



EBA/Op/2016/08

03/05/2016

Opinion of the European Banking Authority on the Commission's intention not to endorse the draft Regulatory Technical Standards on additional collateral outflows according to Article 423(3) CRR

Introduction and legal basis

Draft regulatory technical standards ('RTS') with regard to additional collateral outflows under Article 423(3) of Regulation (EU) No 575/2013¹ were submitted by the European Banking Authority ('EBA') to the European Commission for endorsement on 27 March 2014.

On 3 December 2015 the European Commission informed the EBA about the European Commission's intention not to endorse the draft regulatory technical standards.

The EBA's competence to deliver an opinion is based on the sixth subparagraph of Article 10(1) of Regulation (EU) No 1093/2010².

In accordance with Article 14(5) of the Rules of Procedure of the Board of Supervisors³, the Board of Supervisors has adopted this opinion.

Comments

¹ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

² Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p.12).

³ Decision adopting the Rules of Procedure of the European Banking Authority Board of Supervisors of 27 November 2014 (Decision EBA DC 2011/001(Rev4)).

When publishing the final draft RTS in March 2014, the EBA indicated that its historical look-back approach ('HLBA') method of calculating⁴ additional liquidity outflows corresponding to collateral needs resulting from the impact of an adverse market scenario on an institution's derivative transactions was more conservative than the HLBA specified by the Basel Committee on Banking Supervision ('BCBS') because it did not allow institutions to take into account collateral amounts pledged towards an institution. This was in order to leave the HLBA less vulnerable to collateral inflows that may not be re-used or are made up of less liquid assets.

As pointed out by the Commission in its letter of 3 December 2015, the assessment of the draft RTS was delayed⁵ pending the adoption of the Commission's delegated act on the liquidity coverage ratio⁶. Furthermore, the European Commission, while recognising that the BCBS clarified its rules text in April 2014, which was after the deadline for submission of the RTS by the EBA, raises concerns that the EBA's HLBA approach could have a significant impact on credit institutions and international derivative markets.

The Commission notes that the HLBA methodology in the draft RTS is based on the largest gross difference in collateral posted for derivative contracts over any 30 day period in the last 2 years. In contrast, the HLBA approach specified by the Basel Committee on Banking Supervision ('BCBS')⁷ uses the largest net difference in collateral posted⁸. Therefore, the Commission is concerned that the liquidity outflows under the EBA's HLBA approach, as compared to the BCBS's HLBA approach, would be much higher for major players in derivative markets. Furthermore, the Commission indicates that 80% or more of collateral received by banks is cash or very high quality sovereign debt, which seems to be in its view a good argument for allowing netting as permitted under the BCBS's HLBA approach. From a broader market perspective, the EBA's HLBA approach could also have a significant impact on the level playing field in international derivative markets.

The Commission would therefore be open to endorsing amended draft RTS based on the BCBS's HLBA approach. The EU Commission services indicated to the EBA that this change does not require a new impact assessment or consultation.

After careful consideration of the Commission's reasons for its proposed amendments, the EBA has decided that, given the absence of reporting data resulting from the delayed Commission

⁴ In addition to the HLBA, which acts as the floor methodology, the draft RTS also introduced an option to apply a method (the 'AMAO' or 'Advanced Method of Additional Outflows') that was designed for institutions with large derivative portfolios and that could produce higher outflows, although this is not mandatory.

⁵ Article 10(1) of Regulation (EU) No 1093/2010 requires the Commission to decide whether to endorse draft RTS within 3 months of their receipt.

⁶ Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions (OJ L 11, 17.1.2015, p.1).

⁷ 'Basel III: The Liquidity Coverage Ratio and liquidity risk monitoring tools', published in January 2013.

⁸ In April 2014 the BCBS clarified that the largest absolute net 30-day collateral flow is the largest aggregated cumulative net collateral outflow or inflow at the end of all 30-day periods during the preceding 24 months, at portfolio level (see response to question 10 in the BCBS's document entitled 'Frequently Asked Questions on Basel III's January 2013 Liquidity Coverage Ratio framework').

endorsement of the draft RTS⁹ and in view of the need to avoid any significant impact on institutions and derivative markets resulting from differences between the EBA's and the BCBS's HLBA approach, the draft RTS should be amended in a way consistent with the Commission's proposed approach and submitted to the Commission in the form set out in the Annex.

This opinion will be published on the EBA's website.

Done at London, 02 May 2016

[signed]

Andrea Enria

Chairperson

For the Board of Supervisors

⁹ Given the novelty of the rules on additional liquidity outflows corresponding to collateral needs resulting from derivatives, their practical application and impact on institutions was to be examined by the EBA within two years of their application, together with any international regulatory developments, with a view to revising the RTS if necessary.



Brussels, **XXX**
[...](2013) **XXX**

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of **XXX**

**COMMISSION DELEGATED REGULATION (EU) No .../...
supplementing Regulation (EU) No 575/2013 of 26 June 2013 of the European
Parliament and of the Council with regard to regulatory technical standards for
additional liquidity outflows corresponding to collateral needs resulting from the impact
of an adverse market scenario on an institution's derivatives transactions, financing
transactions and other contracts**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 423(3) of Regulation (EU) No 575/2013 ('the Regulation') empowers the Commission to adopt, following submission of draft standards by the European Banking Authority (EBA), and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, delegated acts specifying the materiality and the measurement of additional collateral outflows resulting from the impact of an adverse market scenario on institutions' derivatives transactions, financing transactions and other contracts.

