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SUBJECT
Response to the consultation on the RTS under IFD/IFR

Optiver welcomes the opportunity to respond to the consultation by the European Banking Authority (EBA) on the draft regulatory technical standards (RTSs) related to the implementation of the new prudential regime for investment firms.

Optiver would like to focus in its response on two issues, both relating to the draft *RTS on The reclassification of investment firms as credit institutions under article 8a (6) of Directive 2013/36/EU* (hereafter the "Classification RTS").

MANAGEMENT SUMMARY

WHAT IS THE PROBLEM?

The proposed delegated regulation could lead to an unintentional classification and subsequent authorisation of certain European investment firms as Credit Institutions under CRD/CRR and subsequent direct supervision by the Single Supervisory Mechanism (SSM). **This will discriminate against investment firms that have their holding companies in the EU and will disadvantage them when compared to investment firms, with the exact same operations and balance sheet sizes, which have their holding company in the US, the UK or other (non-EU) jurisdictions**.

The root cause of the problem is two-fold:

I. For the calculation of the total assets, the EU headquartered groups will also have to include assets of non-EU entities in the group, whereas the non-EU headquartered firms will only have to include the assets of EU regulated entities and EU authorised branches; and
II. Within IFRS the possibilities for offsetting of opposing positions are very limited, thereby artificially inflating the balance sheets of market making firms with fully hedged trading books to levels that are not proportionate to the actual (limited) risks of the positions.

To prevent from having to apply for banking status, EU headquartered market making firms like Optiver will have no choice but to either: (1) restrict the amount of liquidity they provide to prevent the balance sheet from growing too big, or (2) move the headquarters of the firm to a jurisdiction outside of the EU.

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We are convinced that it was never the intention of the European Commission to include the assets of non-EU entities in the calculation of the total assets for the purpose of the EUR 30bn threshold, but only the assets of the non-EU subsidiaries of EU investment firms, as well as the EU branches on non-EU groups. We find evidence of this intention in the text of the Commission proposal, the opinion of the ECB of this proposal and the subsequent changes made to the text following the ECB's concerns.

WHAT IS THE SOLUTION?

We feel however that it is not too late and that the Level II regulatory technical standards allow for a solution of this problem. For this the Classification RTS should clarify that:

1) For the calculation of total assets, firms should only include in the calculation:
   a. the assets of the EU investment firm;
   b. the assets of all the investment firms' EU- and non-EU subsidiaries;
   c. the assets of other EU investment firms in the EU group; and
   d. the assets of EU branches in case of non-EU groups

   This asset calculation would thus exclude from the total assets calculation the assets of non-EU entities if these entities are not subsidiaries of EU investment firms.

2) For the calculation of the total assets, firms should be able to use 'prudential individual reporting' (article 3(2) of the RTS) that allows for appropriate off-setting of risks in opposite positions in exchange traded derivatives, thus significantly reducing the balance sheet of market makers.

THE REMAINDER OF THIS MEMO

On the next pages, we dive further in this problem and the proposed solutions. It is divided in two sections.

1. The first section will deal with **Chapter 4** of the Classification RTS as currently proposed and describes why we feel that the calculation of total assets in the draft as its stands inadvertently includes the assets of non-EU entities of EU headquartered groups. It presents evidence of our analysis and suggest changes to ensure that EU headquartered investment firms can remain competitive towards their non-EU counterparts, in line with the ambitions of the Capital Markets Union project.

   Here we suggest concrete changes to the draft Classification RTS. In cooperation with external legal counsel we have prepared draft changes to the RTS that we have included in Annex 1.

2. The second section will deal with **Article 3(2)** of the Classification RTS as currently proposed and the definition of total assets and presents an approach for the 'prudential individual reporting' that allows for better off-setting of risks associated with positions in exchange traded derivatives.

   Here we seek confirmation from the EBA that we would be correct in applying the CRR leverage ratio methodology with the SA-CCR approach to calculate the total assets in the case of derivatives.

