

European Banking Authority (EBA)  
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Reference

## **Consultation Paper - Draft Regulatory Technical Standards on own funds part three**

### **Q01: Are the provisions of Article 14a sufficiently clear? Are there issues which need to be elaborated further?**

We are concerned that the EBA has gone further in this draft RTS than the mandate in CRR allows for. The mandate in CRR only refers to holdings, indirect holdings and synthetic holdings. A holding is normally represented by some form of ownership, holding of a fund share or a synthetic holding through a derivative. In relation to the draft RTS we especially find it hard to see how a defined benefit pension fund could qualify as a holding (direct, indirect or synthetic). We also find it hard to see how providing senior funding to an entity could qualify as a holding.

That said, we are of the opinion that defined benefit pension funds should not be included in the scope of any holding, unless a credit institution has an ownership in the 'fund' in question. The same should apply for funds in general, for example a senior exposure to a fund should not be regarded as a holding.

It is important to have in mind that banks as well as corporates are using different solutions for the purpose of 'backing' their defined benefit pension obligations. The term used in IFRS accounting (IAS 19) is plan assets which include assets held by a long-term employee benefit fund or is a qualifying insurance policies. A long-term employee benefit fund could come in different legal forms. A common legal form in the case of Swedish banks, including SEB, is a trust. Some banks also use qualifying insurance policies, which are issued by an unrelated insurer, for the purpose of backing their defined benefit pension obligations.

According to IFRS a long-term employee benefit fund is required to be legally separate from the reporting entity and exists solely to pay or fund employee benefits, are available to be used only to pay or fund employee benefits and are not available to the reporting entity's own creditors (even in bankruptcy). The same requirements apply in the case of qualifying insurance policies, with the only difference that the legal separation requirement is altered with a requirement that the insurer should be unrelated.

Given these strict requirements we find it very hard to see that investments made by any such entities should be regarded as direct, indirect or synthetic holdings by banks. Our strong opinion is that they should not as long as they comply with these requirements, since merely the legal separation requirement demonstrates that no holding exists.

We also find it unclear what would constitute "supporting the investment risk" with regards to defined benefit pension funds. The spectrum is wide since one stance could be that you are not supporting the investment risk when complying with the above legal separation or unrelated requirement. Another stance could be that you are supporting the investment risk as soon as you have signed an agreement with for example an insurer and hence is aware of its investment policy.

If the EBA in the end will go ahead with its proposal that investments in defined benefit pension funds should be regarded as indirect holdings such an obligation to look-through to single assets will result in a major administrative burden. The reason being that both long-term employee benefit funds and insurers used are as indicated above acting very independently. In case for example a trust is used reporting (e.g. for the purpose of annual reports) is often done by independent actuaries. In case a qualifying insurance policy is used the insurer needs to provide information about the underlying investments to banks regularly. Plan assets also to various degrees consist of investments in different kind of funds meaning that the look-through also will involve many layers of investments.

**Q02: Provisions included in paragraph 1of the following Article 14a refer in particular to pension funds. These provisions have to be read in conjunction with the deductions referred to in Article 33(e) of the CRR. Would you see any cases where there might be an overlap between the two types of deductions? Please describe precisely these situations and the nature of the problem.**

CRR contains explicit requirements for how to treat defined benefit pension fund assets and defined benefit pension fund liabilities in the calculation of Common Equity Tier 1 capital. According to Article 33 (e) shall defined benefit pension fund assets on the balance sheet be deducted from CET 1. A net defined benefit pension fund liabilities on the other hand shall not be adjusted for and hence have a full negative effect on CET 1. This asymmetrical treatment could be questioned but will be dealt with in a separate context.

Any requirement to carve-out individual investments in a defined benefit pension fund will certainly lead to an overlap with these provisions, since these investments have already affected the amounts that have either been deducted or had a full negative effect on CET 1. We are therefore of the opinion that the treatment of defined benefit pension schemes already provided for under CRR is more than enough and that no further provisions for the treatment of defined benefit pension funds are needed.

Again, if the EBA in the end will go ahead with its proposal that investments in defined benefit pension funds should be regarded as indirect holdings it is essential that any overlap with Article 33 (e), is fully adjusted for in order to avoid a double deduction requirement. The full negative effect on CET 1 from defined benefit pension fund liabilities then also needs to be adjusted for.

Yours sincerely,



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