EBA/CP/2026/17

25/08/2026

Consultation Paper

Draft Regulatory Technical Standards

- on the calculation of the threshold referred to in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013 under Article 8a(6) point (b) of Directive 2013/36/EU,
- on the provision of information for the effective monitoring of the credit institutions thresholds under Article 55(5) of Regulation (EU) 2019/2033, and
- on the elements to be taken into consideration by competent authorities when deciding whether to grant a waiver under Article 8a(3a) of Directive 2013/36/EU.

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1. Responding to this consultation

The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 5.2.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 25.11.2026. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EU) 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the [Legal notice section] of the EBA website.

2. Executive Summary

This consultation responds to the co-legislators requests that the EBA specifies:

- the methodology for calculating the thresholds referred to in Article 8a(1) of Directive 2013/36/EU (CRD) - Article 8a(6)(b) CRD;
- the information to be provided to competent authorities for monitoring the thresholds of Article 8a(1) CRD - Article 55(5) of Regulation (EU) 2019/2033 (IFR);
- the elements to be taken in consideration by competent authorities when deciding on the waiver set out by Article 8a(3a) CRD - Article 8a(7) CRD.

The draft RTS on the methodology for calculating the thresholds set out in Article 8a(1) CRD had already been consulted upon[1], but had to be reconsidered due to the changes introduced by Article 8a CRD, which now limits the scope of the group test. Currently, only the assets of EU undertakings and their subsidiaries that carry out any of activities (3) and (6) of MiFID, and the EU branches of third-country entities of the same group shall be included in the calculation of the total assets for the purposes of the threshold of CRD Article 8a point b, as opposed to a global scope in the previous version of CRD. This simplifies calculation and reporting requirements.

The draft RTS on the provision of information for the effective monitoring of the thresholds set out in Article 8a(1) CRD specify what investment firms in scope should report. In line with IFR Article 55(5), undertakings would have to report only if their total assets are in excess of 5 billion euros. Investment firms would need to fill out two templates quarterly. Monthly data could be obtained by simple interpolation to reduce burden.

As for the draft RTS on the elements to be taken into consideration to grant a waiver to an entity in accordance with CRD Article 8a(3a), competent authorities would be expected to:

- assess the group's organisational structure, booking practices and allocation of assets [2];
- analyse the entity's business model and the share of its deals on behalf of clients; [3]
- draw on available regulatory instruments to measure its systemic risk;[4]
- analyse the size and complexity of its derivatives portfolio and footprint. [5]

This document provides background and rationale for each draft RTS, an assessment of their costs and benefits for market participants, and an overview of the impact of the policy options.

[1] First consultation in June 2020 (link) and second consultation in June 2021 (link).

2 As requested by Article 8a(3a) point a. of the CRD.

3 To be considered according to Article 8a(3a) point b. of the CRD.

4 In line with Article 8a(3a) point c. of the CRD.

5 As requested by Article 8a(7) of the CRD.

Next steps

After a 3-months consultation period, the EBA will finalise the three draft RTS and submit the final texts to the European Commission.

3. Background and rationale

1. The European investment firms' population is characterised by great variety[6] for what concerns size, business model, risk profile, and complexity, ranging from one-person firms to large, potentially systemic, undertakings. Consequently, the Investment Firm Regulation (IFR[7]) and the Investment Firm Directive (IFD[8]) introduced proportionate and risk-sensitive rules and requirements for investment firms. The prudential framework, applicable since 26 June 2021, differentiates between investment firms that are either systemically important or have the same risk profile of credit institutions, which will remain subject to the banking rules and requirements of the Capital Requirements Regulation (CRR[9]), and other investment firms, whose size and activities justify the application of the less complex provisions of the IFR and IFD.
2. The IFR and IFD award a large number of mandates to the EBA, which is required to develop draft technical standards to support the implementation of the prudential requirements for investment firms. This Consultation Paper discusses and proposes three sets of draft Regulatory Technical Standards (RTS):
    a. Draft Regulatory Technical Standards on the calculation of the threshold referred to in point (1)(b) of Article 4(1) of the CRR. Article 8a of the Capital Requirements Directive (henceforth CRD) requires undertakings referred to in point (1)(b) of Article 4(1) of the CRR which have already obtained an authorisation pursuant to Title II of Directive 2014/65/EU (MiFID[10]) to submit an application for authorisation in accordance with Article 8 of the same Directive when either of the thresholds introduced by the points (a) and (b) of Article 8a(1) CRD is breached. The draft RTS specify the methodology for calculating the total assets to be compared with the thresholds, as mandated by Article 8a(6)(b) of the CRD[11].
    b. Draft Regulatory Technical Standards on the provision of information for the effective monitoring of the credit institutions thresholds under Article 55(5) of the IFR. Article 55(1) of the IFR requires some investment firms whose 12-months average of their consolidated assets is equal to or exceeds EUR 5 billion to report with quarterly frequency the value of their monthly total assets to their competent authority. The draft RTS further specify the information to be provided, as mandated by Article 55(5) of the IFR.

6 EBA/Op/2015/20 Report on investment firms

7 EUR-Lex - 02019R2033-20240109 - EN - EUR-Lex

8 EUR-Lex - 02019L2034-20241224 - EN - EUR-Lex

9 EUR-Lex - 02013R0575-20250629 - EN - EUR-Lex

10 EUR-Lex - 02014L0065-20250117 - EN - EUR-Lex

11 EUR-Lex - 02013L0036-20250117 - EN - EUR-Lex

c. Draft RTS on the elements to be taken into consideration by competent authorities when deciding whether to grant a waiver in accordance with Article 8a(7) of the CRD. Paragraph (3a) of Article 8a CRD allows competent authorities (CA) to waive the requirement to obtain an authorisation as a credit institution for those undertakings that satisfy the requirements set out in Article 8a(1) of the CRD. The draft RTS specify the elements to be taken in consideration by the competent authorities when deciding on whether to grant a waiver, as mandated by Article 8a(7) of the CRD.

3. The following sub-sections provide more details concerning the background and rationale of each draft RTS.

3.1. Background and rationale of the draft RTS on the calculation of the threshold referred to in point (1)(b) of Article 4(1) CRR (Article 8a(6) point (b) of the CRD)

4. The Draft RTS on the calculation of the threshold referred to in point (1)(b) of Article 4(1) CRR have been developed in response to a mandate initially addressed during the first phase of the EBA roadmap on investment firms, focusing on the reclassification of some investment companies as credit institutions. These draft RTS have already undergone two rounds of public consultation[12], given that, after the first iteration, it appeared necessary to identify more accurately the entities to be considered for the computation of the total assets for the purposes of Article 8a CRD, so to avoid biases based on domiciliation.
5. Since the draft RTS was being consulted after the date of application of the IFR/IFD framework (i.e. 26 June 2021), in order to ease the implementation of the new IFR/IFD framework and to provide clarity on the competent authorities' duties until the publication of the legal text, the EBA issued an Opinion[13] inviting competent authorities to adopt a pragmatic approach for those cases where the eventual breach of the EUR 30bn threshold cannot be assessed without the guidance provided by the draft RTS. More precisely, the EBA invited CAs not to prioritise any supervisory or enforcement action in relation to said cases until 6 months have passed since the date of application of the RTS. This EBA Opinion accompanied a statement from the European Commission clarifying that, until the time they are granted or rejected the authorisation to become a credit institution, investment firms needing such authorisation

12 First consultation: EBA starts delivering on the implementation of the new regulatory framework for investment firms, June 2020 (link).

Second consultation: EBA launches second consultation on its technical standards on the calculation of the EUR 30bn threshold for investment firms, June 2021 (link).

Publication of RTS: EBA publishes the methodology for investment firms to be reclassified as credit institutions, December 2021 (link).

13 Opinion on appropriate supervisory and enforcement practices for the process of authorising investment firms as credit institutions (link).

should continue applying the CRR/CRD framework as implemented on the day prior to the date of application of the new framework, in accordance with Article 58 of the IFR.

6. These RTS are relevant for entities that carry out any of activities (3) and (6) of Section A of Annex I to Directive 2014/65/EU (henceforth, "activities (3) and (6) MiFID" or "relevant activities") for the purposes of monitoring the EUR 30 billion threshold based on total consolidated assets. The draft RTS are now reconsulted because of the significant changes introduced to Article 8a by the CRD 6, regarding the calculation mentioned in point (b) of that article. In particular, the scope of entities to be considered for the calculation is now limited to those domiciled in the EU, rather than referring to all the entities in the group. Two clarifications remain: (i) the assets of third country branches in the EU as well as assets of subsidiaries of EU undertakings shall be included in the calculation of the total assets; and (ii) only those undertakings that perform activities (3) and (6) of MiFID and individually have total assets of less than EUR 30 billion should be included in the calculation.
7. Article 8a of the CRD - which specifies the requirements for authorising a new type of credit institutions – led to a widening of the 'credit institution' definition in Article 4(1)(1) of the CRR. Article 8a of the CRD provides guidance concerning the deadline for submitting an application for a credit institution authorisation for those investment firms that are referred to in point 1(b) of Article 4(1) of the CRR and have already obtained an authorisation pursuant to Title II of Directive 2014/65/EU. More precisely, that Article dictates that said investment firms should submit the authorisation request at the latest on the day when either one of the thresholds specified in points (a) or (b) of Article 8a(1) of the CRD is breached.
8. Article 8a(6)(b) of the CRD mandates the EBA to develop draft RTS to specify the methodology for calculating the thresholds referred to in paragraph 1 of the same Article. These draft RTS provide clarifications on all the areas that are deemed relevant in developing such methodology, and especially on the assets to be considered for the calculation, the concept of 'consolidated assets' for the purpose of this calculation, and the calculation of the total assets' value when relevant undertakings are established outside the EU.
9. It is important to highlight that, while assets of credit institutions should be considered against the EUR 30 billion threshold insofar as each credit institution complies with the relevant criterion (i.e. being a credit institution as defined at point (1)(b) of Article 4(1) of the CRR), the actual calculation of the total assets should only be carried out by investment firms meeting all criteria in Article 8a of the CRD (i.e. being a credit institution as defined by point (1)(b) of Article 4(1) of the CRR and having already obtained a MiFID authorisation), as the calculating entities are the ones which will need to apply for a credit institution authorisation.
10. The present draft RTS differentiate the methods for the calculation of the total assets at individual and group level:
    a. At individual level, undertakings are required to submit the application if the average of monthly total assets – calculated over a period of 12 consecutive months – is equal to or exceeds EUR 30 bn. The last day for firms to apply for the authorisation is the day on which the aforementioned average is equal to or higher than that threshold.
    b. At group level, undertakings whose average of their monthly individual total assets – calculated over a period of 12 consecutive months – is less than EUR 30 bn are

still required to submit a credit institution application if they are part of a group in which the total value of the consolidated assets of all undertakings in the group – that have individual total assets of less than EUR 30 bn and carry out any of the relevant activities – is equal to or exceeds EUR 30 bn. The last day for said firms to apply for the authorisation is the day on which the aforementioned average of consolidated assets is equal to or higher than that threshold.