If the EBA has any questions regarding this response, or would like to have a further discussion on our analysis and suggested changes to the Calculation RTS, please contact Willem Sprenkeler, Head of Public Affairs at +31 20 708 7493 or willemsprenkeler@optiver.com.

CHAPTER 4 – DEFINITION OF ASSETS, SCOPE OF UNDERTAKINGS FOR THE CALCULATION OF THE THRESHOLD FOR THE GROUP TEST AND CALCULATION OF THE TOTAL VALUE OF ASSETS

HOW THE DRAFT RULES PUT LARGE EUROPEAN INVESTMENT FIRMS AT A COMPETITIVE DISADVANTAGE

Optiver would like to bring to the attention of EU legislators and regulators an issue with potentially far-reaching consequences for the level playing field between large European headquartered investment firms and their non-European competitors, as a result of the upcoming implementation on June 21, 2021 of the Investment Firm Directive (IFD) and Investment Firm Regulation (IFR) and the related Level 2 technical standards.

The implementation of these pieces of legislation as currently drafted will effectively put a hard cap on the size of European headquartered investment firms, making it harder for them to compete with banks and will only further increase the dominance of large US investment banks on the European financial markets.

As the draft RTS under IFD/IFR are currently subject to consultation and will soon need to be adopted by the European Commission after a final proposal from the European Banking Authority there is still an opportunity for EU legislators and regulators to review the proposed rules and enable large EU headquartered investment firms to compete on a level playing field with non-EU competitors, prevent the European financial markets from becoming too dependent on non-EU investment banks and make the EU an attractive location for holding companies of large, globally active investment firms – goals that are closely aligned with the ambitions of the Capital Markets Union (CMU) project.

In this paper, we have outlined a possible alternative approach to the draft RTS to clarify the calculation of the threshold values, which minimise the unlevel playing field situation between EU & non-EU groups; whilst also responding to the co-legislators' intentions of capturing the right risks with the right prudential framework.

1. INTRODUCTION

On June 21, 2021 new rules regarding capital requirements for investment firms will enter into effect in the 27 Member States of the European Union (EU). Currently most investment firms in the EU are subject to Directive 2013/36/EU (CRD) and Regulation (EU) No 575/2013 (CRR), which were drafted following the financial crisis and were targeted at the risks that large banks are exposed to. Together, the new Investment Firm Directive (IFD) and Investment Firm Regulation (IFR) provide for a more adapted regime, specifically targeted to capture the risks stemming from the typical activities of investment firms.

However, Optiver believes that the final texts of the Level 1 text and the draft *RTS on The reclassification of investment firms as credit institutions under article 8a (6) of Directive 2013/36/EU* (hereafter the "Classification RTS") however have - perhaps unintentionally - drifted away from the initial proposal of the European Commission (Commission). The Classification RTS as it is currently proposed could lead to an unintentional classification and subsequent authorization of certain European headquartered investment firms as Credit Institutions under CRD/CRR and subsequent direct supervision by the Single Supervisory Mechanism (SSM). Equally large investment firms with their holding company in a non-EU location will however not be regulated as banks.

This will ultimately discriminate investment firms that have their holding in the EU and will disadvantage them severely versus investment firms with the exact same operations and balance sheet sizes in the EU-27 but which have a holding company in the US, the UK or other (non-EU) jurisdictions.

2. IFD/IFR RULES ON CLASSIFICATION OF LARGE INVESTMENT FIRMS

The IFD/IFR introduces a number of amendments to CRD and CRR including:

- extending the definition of 'credit institution' in CRR to include certain entities carrying out the activities of dealing on own account or underwriting or placing on a firm commitment basis (specified activities) if their total assets reach or exceed a EUR 30 billion threshold (new point (1)(b) of Article 4(1) CRR);
- adding new provisions to CRD requiring EU entities that fall within the extended definition to submit an application for authorisation as a credit institution when their assets reach or exceed a similar (but not identically defined) EUR 30 billion threshold calculated *on an average basis over a 12 month period* (new Article 8a(1) of CRD).

