

Single Rulebook Q&A

Question ID	2014_800
Status	Final Q&A
Legal act	Regulation (EU) No 575/2013 (CRR)
Topic	Own funds
Article	437
Paragraph	1
Subparagraph	b
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Regulation (EU) No 1423/2013 - ITS on disclosure of own funds requirements
Article/Paragraph	NA
Date of submission	03/02/2014
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Disclose name of institution / entity	No
Type of submitter	Credit institution
Subject matter	Clarifications with respect to Commission Implementing Regulation (EU) No. 1423/2013 (ITS on disclosure of own funds requirements)
Question	<p>1) Further guidance is requested on the disclosure relating to 'governing law of the instrument' as securities can be issued in one country (e.g. the USA) but governed or have subordination provisions based on the law of the country in which the issuing bank resides (e.g. the UK) The 'governing law of the instrument' is required to be populated in row 3 of Annex II. 2) More refined language is requested for the disclosure relating to 'If convertible, specify instrument type convertible into'. Specifically clarification on whether disclosure is required for conversion within the same category of capital (e.g. securities that qualify as AT1 and can convert into preference shares that would also qualify as AT1). This is required to complete row 28 of Annex II. 3) Possible options for specifying non-compliant features should be included in the guidance thereby ensuring consistency across banks. This is required to complete row 36 of Annex II. 4) Guidance is requested on the publishing mechanism. We would like to clarify whether there is a requirement to publish on the external website or in the printed financial statements. A possible date for publishing the table would ensure consistency across banks although this disclosure may need to tie to the date of results presentation. 5) Guidance is requested to provide the expected</p>

	<p>frequency of update. When a change in security is incorporated in the table is it expected that the value change (as at the last reporting date) for all securities is reported? (expected to arise when the update frequency is semi annual or less frequent). Also guidance is requested with respect to the time line within which the schedule is required to be updated. 6) Further guidance is requested for the type of Instrument (row 7). The current guidance under Annex III indicates 'menu options to be provided to institutions by each jurisdiction...' 7) Current guidance under Annex III for row 8 indicates '...total amount of the instrument recognised in regulatory capital before transitional provisions for the relevant level of the disclosure...'. Our interpretation of the text in the law requires disclosing the value of each security in the composition of regulatory capital prior to the grandfathering cap. Our interpretation, therefore requires disclosing within row 8 the value of the security that is different from the value included in the calculation of regulatory capital (calculated post the application of the cap). This seems to be inconsistent with the purpose of EU 1423/2013 where all articles included therein are closely linked and therefore amounts disclosed in each of the schedules are expected to reconcile. Please advise if our interpretation is in line with your understanding of the regulation.</p>
<p>Background on the question</p>	<p>N/A</p>
<p>Final answer</p>	<ol style="list-style-type: none"> 1. The governing law of the instrument refers to the law governing the contractual or statutory provisions of the instrument, which is in any way relevant to the legal status and related rights and duties of holders of that instrument. Each instrument listed should clearly distinguish which provisions are governed by the respective legal frameworks; e.g. "the instrument is governed by the laws of XX, except for the subordination provisions which are governed by the law of XX". 1. Explanations for row 28 of Annex II are provided in Annex III, same row. The type of instrument to which it is convertible into is specified and can be 'Common Equity Tier 1', 'Additional Tier 1', 'Tier 2' and 'Other'. Disclosures are therefore required for instruments that are convertible within the same category of capital, if such conversions are permissible. For instance, under Article 54(2) of Regulation (EU) No. 575/2013 (CRR), conversion of an Additional Tier 1 instrument shall, under the applicable accounting framework, generate items that qualify as Common Equity Tier 1 items. 1. Row 36 Annex II requires institutions to indicate whether there are non-compliant features. The nature of those non-compliant features is to be specified in row 37. Institutions should specify non-compliant features as free text and on a case by case basis. 1. Commission Implementing Regulation (EU) 1423/2013 only specifies

the format of the disclosure requirements provided for by Article 437 of the CRR. As is the case with every disclosure requirement in Part Eight of the CRR, those requirements in Article 437 are subject to the provision laid down in Article 433 on frequency of disclosures and Article 434 on the means of disclosures. Accordingly, institutions are free to choose the medium for disclosure of the templates, but to the extent feasible, all disclosures should be provided in one medium or location, and cross-references should be used when information is disclosed in more than one media. Annual disclosures should be published in conjunction with the date of publication of financial statements. It should be kept in mind that the EBA is currently working on guidelines on institutions assessing more frequent disclosures, which are currently being drafted and will be consulted on in Q3 2014. Furthermore, Article 106 of Directive 2013/36/EU requires Member States to empower competent authorities to require institutions to disclose information more frequently than once per year, and to set deadlines for publication, as well as to use specific media and locations for publications other than the financial statements.

If the table is disclosed on a public website, the location of this disclosure needs to be referred to in the last published or nearest published Pillar 3 report or document containing the disclosures required by Part Eight of the CRR. This could be the Pillar 3 report as at 31 December 2013, if it is published before the table is disclosed on the website.

1. The information specified in this Standard has to be disclosed on at least an annual basis in accordance with Article 433 of the CRR. According to this article, institutions shall assess the need for more frequent disclosures. As stated above, the EBA is working on guidelines on institutions assessing more frequent disclosures, which are currently being drafted and will be consulted on in Q3 2014. As also mentioned previously, Article 106 of Directive 2013/36/EU requires Member States to empower competent authorities to require institutions to publish information referred to in Part Eight of the CRR more frequently than once per year and to set deadlines for publication, as well as to use specific media and locations for publications other than the financial statements.

Annex II of the ITS does not contain any requirements regarding frequency or update of this template. Without prejudice to the guidelines which the EBA is mandated to develop under Article 433 of the CRR, where an institution decides to provide disclosures required by the ITS on a more frequent than annual basis, it is expected to revise each item that needs to be updated (i.e. each value that has changed in the reporting period must be updated).

	<ol style="list-style-type: none">1. The specific types of instruments to be reported in row 7 Annex II have to be provided by competent authorities to institutions in their jurisdictions, except for CET 1 instruments for which the EBA list applies. Each type of instrument should be linked to legal references in the CRR.1. With respect to instruments that are eligible under the CRR, the amount included in regulatory capital for each individual instrument should be disclosed. For instruments subject to transitional arrangements, the amount to be disclosed is total amount of the instrument recognised in regulatory capital before the application of transitional provisions. The disclosure should also specify whether an instrument is recognised in part in more than one tier of capital, and if the amount recognised is different from the amount at issuance.
Link	https://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2014_800

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www.eba.europa.eu