11. The scope of undertakings whose assets should be taken into account in the EUR 30 bn threshold calculation at group level includes all undertakings belonging to the group (as well as the branches and subsidiaries of these undertakings which are established in third-countries), that carry out the relevant activities and have individual total assets of less than EUR 30 bn.
12. Branches established in the EU should be considered in the calculation of the EUR 30 bn threshold if they belong to relevant undertakings established in third countries and these relevant undertakings have individual total assets of less than EUR 30 bn. In light of the wording of the last subparagraph in Article 4(1)(1) of the CRR[14], and in line with the definition of 'group' used throughout the draft RTS, Article 7 of the draft legal text provides clarifications with regard to the treatment of relevant branches authorised in the EU that are established by relevant undertakings domiciled in a third country, where the undertakings in the third country have a value of total assets larger than EUR 30 bn. The assets of these branches are to be added to the value of consolidated assets for the relevant undertakings in the group. Branches belonging to undertakings that have an individual value of total assets larger than EUR 30 bn, but whose value of consolidated assets (calculated as the individual value of total assets from which are deducted the intragroup exposures with all other relevant undertakings in the group) is smaller than EUR 30 bn are not within the scope of Article 7 of the current draft RTS.
13. Subtracting intragroup exposures from the value of total assets differs depending on whether the threshold is calculated at individual or at group level. In the context of the individual test, all relevant intragroup exposures (i.e., between the calculating undertaking and all other relevant undertakings in the group) are considered. Differently, in the context of the group test, intragroup exposures between the calculating undertaking and relevant undertakings which have a total value of individual assets of less than EUR 30 bn or a value of consolidated assets (calculated as the individual value of total assets from which are deducted the intragroup exposures with all other relevant undertakings in the group) of less than EUR 30 bn are to be subtracted. To ensure consistency with this treatment, intragroup exposures between EU undertakings and their branches and subsidiaries established in third countries should also be deducted. These draft RTS do not consider off-balance sheet items as part of the calculation of the total value of the assets as the CRD does not require such inclusion; accordingly, assets under management and assets under safekeeping should not be included in the calculations.
14. As different sets of accounting standards can be used by investment firms for the purpose of determining the value of their individual or consolidated total assets, the draft legal text

14 For the purposes of points (b)(ii) and (b)(iii), where the undertaking is part of a third-country group, the total assets of each branch of the third-country group authorised in the Union shall be included in the combined total value of the assets of all undertakings in the group.

proposes a hierarchical approach for what concerns the principles that should be employed by investment firms. More precisely, the draft RTS require the use of the International Financial Reporting Standards (IFRS) as the basis for the computation of total assets, while the recourse to an EU Member State local GAAPs is admitted only when the investment firm and/or its group do not use IFRS. Given the distortion that the use of third countries' local GAAPs, especially those not recognised in the EU, could generate in the computation of the total assets for the purposes of Article 8a(1) of the CRD, the draft RTS do not allow the direct use of non-EU local GAAPs-based values, but rather require these values to be adjusted so that the inputs obtained mirror those obtainable from the application of either IFRS or an EU Member State's local GAAPs.

15. Article 8a of the CRD requires undertakings to submit an application for an authorisation as credit institution at the latest when the average of their monthly total assets is equal to or exceeds EUR 30bn over a period of 12 consecutive months. These draft RTS clarify that the calculations of the total value of the assets should be performed on a quarterly basis and that monthly data can be obtained by interpolation, allowing undertakings to work out the asset values just four times per year, rather than twelve. This approach seems the most appropriate, as Article 8a of CRD does not specifically require the calculation to be performed on a monthly basis. Furthermore, since the CRD does not indicate the time of the year when the calculation should be performed, the reference dates for the calculations have been explicitly listed in the draft RTS and have been aligned with the ones for reporting requirements.

3.2. Background and rationale of the draft RTS on provision of information for the effective monitoring of the credit institutions thresholds under Article 55(5) of Regulation (EU) 2019/2033

16. Among other things, some investment firms are required by Article 55 IFR to monitor their position, and where applicable their group's position, in relation to the thresholds triggering the classification as a credit institution in accordance with points (a) and (b) of Article 8a(1) of the CRD.
17. Article 55(5) IFR requires the EBA to develop, in consultation with ESMA, an RTS 'to specify further the obligation to provide information to the relevant competent authorities referred to in paragraphs 1 and 2 in order to allow effective monitoring of the thresholds set out in points (a) and (b) of Article 8a(1) of the CRD'. The objective of the draft RTS on provision of information for the effective monitoring of the credit institutions thresholds under Article 55(5) of the IFR (hereafter the 'monitoring RTS') is to provide competent authorities with the adequate tools (and especially the necessary data) for monitoring on an ongoing basis the total assets against the EUR 30 billion threshold for investment firms.
18. Since the mandate requires the EBA 'to specify further the obligation to provide information', it is understood that a list of elements – data points – necessary to ensure the monitoring of the EUR 30 billion threshold should be identified. The data points to be reported by investment firms in the scope of Article 55 should be consistent with the inputs used by such undertakings

in computing the above-mentioned threshold, whose calculation methodology is detailed in the RTS developed in accordance with the mandate reported in Article 8a(6), point (b) CRD (hereafter the 'methodology RTS'). Furthermore, it is understood that an 'effective monitoring' of the EUR 30 billion threshold is best achieved if competent authorities have access to the information that is required to autonomously compute the level of total assets. Consequently, the EBA proposes reporting entities to provide the relevant information by filling a reporting template requesting only the minimum data that is necessary for competent authorities to autonomously compute those values.

19. More precisely, consistently with the provisions of the methodology RTS, investment firms in the scope of Article 55 of the IFR should at least report the monthly values of their total assets and, if appropriate, the consolidated total assets as computed according to the provisions of the methodology RTS. These data should be reported to the competent authorities on a quarterly basis (i.e. every quarter, three values should be reported, one for each month). Particular attention is given to the contribution of branches located in the EU that carry out activities (3) and (6) of MiFID and belong to entities incorporated in third countries. The contribution of those branches to the total consolidated assets is captured in a separate data point.
20. Additionally, in the context of the group-wide assessment (group-level credit institution test – hereafter the 'group CI test') prescribed in the methodology RTS, two data points on the identification of the ultimate parent of the group were added. These data points will ease the performance of the matching and consistency checks concerning reports submitted by different group entities in different Member States.

3.3. Background and rationale of the draft RTS on the elements to be taken into consideration by competent authorities when deciding whether to grant a waiver in accordance with Article 8a(3a) of Directive 2013/36/EU

21. Article 8a(3a) of the CRD introduces the possibility for competent authorities to waive undertakings breaching one of the thresholds identified by Article 8a(1) from obtaining an authorisation as a credit institution. Paragraph 3a also provides guidance concerning which elements should be considered by competent authorities when deciding on the waiver request, as it dictates that the decision should at least be based on:
    a. When the undertaking is part of a group, the organisational structure of the group, the booking practices prevailing within the group, and the allocation of assets across different group entities (Article 8a(3a)(a)).
    b. The nature, size and complexity of the activities carried out by the undertaking in the Member State where it is established and in the Union as a whole (Article 8a(3a)(b)).
    c. The importance of, and systemic risk posed by, said activities (Article 8a(3a)(c)).
22. Article 8a(7) of the CRD mandates the EBA to develop draft RTS to specify the elements to be taken into consideration by competent authorities when deciding whether to grant a waiver in

accordance with Article 8a(3a) of the CRD. The mandate also requires the EBA to take into account the materiality of the counterparty credit risk to which an undertaking is exposed.

23. For the purposes of this section, the following definitions apply:
    a. Class 1 undertakings are those investment firms that have been authorised as credit institutions after breaching one of the thresholds reported in Article 8a(1) of the CRD.
    b. Class 1 minus undertakings are those investment firms that satisfy at least one of the following conditions:
        i. their consolidated assets are higher than EUR 15 billion;
        ii. they are included in the supervision on a consolidated basis of a credit institution; or
        iii. their consolidated assets are higher than EUR 5 billion and they are designated by their competent authorities following specific criteria in accordance with Article 1(2) or Article 1(5) of the IFR.
    c. Class 2 undertakings are those investment firms that are not classified in any of the other classes.
    d. Class 3 undertakings are those investment firms that meet all the requirements under Article 12 of the IFR.
24. A comparison between the regulatory and supervisory regimes of Class 1 minus and Class 1 undertakings suggests that the introduction of the waiver is aimed at avoiding the shift of supervisory authority from the CA responsible for the prudential supervision of investment firms to the banking supervisor for those undertakings whose risk profile does not justify it. Class 1 minus investment firms are in fact already subject to reporting and prudential requirements that largely coincide with those of credit institutions, with only few material differences[15].
25. Where the risk profile and business model of the firm do not mirror those of a credit institution, those undertakings that have already been authorised as credit institutions after breaching one of the thresholds set out in Article 8a(1) of the CRD, may apply for the waiver and seek a reclassification as investment firms.
26. Given the low likelihood of Class 2 undertakings breaching one of the thresholds in Article 8a(1) of the CRD without first being reclassified as a Class 1 minus undertaking, these draft RTS have been developed focusing on the predominant case of a Class 1 minus investment firm applying for the waiver, given their expectation of breaching one of the thresholds set out in Article 8a(1) of the CRD. Additionally, as the waiver request and the related documentation needs to be provided together with the application to be authorised as a credit institution (as per Article 8a(3a) of the CRD), these draft RTS have been developed assuming that the competent authority could also leverage on the information provided during the credit institution authorisation process in order to reach a decision on the waiver request.