Such a threshold is reasonable to ensure that investment firms of sufficient size and *European importance* are proportionately regulated within the European Union. As such, Optiver welcomes the introduction of the standalone 'solo test' to determine whether an EU entity meets the relevant EUR 30 billion threshold on a standalone basis (see article 4(1)(1)(b)(i) CRR and article 8(a)(1)(a) CRD).

However, Optiver challenges that the proposed implementation of the calculation of the 'group test' threshold in article 8a(1)(b) CRD (and thus article 4(1)(1)(b)(ii) and (iii) CRR) as set out in the Classification RTS meets the intentions of the Level 1 Legislation and that of the policy makers as it includes in the calculation also the assets of non-EU entities that are not a subsidiary of the EU investment firm.

EU PARENT UNDERTAKINGS AND NON-EU PARENT UNDERTAKINGS

Within the Classification RTS, a distinction is made between an investment firm headed by an 'EU parent undertaking' and an investment firm headed by a 'non-EU parent undertaking'. This distinction -which has fundamental implications for the future of EU capital markets – does not seem based on the intentions of the Level 1 Legislation.

Within article 8 and 9 of the Classification RTS as currently proposed, the investment firm must calculate 'total assets' for the purposes of the 'group test' in point 8a(1)(b) CRD as follows:

a) the aggregation of the assets of both EU and non-EU entities carrying out specified activities *where they are part of a group headed by an EU parent undertaking* (an EU group) - but only the assets of EU entities (so carrying on specified activities) *where they are part of a group headed by a non-EU parent undertaking (a third-country group);* and
b) that aggregation to use the individual (i.e., unconsolidated) balance sheets of those group companies (with some adjustments for intercompany items).

This proposed approach is likely to deter investment firms locating their parent entities within the European Union.

In the rest of this paper, we have reflected on an alternative approach, which would still capture the risks as intended by the co-legislators but would not be such a deterrent to having an EU headquartered large investment firm. We also present a number of numerical examples to illustrate why Europe's capital

markets may not be such an attractive place anymore for the headquarters of a large European investment firm with global operations.

3. BACKGROUND

COMMISSION PROPOSAL

Originally the proposed text of the 'group test' required only the aggregation of the total assets shown on individual balance sheets of EU entities which were part of the group, regardless of the location of the parent entity. The group test in the original proposal made no distinction between EU groups and third country groups and it would have been clearly over-reaching to treat smaller EU firms which are subsidiaries of third country groups as credit institutions simply because the third country group also includes large non-EU entities that carry on specified activities outside the EU.

OPINION OF THE ECB

Subsequent changes by the co-legislators were made as a response of the opinion of the ECB of 22 August 2018 (ECB opinion on the legislative proposal CON/2018/36). In that opinion the ECB recommending the following:

"the proposed regulation should provide clarification as to how the assets are to be calculated, i.e. including the assets of Union branches of third country groups and third country subsidiaries of undertakings in the Union arising from their consolidated balance sheet." (emphasis added)

In Optiver's view the ECB's concerns were clearly that the originally proposed text would have resulted in:

(a) an EU entity carrying on specified activities which is part of a third-country group not being treated as a credit institution if the EU entity's assets are less than EUR 30 billion - even though the third-country group includes a group company with an EU branch where the branch has assets which (when aggregated with the assets of the EU entity) would result in the EU entity exceeding the EUR 30 billion threshold;

and, more importantly in this context

(b) an EU entity carrying on specified activities not being treated as a credit institution if the EU entity's solo assets are less than EUR 30 billion - even though that EU entity has a non-EU subsidiary with assets such that the consolidated assets of the EU entity exceed the EUR 30 billion threshold.