In accordance with Article 10(1) of Regulation (EU) No 1093/2010 establishing the EBA, the Commission shall decide within three months of receipt of the draft standards whether to endorse the drafts submitted. The Commission may also endorse the draft standards in part only, or with amendments, where the Union's interests so require, having regard to the specific procedure laid down in those Articles.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1093/2010, the EBA has carried out a public consultation on the draft technical standards submitted to the Commission in accordance with Article 423(3) of the Regulation. A consultation paper was published on the EBA internet site on 23 May 2013, and the consultation closed on 14 August 2013. Moreover, the EBA invited the EBA's Banking Stakeholder Group set up in accordance with Article 37 of Regulation (EU) No 1093/2010 to provide advice on them.

Together with the draft technical standards, the EBA has submitted an explanation on how the outcome of these consultations has been taken into account in the development of the final draft technical standards submitted to the Commission.

Together with the draft technical standards, and in accordance with the third subparagraph of Article 10(1) of Regulation No (EU) 1093/2010, the EBA has submitted its Impact Assessment, including its analysis of the costs and benefits, related to the draft technical standards submitted to the Commission. This analysis is available at <http://www.eba.europa.eu/regulation-and-policy/liquidity-risk/draft-regulatory-technical-standards-on-additional-liquidity-outflows>, pages 22-32 of the Final Draft Regulatory Technical Standards package.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The provisions of this delegated act determine the method for the measurement of the additional collateral outflows resulting from the impact of an adverse market scenario on institutions' derivative transactions, as a component of the liquidity coverage requirement specified in Commission Delegated Regulation (EU) No 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions. The method of calculation is based on the Historical Look Back Approach ('HLBA') for market valuation changes developed by the Basel Committee on Banking Supervision ('BCBS') for determining these additional collateral outflows in paragraph 123 of the BCBS's document entitled 'Basel III: The Liquidity Coverage Ratio and liquidity risk monitoring tools' and published in January 2013 and as further elaborated by paragraph 10 of the BCBS's document entitled "Frequently Asked Questions on Basel III's January 2013 Liquidity Coverage Ratio framework, April 2014".

In addition, this delegated act determines the threshold above which an institution's derivative transactions shall be considered material for the purposes of the first subparagraph of Article

423(3) of the Regulation and therefore shall fall within the scope of application of the delegated act.

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additional liquidity outflows corresponding to collateral needs resulting from the impact
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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012¹, and in particular fourth subparagraph of Article 423(3) thereof,

Whereas:

- (1) As required in Article 423(3) of Regulation (EU) No 575/2013, institutions shall add an additional outflow corresponding to collateral needs that would result from the impact of an adverse market scenario on the institution's derivatives transactions, financing transactions and other contracts if material. Given considerations of materiality and practicality, securities financing transactions should not be subject to additional collateral outflows corresponding to collateral needs resulting from the impact of an adverse market scenario.
- (2) Given that Article 423(3) of Regulation (EU) No 575/2013 refers to collateral needs, the rules should be restricted to derivatives transactions that are collateralised, including those that mature within 30 days.
- (3) In order to ensure a level-playing field for institutions and derivative markets, the calculation of the additional collateral outflows should be based on the Historical Look Back Approach ('HLBA') for market valuation changes developed by the Basel Committee on Banking Supervision ('BCBS') for determining these additional collateral outflows, which uses for that purpose the largest aggregated cumulative net collateral outflow or inflow realised at the end of all 30-day periods during the preceding 24 months at the portfolio level.
- (4) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority ('EBA') to the Commission.
- (5) The EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in

¹ OJ L 176, 27.6.2013, p. 1.

accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council².

- (6) In accordance with the procedure set out in Article 10 of Regulation (EU) No 1093/2010, the Commission informed the EBA about its intention not to endorse the draft regulatory technical standards submitted by the EBA explaining the reasons for the non endorsement. The EBA resubmitted the draft regulatory technical standards in the form of a formal opinion accepting the Commission's proposed approach strictly based on the BCBS's HLBA approach. *(to add: COM final decision)*

HAS ADOPTED THIS REGULATION:

Article 1

Conditions of application in relation to the notion of materiality for the purposes of first subparagraph of Article 423 (3) of Regulation (EU) No 575/2013

1. An institution's derivatives transactions shall be considered material for the purposes of the first subparagraph of Article 423(3) of Regulation (EU) No 575/2013 where the total of notional amounts of such transactions has exceeded 10% of the net liquidity outflows as referred to in Article 412 of Regulation (EU) No 575/2013 at any time in the previous two years.
2. For the purpose of this Article the net liquidity outflows as referred to in Article 412 of Regulation (EU) No 575/2013 shall be calculated without the additional outflow component of Article 423(3) of that Regulation.

Article 2

Method for the calculation of an additional outflow corresponding to collateral needs resulting from the impact of an adverse market scenario on the institution's derivative transactions

1. The additional outflow corresponding to collateral needs resulting from the impact of an adverse market scenario on an institution's derivatives transactions considered as material in application of Article 1 of this Regulation, shall be the largest absolute net 30-day collateral flow realised during the 24 months preceding the date of calculation of the liquidity coverage requirement.
2. Institutions may only treat inflows and outflows of transactions on a net basis where they are executed under the same master netting agreement. The absolute net collateral flow shall be based on both realised outflows and inflows and the netting shall be calculated at the institution's portfolio level.

Article 3

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

² Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p.12).

Done at Brussels,

*For the Commission
The President*