15 Such as different tax rate applied to credit institutions by some member states, obligation to contribute to Deposit Guarantee Schemes (DGS), possibility to take part in monetary policy operations aimed at credit institutions, and application of stricter corporate laws in some member states.

27. Each of the indicators to be assessed by competent authorities when taking a decision on the waiver request has been developed starting from one of the four criteria of paragraphs 3a and 7 of Article 8a of the CRD. Such indicators represent the elements that must be necessarily considered by competent authorities, who could however decide to extend their analysis to additional parameters, if deemed necessary.
28. The combined analysis of the organogram of the group to which the requesting undertaking belongs, considered at its highest level of consolidation in the EU, and the percentage of assets/liabilities connected to dealing on own account that are originated and fully booked by a given group entity aims at providing a picture of the organisational structure, the booking practices and the allocation of assets of the group to which the requesting undertaking potentially belongs.
29. The organogram of the group of the requesting undertaking is required as in assessing whether to grant the waiver, consideration shall be given to the extent of the geographical dispersion of said group. The existence of cross-border operations might in fact materially amplify the systemic relevance of the undertaking and make the supervision of its group more complex.
30. Trades originated in one legal entity and partially booked in another might hinder the transparency of risk allocation within the group, increasing the complexity for competent authorities of different Member States to identify the entity that ultimately bears the risk and eventually suffers the losses. This might lead to complications in coordinating supervisory and/or resolution actions. Additionally, reliance on intragroup hedging might increase the risk of contagion across group entities in the event of default of a single group entity. The rejection of the waiver would therefore allow to shift the supervisory authority to banking supervisors, who are experienced in supervising the application of the CRR/CRD framework in a more complex cross-border context. If the combined analysis of the organogram and the booking practices show excessive or non-transparent interdependencies among the group entities, then this should be treated as an argument in favour of rejecting the waiver request.
31. The level of total assets might not always represent an appropriate measure for determining the necessity for an undertaking to request a credit institution authorisation. For example, that may be the case when an investment firm systematically hedges its market risk position, making it so that increases in the size of its total assets do not result in proportional increases in the market risk borne by the institution. To discriminate these cases from the others, when assessing the waiver request, competent authorities are required to analyse the business model of the requesting undertaking, with special regard to how it manages the market risk stemming from its activities. On the contrary, large volumes of the activity of underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis might be an indication that the requesting undertaking may bear market risk that could be the source of financial instability. Consequently, competent authorities should assess the size and nature of this activity so to determine the appropriateness of shifting the supervision of the entity to the banking authority.
32. When analysing the activities of the requesting undertaking, competent authorities should assess the size of the activity carried out by the entity on own account on behalf of its clients. The default of a firm whose total assets are represented in large part (whether in absolute or relative terms) by instruments acquired and held on its books on behalf of its clients poses a

direct risk to those clients. Therefore, for investment firms characterised by a large amount of assets dealt on behalf of clients there is a case in assigning the supervisory authority to the banking supervisor.

33. To assess the importance of, and the systemic risk posed by, the activities carried out by the requesting undertaking, the competent authority should take into consideration the outcome of existing supervisory processes and the number and relevance of large exposures of credit institutions toward the investment firm.
34. The systemic nature of the activities carried out by the requesting undertaking is already analysed through the O-SII assessment (under Article 131 of the CRD) and by the thresholds and the criterion set out under Delegated Regulation (EU) 2021/2153 on the criteria for subjecting certain investment firms to the CRR/CRD framework. The outcome of these two supervisory processes should be considered for the purposes of the waiver, but only in the context of assessing whether the activities carried out by the requesting undertaking generate concerns from a systemic risk perspective. While reaching a definitive decision on the waiver request, the competent authority should not look mechanistically at the elements in isolation but rather have a holistic view of all elements and indicators specified in the technical standards.
35. The analysis of the systemic nature of the activities carried out by the applicant shall also be complemented by the assessment of the number and relevance of large exposures of credit institutions under the supervision of the CA toward the requesting undertaking. Where large exposures of credit institutions toward the requesting undertaking are such to cause concerns that distress on the requesting undertaking side might trigger distress in one or more relevant credit institutions, the interdependency between the requesting undertaking and the banking system may justify shifting the supervision of the applicant to the competent banking supervisor. It is however possible that, in some cases, large counterparty exposures may correspond to the undertaking primary clearing members. Large exposures of a credit institution to an investment firm warrant differentiated treatment where the credit institution also acts as the firm's clearing member. In such cases, the nature of the relationship, particularly the structured contingency arrangements and the central role of the clearing member, implies that these exposures may reflect operational necessities rather than heightened interdependencies. Moreover, large exposures arising from the provision of liquidity to the investment firm should also not be considered a reason to reject the waiver, when the credit institution is the clearing member, given that the clearing member's function inherently involves supporting the orderly settlement of transactions and ensuring the continuity of clearing services.
36. The systemic relevance of the requesting undertaking is also determined by its role in the derivatives markets. To assess the systemic significance of the counterparty credit risk borne and generated by the requesting undertaking, it is therefore appropriate for competent authorities to analyse the composition of the derivatives portfolio of the requesting undertaking, the relevance from a market standpoint of its over the counter (OTC) component (both margined and unmargined), and the complexity of the instruments therein contained. Should one or more of these components generate concerns that distress or default on the requesting undertaking side might generate turbulence on derivatives markets, the competent

authority should consider not granting the waiver. Banking supervisors are in fact experienced in supervising the correct application of the CRR and the CRD for what concerns the interdependencies generated by derivatives transactions and concerning complex OTC derivatives. In the last decade, the two major reforms in the derivative markets, mandatory clearing and margin requirements for OTC derivatives, substantially reduced interdependencies in the financial sector. However, OTC transactions that are unmargined generate a higher counterparty credit risk for both the entity applying for the waiver and its counterparty vis-à-vis centrally cleared derivatives or margined transactions, deserving more scrutiny in the decision on whether to grant the waiver.

37. To avoid that the fragmentation of information sources leads to overlooking data that might be relevant for the purposes of deciding on the waiver request, competent authorities should consider all the relevant information on the requesting undertaking that is in their possession before reaching a decision. They should also require the requesting undertaking to provide additional documents or data, if deemed necessary for the completeness and thoroughness of the assessment of the waiver request.

4. Draft regulatory technical standards

4.1. Draft RTS on the calculation of the threshold referred to in point (1)(b) of Article 4(1) CRR (Article 8a(6) point (b) of the CRD)

COMMISSION DELEGATED REGULATION (EU) …/..

of XXX

[…]**supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for the methodology for calculating the threshold above which an investment firm is required to apply for a credit institution authorisation**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2013/36/EU, and in particular 8a(6) point (b) thereof,

Whereas:

(1) Under Article 8a of Directive 2013/36/EU, investment firms that qualify as credit institutions pursuant to point (1)(b) of Article 4(1) of Regulation (EU) No. 575/2013 – and have already obtained authorisation pursuant to Title II of Directive 2014/65/EU – are required to submit an application for authorisation to the competent authority for credit institutions when the total value of the consolidated assets is equal to or exceeds EUR 30 billion at solo or group level.

(2) This Regulation provides a methodology for calculating the amount of total assets to be compared with the thresholds upon which investment firms under point (1)(b) of Article 4(1) of Regulation (EU) No. 575/2013 shall apply for authorisation as a credit institution.

(3) The notion of 'group' used in this Regulation relies on point (138) of Article 4(1) of Regulation (EU) No 575/2013 and point (13) of Article 3(1) of Directive 2019/2034/EU, which define 'group' in a broad manner as a parent undertaking and all its subsidiary undertakings, without a geographical characterisation of the group or regardless of the domicile of the undertakings within the group.

(4) For the purposes of specifying the assets' valuation, this Regulation takes into account the different accounting standards applicable to investment firms and credit institutions and adopts a hierarchical approach consistent with Articles 50 and 51 of Regulation (EU) No 468/2014 (SSM Framework Regulation) providing for a methodology based on quantitative thresholds to assess the significance of credit institutions.

(5) This Regulation acknowledges that a consistent definition of the exchange rate is necessary to ensure that those investment firms that do not report in euro can consistently perform the calculation laid down in Article 8a of Directive 2013/36/EU.

(6) The methodology for calculating the amount of total assets to be compared with the thresholds should take into account that the total value of the consolidated assets of all undertakings in a group can potentially encompass intragroup exposures. While these elements are relevant from a prudential point of view, the methodology should

be devised in such a manner as to ensure that the amount of consolidated assets can be determined at group level.

(7) In performing the calculation under Article 8a of Directive 2013/36/EU, investment firms that are part of third-country groups shall include in the combined total value of the assets of all relevant entities in the group the total assets of the branches in the EU of relevant undertakings in third-country groups, as indicated in the last subparagraph of Article 4(1)(1) of Regulation (EU) No 575/2013. The total value of assets of these third-country branches shall be calculated following the same principles of the statistical data reporting pursuant to Regulation (EU) 1071/2013 (ECB/2013/33) consistent with the treatment of credit institutions as per Article 8 of Directive 2013/36/EU and credit institutions as per Article 8a of Directive 2013/36/EU.