The ECB's concerns were likely based on the premise that both the solo and group tests in the originally proposed text only focused on the total assets shown in the individual balance sheets of EU entities that carry on specified activities. In particular, the ECB's second concern would have been (largely) illusory if the group tests in the originally proposed text already required the aggregation of the assets of all non-EU entities carrying on specified activities that were part of the same group where that group was headed by an EU parent undertaking.

It is Optiver's opinion that the response provided by the ECB was to expand the scope of the 'individual' balance sheet to include other activities carried out by group entities within the EU; but not extend the scope beyond activities performed within the Union.

The response by the co-legislators to the ECB remarks resulted in the following proposed rewording of the original legislative document (included in the updated legislative text of article 4(1)(1) CRR as inserted by article 62(3) IFR):

i. a provision to widen the scope of 'individual assets' to include branches of non-EU entities within third country groups; and
ii. a provision to focus on the (sub-)consolidated assets of the entities already encompassed by point (1)(b) of article 4(1) CRR and 8a(1) CRD. (i.e: EU entities that carry out specified activities)

PREVENTING REGULATORY ARBITRAGE

A key principle of the IFR and the wider European Banking regulation is to prevent regulated entities to take advantage of regulatory arbitrage across the Union and prevent the risk of circumvention of the requirement for entities to be authorised as credit institutions.

This is made apparent in Recital 36 IFR:

"In order to prevent regulatory arbitrage and reduce the risks of circumvention, competent authorities should endeavour to avoid situations where potentially systemic groups would structure their operations in such a way as to not exceed the thresholds set out in point (1)(b) of Article 4(1) of [CRR] and circumvent the obligation to seek authorisation as credit institutions pursuant to Article 8a of [CRD]."

As such the principle underpinning the updated definition of Credit Institution is to prevent both EU and non-EU headed firms circumventing the requirements by structuring their EU activities in such a way that allows EU activities to be excluded from the calculation of 'total assets'.

It is therefore the opinion of Optiver that the Group Test should focus on EU activities only, as opposed to also including activities conducted outside of the EU (as is currently proposed in the EBA draft RTS).

4. POTENTIAL IMPLICATIONS OF THE EBA PROPOSED APPROACH

As highlighted above, Optiver is of the opinion that the Classification RTS as currently proposed has the potential to cause an un-level playing field for investment firms managed by a parent entity located within the EU, and will certainly deter new entrants locating their parent entities within the European Union.

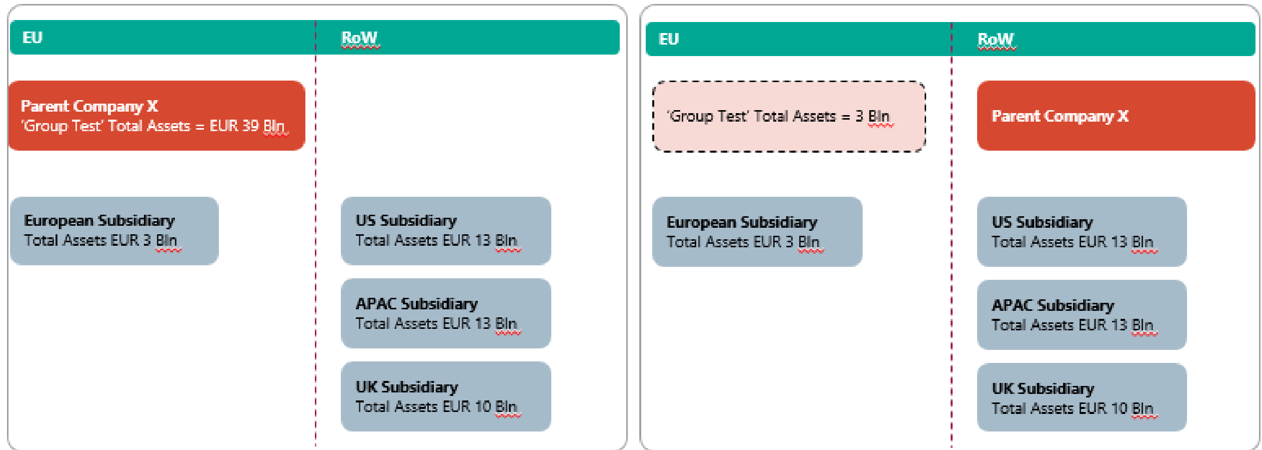
Below we have included a number of hypothetical examples to illustrate considerations that will be made for existing and new entrants:

