <p>The limits for grandfathering applicable to those instruments are determined in accordance with Article 486(3) and (5) of the CRR. The conditions for the inclusion of hybrid instruments with a call and incentive to redeem are further specified in Article 489, and were also clarified in QA 2013_15.</p> <p>Tier 1 instruments issued under national transposition measures of Article 57(ca) of Directive 2006/48/EC without an incentive to redeem shall be included in Additional Tier 1 subject to the limits referred to in Article 486 (3) and (5), regardless of the frequency of subsequent calls.</p> <p>Amounts of such instruments exceeding the applicable percentage referred to in Article 486(3) may be treated as items referred to in Article 484(5) if they comply with the conditions of Article 487(2).</p> <p>Provided the instrument meets all the criteria of Article 63 of the CRR, amounts of such instruments in excess of the limit referred to in Article 486(3) may also be treated as fully eligible Tier 2.</p> <p>It should be noted that the Regulation does not prohibit subsequent calls after the first call date, but also that dividend pusher and stopper clauses that are common in instruments issued under national transposition measures of Article 57(ca) of Directive 2006/48/EC may interfere with the institution's flexibility to cancel distributions on other classes of capital instruments (see related QA 2013_21 and QA 2013_54 for further information).</p>
<p>Link</p>	<p>https://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2013_31</p>