(8) The level-one text refers to 'monthly total assets' for the calculation of the total assets, which, although not explicitly stated, may suggest that the calculation is based on 12 monthly data points. However, a monthly calculation may be very burdensome in particular for complex groups, and it would not produce results substantially different from a calculation based on quarterly data. This would allow a quarterly calculation that, in turn, would require undertakings to work out the assets' values four times per year, leading to a less burdensome implementation. Moreover, this reporting frequency is aligned with other provisions, in particular with the requirements in Article 55(5) of the IFR aimed at monitoring the size of an investment firm and with the reporting requirements of Article 54 of the IFR.

(9) This Regulation is based on the draft regulatory technical standards submitted by the European Supervisory Authority (European Banking Authority) (EBA) to the Commission.

(10) 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 accordance with Article 37 of Regulation (EU) No 1093/2010[1].

HAS ADOPTED THIS REGULATION:

Chapter 1 – Scope and definition

Article 1 – Subject matter and scope

This Regulation specifies uniform rules for a methodology to calculate the thresholds referred to in Article 8a(1) of Directive 2013/36/EU, by identifying the definition of assets and calculation of assets' values.

[1] 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, 15.12.2020, p. 12).

Article 2 – Definitions

For the purposes of this Regulation, the following definitions shall apply:

(1) ‘relevant undertaking’ means any undertaking established in the Union carrying out the activities referred to in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013;

(2) ‘group test’ means the calculation as in point (b) of Article 8a(1) of Directive 2013/36/EU;

(3) ‘relevant activities’ mean any of the activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU;

(4) ‘relevant intragroup exposure’ means exposures that occur between a relevant undertaking and other relevant undertakings, including adjustments resulting from the applicable accounting standards.

(5) ‘branches and subsidiaries established in a third country’ means all the branches and subsidiaries of a relevant undertaking ,which are established in countries that are not Members of the European Economic Area.

Chapter 2 - Accounting standards and relevant exchange rate

Article 3 – Accounting standards and audited figures

1. For the purposes of this Regulation, the relevant undertaking, which has already obtained authorisation pursuant to Title II of Directive 2014/65/EU, shall calculate the total value of the assets of all relevant undertakings in accordance with paragraphs 2 to 3.

2. The total value of the assets of this relevant undertaking, which shall include the assets from its branches and subsidiaries established in a third country and of all relevant undertakings, which shall include the assets from their branches and subsidiaries established in a third country, [2] Intragroup exposures arising between the relevant undertaking and its branches and subsidiaries established in a third country shall be removed from the total value of the assets of the relevant undertaking.

3. If those annual accounts prepared in accordance with IFRS in paragraph 2 of this Article are not available, the relevant undertaking shall determine the total value of assets on the basis of the annual accounts prepared in accordance with a Member State’s applicable accounting standards.

4. For the purposes of paragraphs 2 and 3, where there are two or more relevant undertakings part of the same group, the total value of assets for all relevant undertakings shall be determined on the basis of the annual accounts prepared in accordance with

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[2] Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1).

IFRS or, where none of the relevant undertakings use IFRS, a single Member State's applicable accounting standards.

5. By derogation to paragraphs 2, 3 and 4, the total value of the assets of a relevant undertaking may be calculated on the basis of the annual accounts prepared in accordance with applicable accounting standards in third countries adjusted by the amounts leading to the same outcome of calculating the total assets using the methodology in paragraphs 2, 3 and 4.

Article 4 – Relevant exchange rate

Relevant undertakings, which have already obtained authorisation pursuant to Title II of Directive 2014/65/EU, shall perform the calculation laid down in this Regulation converting any amount into the undertaking's reporting currency at the spot exchange rate prevailing at the reporting reference date. Relevant undertakings which have already obtained authorisation pursuant to Title II of Directive 2014/65/EU and which do not report in euro shall compare the result of that calculation with the threshold referred to in Article 8a(1) of Directive 2013/36/EU, converting the amount of total assets at the spot exchange rate prevailing at the reporting reference date.

Chapter 3 - Calculation of the value of assets for determining the EUR 30 billion threshold

Article 5 – Calculation of total assets in accordance with Article 8a(1)(a) of Directive 2013/36/EU

1. All relevant undertakings shall determine the total value of assets at individual level in accordance with Article 3 of this Regulation.
2. The relevant undertaking which has already obtained authorisation pursuant to Title II of Directive 2014/65/EU shall calculate the total value of assets at individual level in accordance with paragraphs 3 to 5 of this Article.
3. If the total value of assets at individual level is equal to or exceeds EUR 30 billion and the relevant undertaking which has already obtained authorisation pursuant to Title II of Directive 2014/65/EU is not part of a group, this undertaking shall consider this amount as the total value of assets of the undertaking pursuant to Article 8a(1)(a) of Directive 2013/36/EU.
4. If the total value of assets at individual level is equal to or exceeds EUR 30 billion and the relevant undertaking which has already obtained authorisation pursuant to Title II of Directive 2014/65/EU is part of a group, this relevant undertaking shall calculate the value of total assets pursuant to Article 8a(1)(a) of Directive 2013/36/EU by subtracting all relevant intragroup exposures.

5. If as a result of the calculation under paragraph 4 of this Article, the total value of the consolidated assets is more than EUR 30 billion and the undertaking is part of a group, the undertaking shall consider this amount as the total value of assets of the undertaking pursuant to Article 8a(1)(a) of Directive 2013/36 / EU.
6. If as a result of the calculation under paragraph 4 of this Article, the total value of the consolidated assets is less than EUR 30 billion and the undertaking is part of a group, the undertaking shall apply Article 6 of this Regulation.

Article 6 – Calculation of the total value of consolidated assets in accordance with Article 8a(1)(b) of Directive 2013/36/EU

1. The relevant undertakings which have already obtained authorisation pursuant to Title II of Directive 2014/65/EU and have individual total assets of less than EUR 30 billion, as well as the undertakings referred to in paragraph 6 of Article 5 of the present Regulation shall calculate the total value of the consolidated assets pursuant to Article 8a(1)(b) of Directive 2013/36/EU in accordance with paragraph 2 of this Article.
2. For the purposes of the calculation of the total value of consolidated assets, the following formula shall apply:

$$TCA = \sum_{i=1}^{N}(IA_i - RIE_i) + \sum_{j=1}^{M} CA_j$$

where:

TCA= the total value of the consolidated assets of relevant undertakings in the group pursuant to Article 8a(1)(b) of Directive 2013/36/EU;

i = a relevant undertaking with individual total assets of less than EUR 30 billion;

N = the number of relevant undertakings with individual total assets of less than EUR 30 billion;

IA = individual assets, as defined in Articles 3 and 4 of this Regulation, of a relevant undertaking with individual total assets of less than EUR 30 billion, including assets of any of its branches and subsidiaries that are established in third-countries;

RIE = relevant intragroup exposures of the undertaking with individual total assets of less than EUR 30 billion towards other relevant undertakings with individual total assets of less than EUR 30 billion or towards those meeting the criteria in Article 5(6) of this Regulation;

j = a relevant undertaking meeting the criteria in Article 5(6) of this Regulation;

M = the number of relevant undertakings meeting the criteria in Article 5(6) of this Regulation;

CA = value of assets obtained by subtracting the intragroup exposures of the undertaking meeting the criteria in Article 5(6) of this Regulation towards all relevant undertakings in the group with individual total assets of less than EUR 30 billion and towards those meeting the criteria in Article 5(6) of this Regulation from the individual value of total assets of this relevant undertaking.

Article 7 – Calculation of combined assets of third-country groups

1. For the purposes of this Article, a branch authorised in the EU shall be considered a relevant third-country branch if it carries out any activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU of the European Parliament and of the Council and is established by a relevant undertaking in a third country which has individual total assets of more than EUR 30 billion, excluding those undertakings meeting the criteria in Article 5(6) of this Regulation.
2. Where the type of activities carried out by the relevant third-country branch referred to in paragraph 1 is not identified, its total assets shall be considered for the purposes of the calculation of the combined total assets as if the branch were carrying out any activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU of the European Parliament and of the Council.
3. Assets of relevant third-country branches shall be determined in line with the provisions regarding the statistical data reported pursuant to Regulation (EU) 1071/2013 (ECB/2013/33). For relevant third-country branches operating in non-euro area, the same provisions shall apply with reference to the national currency.
4. For the purposes of calculating the combined total value of the assets of all the undertakings of the group pursuant to the last subparagraph of Article 4(1)(1) of Regulation (EU) No 575/2013, the relevant undertaking which has already obtained authorisation pursuant to Title II of Directive 2014/65/EU and is part of a third-country group, shall calculate the combined total value of the assets of all the relevant undertakings of the group by including the total assets of each relevant third–country branch referred to in paragraphs 1 and 2 as in the formula:

$$Combined\ Assets = TCA + \sum_{j=1}^{N} TA_{TCBj}$$

where:

Combined Assets = the combined total value of the assets of all relevant undertakings as defined in point *(b)* of Article 4(1)(1) of Regulation (EU) No 575/2013;

TCA= total value of the consolidated assets as defined in Article 6(2) of this Regulation;

TCBj = a relevant third-country branch *j* as referred to in paragraph 1 of this Article;

N = the number of relevant third-country branches *j*; and

TA = the value of total assets as defined in Article 7(3) of this Regulation.