1) Company X has three major business units; Europe, USA, Asia Pacific and has a parent entity that acts as a Holding company only. This Holding Company X is headquartered within the EU. The majority of their European activities are conducted via a subsidiary domiciled in the UK and only EUR 3bln of assets are located in mainland Europe. It has total consolidated assets of EUR 39bn (EUR 13bn in each of Europe/USA/Asia Pacific).

   As a result of the Group Test, as proposed in the Classification RTS, the EU-27 entity in 2021 will be required to become authorised as a credit institution within Europe and will be under the direct supervision of the ECB, and will have to comply with various other banking regulations. However, if Company X were to relocate their parent entity to either the UK or outside of the

EU, they would no longer have to register as a credit institution, and the European activities would result in a 'Class 2' categorisation.

Example 1 – Company X



Impact of Parent Location

	EU parent location	RoW parent location
European Subsidiary	• **Required to Authorise as a Credit Institution** • **Supervised directly by the ECB** • **Required to meet other Banking regulation** • Regulated under the banking regulations 'CRR/CRD'	• Classified as a 'Class 2' Investment Firm • Supervised by NCA • Regulated under the investment firm regulation
Consolidation	• Full consolidation required • **Supervised by ECB**	• No consolidation within Europe • Third Country Supervision

2) Company Y has three major business units; Europe, USA, Asia Pacific and has a parent entity that acts as a Holding company only. This is a European success story and from its European origin, it has developed trading strategies that are particularly successful in the USA. It has total consolidated assets of EUR 50bn, of which EUR 9bn in Europe, EUR 13bn in Asia Pacific and EUR 28bn in the USA.

   The Holding company is headquartered within the EU and this firm must become a European credit institution despite having the vast majority of its operations and assets outside the EU. This puts European investment firms at an enormous disadvantage versus other jurisdictions as a US firm with the exact same constituents of its' assets would not be regulated in the same form.

3) A more extreme example - Company Z has three major business units; Europe, USA, Asia Pacific and has a parent entity that acts as a Holding company only. This is a European success story and from its European origin, it has developed trading strategies that are particularly successful in the USA. It has total consolidated assets of EUR 50bn, EUR 11bn in Europe, EUR 7 bn in Asia Pacific and EUR 32bn in the USA.

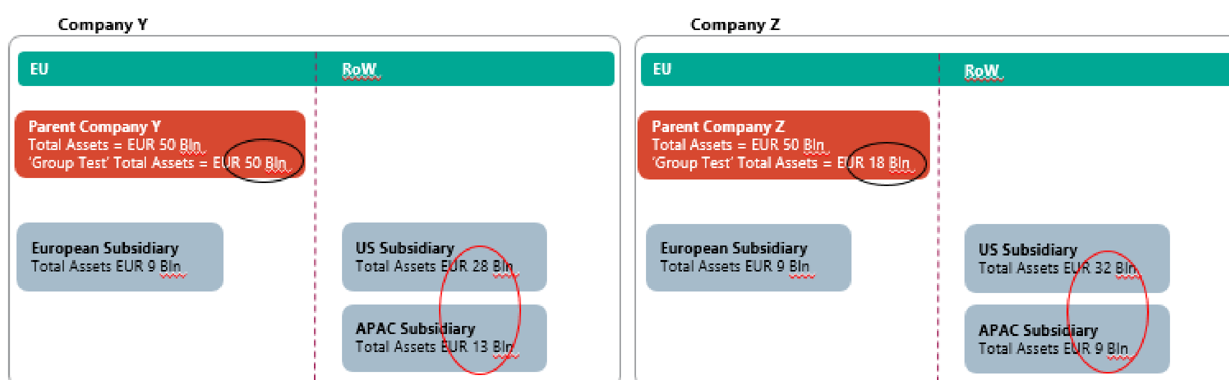
   Following the logic of example 2 above, one would think that this firm must also become a European credit institution (despite not having much substance within the EU) because the Holding company is headquartered within the EU. However, article 8 of the Classification RTS as currently proposed states the following:

