

Single Rulebook Q&A

Question ID	2013_46
Status	Final Q&A
Legal act	Regulation (EU) No 575/2013 (CRR)
Topic	Own funds
Article	63
Paragraph	-
Subparagraph	-
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	N/A
Date of submission	08/07/2013
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Disclose name of institution / entity	No
Type of submitter	Credit institution
Subject matter	Old-style Tier 1 requalifying as CRR Tier 2 capital
Question	<p>When an old-style Tier 1 instrument with an incentive to call passes its step-up date and ceases to be recognised as grandfathered Tier 1 capital under Regulation (EU) No 575/2013 (CRR), can it qualify as Tier 2 capital going forward if it were to meet all the requirements of Article 63 of CRR? For many existing instruments, the quarterly calls following the first call date of the Tier 1 instrument would prevent the inclusion in Tier 2 capital under CRR. If an old-style Tier 1 instrument had the Issuer's Call entirely removed from the instrument's documentation by the Issuer or Trustee, could it theoretically requalify as Tier 2 if it met all the other provisions for Tier 2 capital (Article 63 etc) after the removal of the Call provision?</p>
Background on the question	To clarify the answer to question "2013_15" with regard to the implications for older Tier 1 instruments and Tier 2 instruments.
EBA answer	<p>Any material change in the contract will be considered as a new issuance. The instrument will be fully eligible in Tier 2 in its own right if and only if, as a result of the changes in the contract, it complies fully with Article 63 of Regulation (EU) No 575/2013 (CRR). In particular, settlements of coupon payments in a form other than cash or an own funds instrument may only be</p>

	<p>effected provided the requirements of Article 73 (1) and (2) are met. In addition, dividend pusher and stopper clauses interfere with the institution's flexibility to cancel distributions on other classes of capital instruments (see related question QA 2013_21 for further information).</p> <p>For the avoidance of doubt, the answer to this question does not apply to the exercise of a substitution and variation clause in the case where said clause only allows non-material changes to the contract.</p>
Link	https://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2013_46

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