Article 8 – Average of monthly total assets calculation

1. The value of total assets shall be calculated in accordance with paragraphs 2 to 3 of this Article on the following reference dates: 31 March, 30 June, 30 September and 31 December.
2. For the purposes of Article 8a(1) of Directive 2013/36/EU, for each month in the quarter, the relevant undertaking shall calculate the monthly total assets as a linear interpolation between the value of the assets at the end of that quarter and the value of the assets at the end of the previous quarter as in the formula:

   $$MTA_t = TA_{Q-1} + t * (TA_Q - TA_{Q-1})/3$$

   where:

   MTA_t = monthly total assets in month t;

   t = one of the three months of quarter Q and it can assume the values 1, 2 or 3;

   TA_Q = total consolidated assets calculated as in Article 5 or Article 6 of this Regulation, or, where relevant, total combined assets calculated as in Article 7 of this Regulation at the end of the quarter Q of month t; and

   TA_{Q-1} = total consolidated assets calculated as in Article 5 or Article 6 of this Regulation, or, where relevant, total combined assets calculated as in Article 7 of this Regulation at the end of the previous quarter $Q-1$ of month t.
3. The average of monthly total assets calculated over a period of 12 consecutive months shall be calculated as the average of MTA_t as defined in paragraph 1 of this Article over four consecutive quarters.

Article 9 – 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.

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President]

Questions for consultation:

Q1. Are there other elements that should be considered for the purposes of the calculation methodology of the thresholds set out by Article 8a(3a) of the CRD?

4.2. Draft RTS on the provision of information for the effective monitoring of the credit institutions thresholds under Article 55(5) of Regulation (EU) 2019/2033

COMMISSION DELEGATED REGULATION (EU) …/..

of XXX

[…]

supplementing Regulation (EU) 2019/2033 of the European Parliament and of the Council with regard to regulatory technical standards specifying the obligation to provide information to the relevant competent authorities in order to allow effective monitoring of the thresholds set out in points (a) and (b) of Article 8a(1) of Directive 2013/36/EU

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements for investment firms and amending Regulation (EU) No 1093/2010, Regulation (EU) No 575/2013, Regulation (EU) No 806/2014 and in particular Article 55(5), third sub-paragraph thereof,

Whereas:

(1) The obligation to provide information to the relevant competent authorities, for the purposes of an effective monitoring of the thresholds set out in points (a) and (b) of Article 8a(1) of Directive 2013/36/EU[1], should be further specified in regulatory technical standards. Those technical standards should introduce a coherent reporting framework established on the basis of a harmonised set of standards. Furthermore, it is appropriate to specify, on the basis of Article 55 of Regulation (EU) No 2019/2033, the modalities according to which investment firms are required to report information for the ongoing monitoring of the thresholds referred to in that Article.

(2) The technical standards, with a view to allowing an effective monitoring of the thresholds set out in points (a) and (b) of Article 8a(1) of Directive 2013/36/EU, should be closely aligned with the methodology for the calculation of those thresholds as specified in [*Draft* RTS *prepared in accordance with Article 8a(6), point (b) of Directive 2013/36/EU*]. In particular, the total assets of all relevant undertakings as well as branches in the EU of third country groups that perform relevant activities should be reported in order to allow the competent authority to assess both an individual entity's position in relation to the thresholds and the calculation of the consolidated total assets reflecting the position of a group supervised on a consolidated basis.

[1] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directive 2006/48/EC and Directive 2006/49/EC, OJ L 176, 27.6.2013, p. 338.

(3) Consistently with the legal mandate in Article 55 of Regulation (EU) No 2019/2033, the information for the effective monitoring of the threshold set out in point (a) of Article 8a(1) of Directive 2013/36/EU should be reported by investment firms. The information for the effective monitoring of the threshold set out in point (b) of Article 8a(1) of Directive 2013/36/EU should be reported by every relevant investment firm included in the group test of Article 6 and, where applicable, Article 7 of Regulation … [*Draft RTS prepared in accordance with Article 8a(6), point (b) of Directive 2013/36/EU*] in the light of the data exchange requirements specified in Article 55(2) of Regulation (EU) 2019/2033.

(4) For the purposes of Article 8a(1) of Directive 2013/36/EU, undertakings are expected to monitor the relevant thresholds on an ongoing basis and, where they reasonably anticipate reaching a threshold, to take the necessary preparatory steps to ensure that an application for authorisation can be submitted at the latest on the date on which the threshold is met. Competent authorities should, where appropriate, engage in early supervisory dialogue with undertakings approaching the thresholds on the basis of the information reported pursuant to Article 55 of Regulation (EU) 2019/2033.

(5) This Regulation is based on the draft implementing technical standards submitted by the European Supervisory Authority (European Banking Authority) (EBA) to the Commission.

(6) EBA has conducted open public consultations on the draft implementing 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 accordance with Article 37 of Regulation (EU) No 1093/2010[2].

HAS ADOPTED THIS REGULATION:

Article 1 - Subject matter

This Regulation specifies the obligation to provide information referred to in paragraphs 1 and 2 of Article 55 of Regulation (EU) 2019/2033 by laying down uniform reporting formats and templates, instructions and methodology on how to use those templates, the frequency and dates of such reporting.

Article 2 - Definitions

For the purposes of this Regulation, the following definitions apply:

(1) 'relevant undertaking' means a relevant undertaking as defined in Article 2, point (1) of *[the Draft RTS prepared in accordance with Article 8a(6), point (b) of Directive 2013/36/EU]*.

(2) 'relevant third country branch' means a relevant third country branch as referred to in Article 7(1) of *[the Draft RTS prepared in accordance with Article 8a(6), point (b) of Directive 2013/36/EU]*.

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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, 15.12.2020, p. 12).

(3) ‘relevant activities’ mean any of the activities as defined in Article 2, point (4) of *[the D*raft RTS prepared in accordance with Article 8a(6), point (b) of Directive 2013/36/EU].

(4) ‘relevant investment firm’ means a ‘relevant undertaking’ which carries out relevant activities and is an investment firm as defined in point (1) of Article 4(1) of Directive 2014/65/EU.

Article 3 - Reporting reference dates

1. Relevant investment firms shall submit the information referred to in paragraphs 1 and 2 of Article 55 of Regulation (EU) 2019/2033 with a quarterly frequency as this information stands on 31 March, 30 June, 30 September and 31 December.
2. Where relevant investment firms are permitted by national laws to report their financial information based on their accounting year-end which deviates from the calendar year-end, the reporting reference dates may be adjusted accordingly, so that reporting of information is done every three, six, nine or twelve months from their accounting year-end, respectively.

Article 4 - Reporting remittance dates

1. Relevant investment firms shall submit the information referred to in paragraphs 1 and 2 of Article 55 of Regulation (EU) 2019/2033 by close of business on the following remittance dates: 12 May, 11 August, 11 November and 11 February.
2. If the remittance date is a public holiday in the Member State of the competent authority to which the report is to be provided, or a Saturday or a Sunday, data shall be submitted on the following working day.
3. Where the relevant investment firm report their information using adjusted reporting reference dates based on their accounting year-end as set out in Article 2(2) of this Regulation, the remittance dates may also be adjusted accordingly so that the same remittance period from the adjusted reporting reference date is maintained.
4. Relevant investment firms may submit unaudited figures. Where audited figures deviate from submitted unaudited figures, the revised, audited figures shall be submitted without undue delay. Unaudited figures are figures that have not received an external auditor's opinion whereas audited figures are figures audited by an external auditor expressing an audit opinion.
5. Corrections to the submitted reports shall be submitted to the competent authorities without undue delay.

Article 5 - Format and frequency of reporting

1. Relevant investment firms shall report the information specified in this Article, where they are subject to an obligation to provide information to competent authorities in

accordance with paragraph (1) or (2) of Article 55 of Regulation (EU) 2019/2033, with a quarterly frequency.

2. Relevant investment firms shall report the information set out in template I 10.01 of Annex I in accordance with the instructions of Annex II.

3. Relevant investment firms shall report the information set out in template I 10.02 of Annex I in accordance with the instructions of Annex II, where both of the following conditions are met:

   (i) the relevant investment firms have individual total assets of less than EUR 30 billion or are undertakings referred to in Article 5(6) of *[the Draft RTS prepared in accordance with Article 8a(6), point (b) of Directive 2013/36/EU]*;

   (ii) and the relevant investment firms are part of a group and that group includes at least one other relevant undertaking or relevant third country branch whose assets have to be included in the calculation in accordance with Articles 6 and 7 of *[the Draft RTS prepared in accordance with Article 8a(6), point (b) of Directive 2013/36/EU]*.

Article 6 - Data precision and information associated with submissions

1. Relevant investment firms shall submit the information in the data exchange formats and representations specified by the competent authorities and respecting the data point definition of the data point model and the validation rules referred to in Annex III as well as the following specifications:

   (a) Information that is not required or not applicable shall not be included in a data submission.

   (b) Numerical values shall be submitted as follows:

      (i) data points with the data type 'Monetary' shall be reported using a minimum precision equivalent to thousands of units;

      (ii) data points with the data type 'Percentage' shall be expressed as per unit with a minimum precision equivalent to four decimals;

      (iii) data points with the data type 'Integer' shall be reported using no decimals and a precision equivalent to units.

   (c) Investment firms and credit institutions shall be identified solely by their Legal Entity Identifier (LEI).

   (d) Legal entities and counterparties other than investment firms and credit institutions shall be identified by their LEI where available.

2. Relevant investment firms shall accompany the submitted data with the following information:

   (a) reporting reference date and reference period;

   (b) reporting currency;

   (c) accounting standard;

   (d) Legal Entity Identifier (LEI) of the relevant undertaking;

(e) scope of consolidation.

Article 7 - Final provisions

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.

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President

Questions for consultation: **Q2. Are there other elements that should be considered for the purposes of the provision of information for the effective monitoring of the credit institutions thresholds?**

ANNEXES

Please see separate files

Annex I – Templates for the reporting for threshold monitoring purposes

Annex II – Instructions for the reporting for threshold monitoring purposes

4.3. Draft RTS on the elements to be taken into consideration by competent authorities when deciding whether to grant a waiver in accordance with Article 8a(3a) of Directive 2013/36/EU

COMMISSION DELEGATED REGULATION (EU) …/…

of XXX

supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards [for/specifying]

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2013/36/EU[1], and in particular paragraph 7 of Article 8a thereof,

Whereas:

(1) The elements to be taken into consideration by competent authorities when deciding whether to grant a waiver of the requirement to obtain an authorisation as a credit institution should be further specified in regulatory technical standards. To decide on the waiver request, competent authorities should consider all the elements relating to the nature, size, and complexity of the activities carried out by the requesting undertaking, the systemic and counterparty risk that it may generate, and the organisational structure of the group to which it eventually belongs.