   "For the purposes of the group test, the relevant undertakings shall include the following entities which are part of the group ….

(a) *Relevant institutions whereas the individual total assets as specified in Article 4 and Article 6(2) of this regulation are less than EUR 30 billion;*
(b) *Relevant institutions as specified in Article 7 (5) of this Regulation;*
(c) *Relevant subsidiaries in third countries whereas individually have total assets less than EUR 30 billion as specified in Article 3 of this Regulation;*
(d) *Relevant third country branches.*

Strangely subsection (c) here would actually *exclude* the EUR 32bn assets in the USA from the calculation, bringing the Group at total consolidated assets of only EUR 18bn and thus not requiring the firm to become a credit institution under CRD/CRR.

Example 2/3 – Company Y & Z



Impact of US Subsidiary Size for the regulated status of the EU entity

	Size US Subsidiary <30Bln (Y)	Size US Subsidiary >30Bln (Z)
European Subsidiary Regulated status	• **Required to Authorise as a Credit Institution** • **Supervised directly by the ECB** • **Required to meet other Banking regulation** • Regulated under the banking regulations 'CRR/CRD'	• Classified as either a 'Class 2' or 'Class 1minus' Investment Firm • Supervised by NCA • Regulated under either the Investment Firm Regulation (IFR) or the Capital Requirements Regulation (CRR)
Consolidation	• Full consolidation required • **Supervised by ECB**	• Possible consolidation within Europe under IFR, and full consolidation within Europe under CRR • Supervised by NCA

We believe this very last example clearly illustrates that it is appropriate to have the EUR 30bn threshold apply on an EU level only basis. Even the Classification RTS - which we view as inappropriately including non-EU assets within the threshold calculation - itself recognises via Article 8 subsection c that it is inappropriate to do so for large subsidiaries.

5. OTHER THRESHOLDS IN IFR/IFD APPLY ONLY TO EU ASSETS

During the legislative process, the co-legislators added a provision to IFR that was designed to ensure that larger investment firms not treated as credit institutions would still be subject to supervision under CRR/CRD (Article 1(2) IFR). This provision includes a solo and group test structured in a similar way to the solo and group tests under CRR/CRD, but with a size threshold of EUR 15bn and subject to wording excluding from the calculations of the threshold "the individual assets of any subsidiaries established outside the Union that carry on any of the [specified activities]" (see points (a) and (b) of Article 1(2) IFR).

However, the starting point for the solo and group test under this provision should be understood as being consistent with the correct methodology discussed above. Article 1(2)(a) and (b) IFR should be understood as focusing on the consolidated assets of EU entities that carry on specified activities, but

then excluding the assets of non-EU subsidiaries of those EU entities when calculating the consolidated assets of those EU entities if those non-EU subsidiaries carry on specified activities. Thus, the intention appears to have been to apply an approach closer to the originally proposed text of point (1)(b) of Article 4(1)(1) CRR and Article 8a(1) CRD (see above).

