



**Single
Rulebook
Q&A**

Question ID	2016_2852
Status	Final Q&A
Legal act	Regulation (EU) No 575/2013 (CRR)
Topic	Own funds
Article	78
Paragraph	1
Subparagraph	-
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Regulation (EU) No 241/2014 - RTS for Own Funds requirements for institutions
Article/Paragraph	29 (3) (a)
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Disclose name of institution / entity	Yes
Name of institution / submitter	BaFin
Country of incorporation / residence	Germany
Type of submitter	Competent authority
Subject matter	Calculation of the predetermined amount for market making purposes
Question	Which amount has to be taken into account in market making operations when the nominal amount of the repurchased CET 1 instruments , e.g. shares, is 1 EUR per share but the current market price which has to be paid for the repurchase of the share is higher, for example 20 EUR. Which

	<p>amount has to be taken into account to compute the predetermined maximum amount for market making purposes for which a <u>general prior permission</u> has been granted by the <u>competent authority (CA) (NCA)</u> according to <u>Article 29 (3) (a) of Delegated Regulation (EU) No. 241/2014</u> <u>78(1) of Regulation (EU) No 575/2013 (CRR)?</u></p>
Background on the question	<p>Article 29 (3) (a) of Delegated Regulation (EU) No. 241/2014 does not specify which amount has to be used to calculate the predetermined maximum amount for market making purposes.</p>
EBA answer	<p>The <u>maximum</u> predetermined maximum amount for <u>CET1 instruments</u> has to be computed in line with the second subparagraph of <u>Article 78(1) of 29(3)(a) of Delegated Regulation (EU) No. 241/2014</u> <u>the CRR</u>. To this end, it is necessary to consider two scenarios: (a) in case the market price is higher than the nominal amount, as in the example given above, the overall repurchase price (number of shares to be repurchased multiplied by the market price at the time of the permission) has to be taken into account for computing the predetermined amount; (b) in case the market price is below the nominal amount, then the nominal amount of the issuance has to be used to calculate the predetermined amount for market making purposes.</p> <p>Therefore, in the case sub (a), the <u>maximum limit</u> of the predetermined amount should be understood as the lower of the following amounts at the time of the permission:</p> <ol style="list-style-type: none"> 1. 3% of the repurchase value of the relevant <u>issue issuance</u>; 2. 10 % of the amount by which Common Equity Tier <u>CET 1</u> capital exceeds the sum of the Common Equity Tier <u>CET 1</u> capital requirements <u>laid down in the CRR, and in Directives 2013/36/EU (CRD) and 2014/59/EU (BRRD)</u> by <u>and a margin that the competent authority considers necessary</u>. pursuant to Article 92 of Regulation (EU) No 575/2013, the specific own funds requirements referred to in Article 104(1)(a) of Directive 2013/36/EU and the combined buffer requirement as defined in point (6) of Article 128 of that Directive. <p>The reason to take into account always the higher amount <u>of either the market price or the nominal amount</u> for calculating the predetermined amount is to ensure that such amount does effectively corresponds to 3% of the <u>relevant CET1 issue issuance</u>. In fact, in case the market price is higher than the nominal amount, only a predetermined amount calculated considering the repurchase value would allow buying a number of shares, that <u>which</u> is equal to 3% of the original <u>issue issuance</u>. On the contrary, if the nominal value were to be considered for the calculation <u>in this case</u>, the resulting predetermined amount would <u>only</u> allow buying a number of shares lower than 3% of the original <u>issue issuance</u>.</p>

	<p>In any case, from a prudential perspective, it must be recalled that the predetermined amount calculated using the repurchase value cannot exceed 10% of the amount by which CET1 capital exceeds the sum of the <u>CET1 requirements laid down in CRR, CRD and BRRD and a margin that the competent authority considers necessary of Pillar 1, Pillar 2 and the combined buffer requirement.</u></p> <p>Therefore, in the example above, 20 EUR have to be taken into account when computing the predetermined amount for market making purposes <u>when granting a general prior permission in accordance with the second subparagraph of Article 78(1) CRR.</u></p>
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