(2) In assessing the waiver request, consideration should be given to the extent of the geographical dispersion of the group to which the requesting undertaking belongs. The existence of cross-border operations may, in fact, significantly complicate its supervision and amplify the systemic relevance of the undertaking. This assessment should be further informed by the analysis of the risk management and organisation of the group of the requesting undertaking, whose complex structure may increase the opacity of the group activities from a supervisory perspective.

(3) Trades originated in one entity and partially booked in another entity may hinder the transparency of the allocation of risks and responsibilities within the group, increasing the complexity for competent authorities of different Member States to identify where those trades are allocated among the entities of the group. This might lead to complications in coordinating supervisory and/or resolution actions, and may generate excessive interdependence, hinder transparency of risk allocation within the group, or impair the ability to identify the entity that ultimately bears the risk. Consequently, for each of the undertakings belonging to the group of the requesting undertaking, information should be requested concerning the trades originated in an entity but partially, booked by a different one within the group. To foster increased consistency across provisions, the methodology to compute assets and liabilities should be consistent with the methodology used to compute the total assets for the purpose of

[1] OJ L [number], [dd.mm.yyyy], [p.].

assessing whether an undertaking has breached one of the thresholds set out in Article 8a(1) of Directive 2013/36/EU.

(4) The population of investment firms includes undertakings characterised by a substantial asset base that is not accompanied by a commensurate level of market risk exposure. These undertakings operate business models under which market risk arising from their trading activity is systematically hedged, resulting in an immaterial residual market risk exposure. Competent authorities should therefore assess the business model, hedging strategies and risk profile with an aim to identifying the cases where exceeding the thresholds set out in Article 8a(1) of CRD does not necessarily justify requiring the undertaking to request a credit institution authorisation. On the contrary, large volumes of the activity of underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis might generate concerns for the impact of the requesting undertaking on financial stability, which may justify assigning the supervision of the entity to the banking authority.

(5) The volume of the activity of dealing on own account on behalf of clients of the requesting undertaking should be adequately considered by the competent authorities with specific regard to the direct risk it poses to clients, as opposed to the activity of discretionary portfolio management.

(6) Supervisory processes examining the systemic nature of an investment firm have already been established under Article 131 of Directive 2013/36/EU (O-SII identification) and under Delegated Regulation (EU) 2021/2153. It is therefore appropriate for competent authorities to take the outcome of these processes into consideration within the general assessment of the waiver, rather than in a mechanistic way.

(7) An analysis of the large exposures of credit institutions toward the requesting undertaking should be included in the assessment, as distress of the requesting undertaking may negatively impact one or more credit institutions. For undertakings having large portfolios of centrally cleared products, such large exposures should be assessed differently because of the specific role that a credit institution can have as clearing member of the requesting undertaking. The interdependence between the requesting undertaking and the banking system may justify assigning the supervisory responsibility of the requesting undertaking to the banking supervisor.

(8) The banking supervisor is likely to be experienced in supervising the correct adoption of Regulation (EU) 575/2013 and Directive 2013/36/EU provisions concerning the interdependencies generated by derivatives transactions and concerning complex Over the Counter (OTC) derivatives portfolios. Consequently, there is the need for competent authorities to analyse the requesting undertaking derivatives portfolio in terms of size, composition, and complexity. The relevance of the requesting undertaking in the OTC market, if significant, and the complexity of its derivatives portfolio may therefore warrant the allocation of the supervisory authority to the banking supervisor.

(9) The fragmentation of information sources risks leading to oversights on competent authorities side and may result in lack of visibility over the essential information. Consequently, the competent authority should take into account the relevant data that is currently at its disposal, and any further information that is needed to assess the waiver application. Likewise, the requesting undertaking can provide additional

documentation to support the application, provided that the volume of information is compatible with concluding the assessment within the specified timeline. Where material concerns arise from elements not expressly specified in this RTS, the competent authority may take those elements into account in determining whether the granting of the waiver remains appropriate.

(10) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority.

(11) The European Banking Authority 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 advice of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council[2].

HAS ADOPTED THIS REGULATION:

Article 1 – Organisational structure, booking practices, and allocation of assets

In assessing the organisational structure, the booking practices, and the allocation of assets of the group to which the requesting undertaking belongs, in accordance with Article 8a(3a)(point a) of Directive 2013/36/EU, the competent authority shall take into account all the indicators specified in Articles 2 and 3.

Question for public consultation:

Q3. Are there other elements that should be considered in the assessment of the organisational structure, the booking practices, and the allocation of assets of the group to which the requesting undertaking belongs, for the purposes of the waiver from needing the credit institution authorisation?

Article 2 – Organogram

1. The competent authority shall assess the complexity of the group structure, at the highest level of consolidation in the EU, to which the requesting undertaking belongs and the extent of cross-border operations among the relevant entities composing that group, by considering:

   (a) the list of all the relevant entities of the group;

   (b) the organisational structure of the group, at the highest level of consolidation in the EU, as provided according to Commission Delegated Regulation (EU) 2022/2579, or according to Article 5 of Commission Delegated Regulation (EU) 2022/2580, including the allocation of the risk management across the group entities; and

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.

(c) the country of domiciliation of each relevant entity.

Question for public consultation: **Q4. Are there additional elements related to the organogram of the requesting undertaking and of its group that should be considered for the purposes of the waiver from needing the credit institution authorisation?**

Article 3 – Booking practices

1. The competent authority shall consider, for each entity of the group of the requesting undertaking at the highest level of consolidation in the EU, the following elements to assess whether the booking practices of the group and the allocation of assets among different undertakings hinder the transparency of the allocation of risks and responsibilities within the group:

   (a) the ratio of the amount of assets associated with the activity of dealing on own account originated and booked by the entity, and the total amount of assets associated with the activity of dealing on own account of the entity;

   (b) the ratio of the amount of liabilities associated with the activity of dealing on own account originated and booked by the entity, and the total amount of liabilities associated with the activity of dealing on own account of the entity;

   (c) the four values that have been used to compute the ratios referred to in points a and b of this paragraph; and

   (d) a general description concerning the values provided under the points from a. to c.

2. For the purposes of paragraph (1), assets and liabilities associated with the activity of dealing on own account shall be considered as originated and not fully booked by the entity when at least one of the following conditions is satisfied:

   (a) the entity is only partly or not at all responsible for the trade;

   (b) legal obligations and rights related to the trade are allocated among two or more of the undertakings of the group; or

   (c) the income or loss generated by the trade is not attributed in its entirety to the entity.

3. The amount of total assets associated with the activity of dealing on own account shall be computed according to Article 3 of the [RTS on the methodology].

4. The amount of total liabilities associated with the activity of dealing on own account shall be computed using the same methodology as the one described in Article 3 of the [RTS on the methodology].

Questions for public consultation: **Q5. This article is aimed at identifying those cases in which the booking practices of the group of the requesting undertaking may hinder the transparency of the allocation of risks and responsibilities within the group. Are there other examples of booking practices leading to low transparency in the allocation of risks and responsibilities that are not considered in this**

Article? Are there examples in which assets or liabilities related to dealing on own account that are originated but not fully booked do not necessarily lower the transparency concerning the allocation of risks or responsibilities within the group?

Q6. Are there additional elements and/or alternative metrics that could be considered for the purpose of analysing the booking practices and the allocation of assets within the group for the purposes of the waiver from needing the credit institution authorisation?

Article 4 – Nature, size, and complexity of the activities

In assessing the nature, size, and complexity of the activities of the requesting undertaking, in accordance with Article 8a(3a)(point b) of Directive 2013/36/EU, the competent authority shall take into account all the indicators specified in Articles 5 and 6.

Questions for public consultation:

Q7. Are there other elements that should be considered in the assessment of the nature, size and complexity of the activities of the requesting undertaking, for the purposes of the waiver from needing the credit institution authorisation?

Article 5 – Business model and hedging policies

1. The competent authority shall assess whether the size and complexity of the requesting undertaking activities are such that its residual market risk is expected to remain immaterial, in particular whether its business model predominantly consists of:
   (a) Dealing on own account for itself or on behalf of a client while actively hedging their market risk through different instruments with offsetting risk profiles; and
   (b) ensuring that the market risk of the positions deriving from the activity referred to in point a. and the respective hedging instruments is mitigated in full once those transactions have been submitted to clearing and settlement, taking into account the possibility of eventual timing mismatches and execution frictions.
2. The competent authority shall assess the nature and size of the activity of underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis (Activity 6 of Annex A of Directive 2014/65/EU). To this end, it shall assess the materiality of the market risk generated by this activity for the requesting undertaking, and whether this activity raises concerns for financial stability.

Questions for public consultation:

Q8. Paragraph 1 of this article identifies a business model that would support receiving the waiver. Are there other business models that, similarly, would support granting the waiver from needing the credit institution authorisation?

Q9. Are the elements in paragraph 1 precise enough in identifying a business model characterised by substantial increases in the total assets without corresponding increases in the market risk borne by the undertaking?

Q10. Are there elements that could mitigate the risk generated by the performance of the activity of underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis that should be taken into consideration for the purposes of the waiver?

Article 6 – Dealing on own account on behalf of clients

1. The competent authority shall assess whether the nature of the activities performed by the requesting undertaking poses a risk to clients, taking into consideration:

   (a) the amount of assets traded on account of the requesting undertaking on behalf of its clients, and the ratio of that amount and the total amount of assets traded on account of the requesting undertaking; and

   (b) the amount of liabilities traded on account of the requesting undertaking on behalf of its clients, and the ratio of that amount and the total amount of liabilities traded on account of the requesting undertaking.