6. PROPOSED WAY FORWARD

In light of the above, and to avoid implementing a prudential framework deterring EU-headed investment firms, we suggest the following recommendations for the Classification RTS:

a) A provision making clear that the threshold in point (a) of Article 8a(1) CRD is determined by reference to the total value of the consolidated assets of an EU entity that carries on specified activities;
b) A provision making clear that the threshold in point (b) of Article 8a(1) CRD is determined by:
    i. identifying all the EU entities in a group that carry on specified activities (step 1);
    ii. eliminating those EU entities identified at step 1 which are subsidiaries of another entity identified at step 1 (to prevent double counting);
    iii. calculating the consolidated assets of each of the remaining entities identified at step 1 (including the assets of their EU and non-EU subsidiaries);
    iv. eliminating those EU entities identified at step 1 whose consolidated assets are equal to or greater than EUR 30bn (consistently with the requirements of point (1)(b)(ii) of Article 4(1) CRR and point (b) of Article 8a(1) CRD);
    v. summing the total consolidated assets of the remaining entities identified at step 1;
    vi. for third-country headquartered groups, adding to that sum the assets of EU branches of non-EU entities (for consistency with the requirements of point (1)(b)(ii) of Article 4(1) CRR).

Optiver believes that this solution would meet the original intent of the Level 1 legislators as well as providing a level playing field for European investment firms who have managed to create large businesses outside of the EU, while ensuring that once the assets held by that investment firm reach certain thresholds within the EU, they are subject to the appropriate regulatory regime.

In Annex 1 to this letter we have - together with external legal counsel – formulated concrete drafting suggestions to the RTS on Classification.

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ARTICLE 3(2) – PRUDENTIAL INDIVIDUAL REPORTING IN ACCORDANCE WITH APPLICABLE LAW

USING SA-CCR TO CALCULATE TOTAL ASSETS

In this section we explain why looking at total asset value from an accounting standards perspective is a poor metric for determining the true size or the risk profile of an investment firm, especially for an option market making firm like Optiver and we present an approach for calculating the total assets of an investment firm in accordance with article 3(2) of the draft Classification RTS.

INTRODUCTION

Recital (37) of Regulation (EU) 2019/2033 (IFR) explains why "large" Investment firms should remain subject to CRR:

"The largest investment firms providing key wholesale market and investment banking services (dealing on own account in financial instruments or underwriting financial instruments or placing financial instruments on a firm commitment basis) ***have business models and risk profiles that are similar to those of significant credit institutions. Their activities expose the firms to credit risk, mainly in the form of counterparty credit risk, as well as market risk for positions they take on own account, client related or not. As such, they present a risk to financial stability, given their size and systemic importance."***

It seems clear from this wording that the EUR 30bn threshold aims to capture whether or not an investment firm is running a large or similar risk profile as a significant credit institution.

It is our view that just looking at total asset value from an accounting standards perspective is a poor metric for determining the risk profile of an investment firm, especially for an option market making firm like Optiver.

Thus, the introduction of the ability to use a prudent approach in measuring the total assets, as detailed in Article 3(2) of the Calculation RTS is welcomed by Optiver as it allows for a fairer representation of total assets for investment firms than just looking at assets according to standard accounting rules. This is mainly due to the strict netting pre-requisites under (IFRS) accounting standards, which particularly penalises market making firms with active trading portfolios.

THE DRAWBACKS OF IFRS

The IFRS offsetting model requires an entity to offset a financial asset and a financial liability when, and only when, an entity currently has a legally enforceable right of set-off and intends either to settle on a net basis or to realize the financial asset and settle the financial liability simultaneously. Due to the nature of the active trading conducted by investment firms, and in particular market makers, it is difficult to demonstrate the intent to set-off under IFRS; whereby in order to demonstrate such intent the investment firm must be able to demonstrate their intent to hold a position until expiration. This intent to hold until expiration is not possible, particularly for market makers, where the focus of the investment strategy is not on long term mispricing/opportunities in the market place but typically very short-term opportunities. As a result, for investment firms it is not always easy to net contracts within the rules of IFRS. As such the IFRS accounting methodology does not provide a prudent measure of the actual risk within the derivatives portfolio.