2. The assets and liabilities of the requesting undertaking originated by the activity of executing orders on behalf of clients shall be included in the calculation of the amounts set out in points a. and b.

3. The amounts referred to in points a. and b. of the first paragraph shall be computed in accordance with Article 3 of the [RTS on the methodology].

Questions for public consultation:

Q11. This article assumes that an undertaking dealing on own account on behalf of clients may generate, in case of distress or default of the undertaking, more risks for said clients. Are there elements that could mitigate these risks that should be taken into consideration for the purpose of the waiver?

Article 7 – Importance of, and systemic risk posed by, the activities

1. In assessing the importance of, and systemic risk posed by, the activities carried out by the requesting undertaking, in accordance with Article 8a(3a)(point c) of Directive 2013/36/EU, the competent authority shall take into account:

   (a) whether the requesting undertaking has been identified as an O-SII in accordance with Article 131 of Directive 2013/36/EU;

   (b) the thresholds included in Article 1 of Delegated Regulation (EU) 2021/2153;

   (c) the criterion included in Article 2 of Delegated Regulation (EU) 2021/2153;

   (d) number, concentration and size of credit institutions not part of the group of the requesting undertaking that report a large exposure, as defined by Article 392 of Regulation (EU) 575/2013, toward the requesting undertaking and that are under the supervision of the competent authority deciding on the waiver; and

(e) whether the credit institutions referred to in point d. are clearing members of the requesting undertaking and the requesting undertaking has contingency arrangements for the provision of liquidity with those clearing members.

Questions for public consultation:

Q12. Are there any other elements that should be considered to assess the systemic risk generated by the requesting undertaking for the purposes of the waiver from needing the credit institution authorisation?

Article 8 – Counterparty credit risk

1. In assessing the counterparty credit risk to which the requesting undertaking is exposed, in accordance with Article 8a(7) of Directive 2013/36/EU, the competent authority shall analyse the composition and the complexity of the derivatives portfolio.
2. The competent authority shall require the requesting undertaking to provide a description of the composition of the derivatives portfolio, including the following quantities, calculated based on the gross notional amounts:
   (a) amount of Over the Counter (OTC) derivatives that are subject to margining agreements;
   (b) amount of OTC derivatives that are not subject to margining agreements;
   (c) amount of OTC derivatives where the counterparty is an entity of the group of the requesting undertaking;
   (d) amount of derivatives that are not considered in the points a. to c.; and
   (e) the ratio between each of the amounts referred to in points a. to d. and the total amount of the entire derivatives portfolio.
3. The competent authority shall assess the relevance for the market as a whole of the role of the requesting undertaking, by considering the amounts reported in points a. to c. of paragraph (2) of this Article against the gross notional amount of the corresponding market.
4. The competent authority shall assess the complexity of the derivatives portfolio by considering:
   (a) the gross notional amount of margined and unmargined OTC derivatives; and
   (b) the composition of the OTC derivatives portfolio, and in particular whether it includes:
      (i) instruments with path-dependent features, instruments on multiple underlying elements, and instruments with payoffs in currencies that are different to that of the underlying; and
      (ii) other instruments whose reporting value is computed using level 3 of IFRS 13.

Questions for public consultation:

Q13. Would you suggest any alternative or additional elements or metrics that could allow an assessment of the complexity of a derivative portfolio that does not lead to an excessively burdensome assessment of the waiver application for both the requesting undertaking and the CA?

Article 9 – Sources of information

1. To assess whether the waiver referred to in Article 8a(3a) of Directive 2013/36/EU can be granted to the requesting undertaking, the competent authority shall use all relevant available information, including:
   (a) the information provided with the application for authorisation as a credit institution in accordance with Commission Delegated Regulation (EU) 2022/2579;
   (b) an eventual additional document provided by the requesting undertaking justifying how the provided information supports the waiver request, no longer than ten pages; and
   (c) any regulatory reporting of all relevant entities, latest audited accounting and financial statements of all relevant entities, internal accounts and latest available ICARAP conclusions of all relevant entities.
2. Following the assessment of the information submitted in the application, the competent authority shall require the requesting undertaking to provide additional information or explanations, where the authority considers it necessary for the purposes of verifying all the criteria on which the waiver assessment is based.
3. Unless differently stated, all the quantities in this Regulation shall be based on the latest audited financial statements of the requesting undertaking.

Questions for consultation:

Q14. Are there any other sources of information that should be considered for the purposes of the waiver set out by Article 8a(3a) of the CRD?

Article 10 – 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.

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President

[Position]

5. Accompanying documents

5.1. Draft impact assessment

The EBA is mandated to develop the following draft RTS:

- the draft RTS on the calculation of the threshold referred to in point (1)(b) of Article 4(1) CRR (Article 8a(6) point (b) of the CRD);
- the draft RTS on provision of information for the effective monitoring of the credit institutions thresholds under Article 55(5) of Regulation (EU) 2019/2033; and
- the draft RTS on the elements to be taken into consideration by competent authorities when deciding whether to grant a waiver in accordance with Article 8a(3a) of Directive 2013/36/EU.

Article 10(1) of Regulation (EU) No 1093/2010 (EBA Regulation) provides that any RTS developed by the EBA should be accompanied by an analysis of 'the potential related costs and benefits'. This analysis should provide an overview of the findings regarding the problem to be dealt with, the solutions proposed and the potential impact of these options'.

This section presents the cost-benefit analysis of the main policy provisions included in the draft RTS on the waiver from the requirement to apply for a credit institution authorisation.

The policy options and cost-benefit analysis for the two recast RTS (RTS on the calculation methodology and the RTS on monitoring of total assets) were already discussed at length in the previous two consultations[1] and the relevant final reports and remain valid for the current version of the RTS, despite changes in Level 1 text.[2,3] Hence, they are not further discussed in this section.

Nevertheless, it is worth noting that the impact assessment in the two more recent documents[4] were assuming the scope of application of the RTS in accordance with the CRD 5, which envisaged a global scope for the entities to be considered for the calculation of the level of total assets. As a consequence, 19 entities in the EU were identified as exceeding the EUR 30 bn threshold, either on

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[1] Consultation Paper on draft RTS on the reclassification of investment firms as credit institutions (EBA/CP/2020/06), issued by the EBA on 4 June 2020 (link), Second Consultation paper (EBA/CP/2021/23), issued by the EBA on 17 July 2021 (link).

[2] Final report on the reclassification of investment firms as credit institutions (EBA/RTS/2021/17) issued by the EBA on 20 December 2021(link).

[3] Final Report on draft regulatory technical standards on the provision of information for the effective monitoring of the credit institution thresholds (EBA/RTS/2021/18), issued by the EBA on 20 December 2021 (link).

[4] Second consultation paper (EBA/CP/2021/23) and Final report (EBA/RTS/2021/17).

a solo or on a group basis.[5] The current version of the CRD narrows the scope of application to only entities domiciled in the Union, and therefore the number of investment firms expected to be required to apply for a credit institution authorisation is expected to be smaller. Indeed, in the last years only 10 investment firms applied for a credit institution authorisation on that basis.[6]

5.1.1. Background

Class 1 and Class 1 minus entities are among the undertakings that are most likely to be interested in applying for the waiver set out in Article 8a(3a) of the CRD, as, respectively, they have already been authorised as credit institutions as a consequence of breaching one of the thresholds in Article 8a(1), or have total assets comprised between EUR 5 billion and 30 billion. The current population of Class 1 undertakings is 10, while Class 1 minus entities are only 6. Although rarer, some Class 2 investment firms might also be interested in the waiver, given the possibility for them of breaching the group threshold.

5.1.2. Problem identification

Article 8a(1) of the CRD discriminates between investment firms that need to request the credit institution authorisation and undertakings that are not required to seek such authorisation by looking at their total assets (or consolidated total assets for those entities breaching the group threshold), without distinguishing those entities that actually adopt a business model that is similar to the one of traditional credit institutions from those firms that do not.

The purpose of the waiver is therefore to allow competent authorities to waive investment firms that do not pose a significant systemic risk from having to obtain a credit institution authorisation and therefore being supervised by a banking supervisor. Consequently, the elements to be taken into consideration by CAs when deciding on the waiver request are aimed at making sure that a credit institution authorisation is only required for those entities that are systemic and complex enough to justify the application of the CRR/CRD requirements and the supervision of the entity by a banking authority.

5.1.3. Policy objectives

The objective of these draft RTS is establishing a list of elements that competent authorities necessarily need to consider when deciding on a waiver request, while leaving them sufficient discretion to factor in their decision the specificities of the requesting undertaking and its relevance in a Member State. The proposed RTS aim to strike the right balance between the need for harmonisation across the Union, necessary to avoid the emergence of regulatory arbitrages, and the importance of granting competent authorities sufficient flexibility to cater for the particularities of each case. Further convergence on decisions on waivers requests will also be provided by the requirement for competent authorities to take into consideration an EBA Opinion on the matter, before concluding on each case.

[5] See: Final report (EBA/RTS/2021/17), p. 20 and ff (link).

[6] See: List of supervised entities, issued by the ECB Banking Supervision (link).

In drafting the RTS, when several options where proposed for satisfying a unique criterion among the ones listed by the CRD, the EBA preferred to endorse the element allowing to find the best compromise between the need to minimise the burden placed on the requesting undertaking for providing the data, and the necessity to allow competent authorities to be able to analyse the information provided in a short time interval. The requirement for the requesting undertaking to present jointly the waiver request and the request for a credit institution authorisation implies, in fact, that a decision on the waiver needs to be taken within the same deadline that the CRD imposes for reaching a decision on the credit institution authorisation.

Whenever possible, the EBA also tried to leverage on assessments that are required by other areas of the regulation (e.g. the O-SII assessment), so to avoid placing additional burden on the CA and the requesting undertaking, while also keeping the internal consistency of the regulatory framework.

5.1.4. Options considered, Cost-benefit analysis and Preferred options

5.1.4.1. Absence of exclusion criterion

Article 8a(3a), point b. of the CRD requires competent authorities to assess the systemic risk posed by the activities carried out by the undertaking when deciding on the waiver. The current regulatory framework for investment firms already requires competent authorities to assess the systemic risk posed by an investment firm when performing the O-SII assessment or when verifying the appropriateness of including the investment firm in the Class 1 minus category also when it does not breach the 15 billion threshold.[7]

For what concerns the outcome of the O-SII assessment, the EBA identified two possible options:

- Option 1a: consider the classification of the requesting undertaking as an O-SII as a sufficient condition to automatically reject the waiver.
- Option 1b: consider the classification of the requesting undertaking as an O-SII as one of the elements to take into consideration when assessing the systemic risk posed by the requesting undertaking.

Considering all investment firms that are classified as O-SIIs as automatically ineligible for receiving the waiver would provide clarity to market participants concerning the pool of acceptable applicants for the waiver and reduce the burden for competent authorities, which would need to assess a reduced number of undertakings.

Option 1a leads however to two issues:

- Article 8a(7) requires the EBA to specify the elements to be considered by the competent authority when deciding on the waiver. The competent authority mentioned in Article 8a(7) is the banking supervisor of the Member State in which the requesting undertaking resides. As the authority deciding on whether an investment firm is an O-SII or not is the local supervisor

[7] IFD, Article 5(1).

of investment firms (which might differ from the local banking supervisor), introducing an exclusion criterion based on the classification of the undertaking as an O-SII might be outside the mandate provided to the EBA, as, in those cases in which the undertaking is considered an O-SII, the decision on the waiver would be implicitly taken by the investment firm supervisor rather than by the banking one.

- The combined reading of Article 8a(7) and 8a(3a) of the CRD requires competent authorities to take into consideration all the four criteria listed by the Level 1 text when taking a decision concerning the waiver request. Automatically preventing investment firms classified as O-SII from requesting the waiver would mean that the waiver would be denied exclusively on the basis of one of the four criteria (the one related to the systemic risk of the activities of the requesting undertaking) rather than their consideration of all of them.

Option 1b is therefore retained.

5.1.4.2. Booking practices

Article 8a(3a) point a. requires the competent authority to take into consideration the booking practices prevailing within the group to which the requesting undertaking potentially belongs. The objective of such analysis is that of complementing the analysis of the organogram in assessing the interdependency of the different entities of the group, to judge the appropriateness of assigning the supervision of the requesting undertaking to the banking supervisor, which is used to cross-border supervisory collaboration.

The EBA considered two options for this element:

- Option 2a: analyse, for each relevant entity of the group, the ratio of the amount of assets (liabilities) associated with the activity of dealing on own account originated and booked by the entity, and the total amount of assets (liabilities) associated with the activity of dealing on own account of the entity.
- Option 2b: analyse the booking practices of the group.

Analysing the booking models of the group to which the requesting undertaking belongs represents the most thorough analysis of the booking practices that are employed by the different entities composing the group. However, the time required by such demanding assessment would have been incompatible with the time constraints of the competent authorities having to decide on the waiver.

Option 2a strikes instead a better balance between not placing too much burden on the undertaking requesting the waiver and the time required by the competent authority to analyse it. Additionally, this element is complementary to the organogram, as it allows to capture the allocation of risk between the different entities within a group. This will allow to discriminate groups whose relevant activities are mainly concentrated in one Member State, while entities in other countries of the Union have only marginal or representations roles, from those groups whose relevant activities are actually carried out by separate entities, scattered across the Union.

Option 2a is therefore retained.

5.1.4.3. Hedging strategies and market risk

In order to assess those situations in which an increase in the total assets does not necessarily lead to an increase in the market risk borne by the institution, the EBA considered the following options:

- Option 3a: consider the ratio between the FRTB capital requirements, and the same requirements obtained without the possibility of considering hedging strategies as mitigants.
- Option 3b: analyse the business model of the institution to understand how the amount of total assets is related to their exposure to market risks.

While the measure under Option 3a would have provided a straightforward indication of the institution ability to manage market risk, the EBA preferred avoiding requesting the computation of this ratio for two reasons:

- Providing a definition of what constitutes a ‘hedging instrument’ or a ‘hedging strategy’ might have been excessively complex.
- The computation of the FRTB requirements without considering hedging instruments and strategies might have been excessively onerous on the requesting undertaking side, both in terms of complexity of the calculation and cost of the systems and models required to perform it.

Consequently, to assess the complexity and nature of the activities of the requesting undertaking, the EBA recommends requiring the competent authority to assess the business model of the institution, so to understand how the amount of total assets is related to their exposure to market risks.

Option 3b is therefore preferred.

5.1.4.4. Nature of the activities performed

The EBA discussed which among the activities listed in Annex I of Directive 2014/65/EU should be considered in order for the competent authority to assess their nature for the purposes of granting or rejecting the waiver. The following options were considered:

- Option 4a: limit the activities to be considered to points 3 (dealing on own account) and 6 (underwriting on a firm commitment basis) of Annex I of Directive 2014/65/EU.
- Option 4b: focus on the activity under point 3 (dealing on own account) but consider also activity 6 where relevant.
- Option 4c: exclusively consider the activity under point 3 (dealing on own account).

Initially, the EBA limited the activities to be considered for this purpose to those reported at points 3 (dealing on own account) and 6 (underwriting on a firm commitment basis) of Annex I of Directive 2014/65/EU, as they usually are the ones that are responsible for inflating the amount of total assets of the requesting undertaking. The possibility to limit the analysis only to those activities that inflate the balance sheet of the requesting undertaking derives from the nature of the thresholds set out in Article 8a(1) (both concerning total assets).

The consideration of Activity 6 of Annex I of Directive 2014/65/EU for the purpose of assessing the nature, size and complexity of the activities of the requesting undertaking might be unnecessary for the following reasons:

- Underwriting on a firm commitment basis concerns the management of the liabilities of the clients of the requesting undertaking, rather than their assets. Distress or default in the requesting undertaking would therefore unlikely result in distress and default of the clients relying on this service.
- Clients requiring an investment firm to underwrite on a firm commitment basis are professionals rather than retail.
- Underwriting on a firm commitment basis is a niche activity among most investment firms that are not part of banking groups.

Notwithstanding what reported above, it should be considered that an assessment of the volume of underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis might be relevant for the purposes of granting or rejecting the waiver request, given the market risk that the requesting undertaking might bear as a consequence of performing large volumes of this activity.

Option 4b is therefore preferred.

5.1.4.5. Assessment of the counterparty credit risk

While assessing the complexity of the derivative portfolio, the EBA considered two options:

- Option 5a: to refer to the amount of capital requirements against counterparty credit risk as an element to be considered for granting or rejecting the waiver.
- Option 5b: a deeper assessment of the derivatives portfolio of the entity.

Option 5a was not considered sufficient, as the amount of prudential requirements against the counterparty credit risk of the requesting undertaking is only partially useful to assess its systemic relevance in derivative markets. Therefore, the draft RTS recommend a deeper assessment of the derivatives portfolio of the entity.

Option 5b is preferred.

5.2. Overview of questions for consultation

Q1. Are there other elements that should be considered for the purposes of the calculation methodology of the thresholds set out by Article 8a(3a) of the CRD?

Q2. Are there other elements that should be considered for the purposes of the provision of information for the effective monitoring of the credit institutions thresholds?

Q3. Are there other elements that should be considered in the assessment of the organisational structure, the booking practices, and the allocation of assets of the group to which the requesting undertaking belongs, for the purposes of the waiver from needing the credit institution authorisation?

Q4. Are there additional elements related to the organogram of the requesting undertaking and of its group that should be considered for the purposes of the waiver from needing the credit institution authorisation?

Q5. This article is aimed at identifying those cases in which the booking practices of the group of the requesting undertaking may hinder the transparency of the allocation of risks and responsibilities within the group. Are there other examples of booking practices leading to low transparency in the allocation of risks and responsibilities that are not considered in this Article? Are there examples in which assets or liabilities related to dealing on own account that are originated but not fully booked do not necessarily lower the transparency concerning the allocation of risks or responsibilities within the group?

Q6. Are there additional elements and/or alternative metrics that could be considered for the purpose of analysing the booking practices and the allocation of assets within the group for the purposes of the waiver from needing the credit institution authorisation?

Q7. Are there other elements that should be considered in the assessment of the nature, size and complexity of the activities of the requesting undertaking, for the purposes of the waiver from needing the credit institution authorisation?

Q8. Paragraph 1 of this article identifies a business model that would support receiving the waiver. Are there other business models that, similarly, would support granting the waiver from needing the credit institution authorisation?

Q9. Are the elements in paragraph 1 precise enough in identifying a business model characterised by substantial increases in the total assets without corresponding increases in the market risk borne by the undertaking?

Q10. Are there elements that could mitigate the risk generated by the performance of the activity of underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis that should be taken into consideration for the purposes of the waiver?

Q11. This article assumes that an undertaking dealing on own account on behalf of clients may generate, in case of distress or default of the undertaking, more risks for said clients. Are

there elements that could mitigate these risks that should be taken into consideration for the purpose of the waiver?

Q12. Are there any other elements that should be considered to assess the systemic risk generated by the requesting undertaking for the purposes of the waiver from needing the credit institution authorisation?

Q13. Would you suggest any alternative or additional elements or metrics that could allow an assessment of the complexity of a derivative portfolio that does not lead to an excessively burdensome assessment of the waiver application for both the requesting undertaking and the CA?

Q14. Are there any other sources of information that should be considered for the purposes of the waiver set out by Article 8a(3a) of the CRD?