Take the example below of a typical position in STOXX50 (Bloomberg symbol: SX5E) derivatives, an option market maker might have:

- SX5E trading @ 3,300
- Long a Synthetic:
  - Long one SX5E Call in expiry T (50 days away) in the 3,300 strike. Price: 116.67
  - Short one SX5E Put in expiry T (50 days away) in the 3,300 strike. Price: 116.67
- Short one SX5E future
- For simplicity assume all contract sizes/multipliers are 1.

The market risk of these positions is almost zero (only some risk on dividends and rates in case the future has different expiry date). Under CRR the risk exposure of the position would be zero under the simplified approach for Equity Risk; and the Counterparty Credit Risk is also minimal, as the replacement cost is zero and the potential future exposure is also zero (see Interpretation 1 for calculation).

Yet under IFRS, on the balance sheet, this position would represent a total asset value of 116.67 EUR:

- Long call: asset of 116.67
- Short put: liability of 116.67
- Short Future: not presented on the balance sheet

The issue outlined above only gets exacerbated if an option market maker keeps more offsetting positions between different strikes. Typically, an option market maker will keep alternating long and short positions in subsequent strikes to keep his price movement and Vega risk under control. However, doing this naturally increases the balance sheet size with the option values without necessarily increasing its risk at that same rate if at all. This "balance sheet" method of looking at whether a firm poses a systemic risk is only correlated to the number of strikes that are in position rather than the actual risk. If anything, this method only incentivizes more risk-taking behaviour, e.g. reducing the number of strikes in position and just keeping bigger opposing strike positions.

ARTICLE 3(2) – PRUDENTIAL INDIVIDUAL REPORTING

Article 3 of the Calculation RTS describes how to calculate the total value of assets for relevant institutions. Three possibilities are provided, to be used in hierarchical order: (1) a prudential individual reporting approach, (2) the use of annual accounts in accordance with IFRS, and (3) the use of an applicable national accounting law.

Paragraph 2 describes *"The total value of the assets of a relevant institution shall be determined on the basis of the prudential individual reporting in accordance with applicable law."*

Prudential individual reporting is done based on two frameworks: FINREP and COREP. However, FINREP is based on IFRS and specifically designed for financial reporting and thus seems to be already considered in article 3(3) of the Calculation RTS. That leaves COREP as the only other reporting framework.

COREP aims to provide insight into the risk profile of an institution for the purpose of prudential oversight. There are several reasons for the COREP framework (or an element of it) to provide an adequate insight:

- The COREP framework provides better insight into inherent risk profile of an institution;

- The COREP framework netting rules are more aligned to international practice, whereas IFRS netting/offsetting requirements are stricter, leading to ill-reflection of the implicit risk profile by merely evaluating the IFRS/FINREP balance sheet size;

In this context, Optiver would like to suggest an approach that we feel provide for a prudent calculation of the value of total assets, which ultimately is a better reflection of the total assets of an Investment Firm, while meeting the principle detailed in recital 37 of IFR. Optiver would like to request confirmation from the EBA, or perhaps a clarification in the form of a recital in the Classification RTS, as to the suitability of his approach as described hereafter.

CALCULATING ASSETS USING THE LEVERAGE RATIO CALCULATIONS

In Part 7 of CRR, 'Leverage' the regulator prescribes an exposure measure methodology for the use of calculating the total exposure of the institution for the purpose of measuring the total leverage used by the institution. The methodology used to calculate the 'total exposure measure' is the sum of the following:

- Total Assets as reported in the financial statement and securities financing transactions; excluding derivatives.
- Total Derivatives Exposure using the SA-CCR methodology
- Add-ons for Securities Financing Transactions
- Off-Balance Sheet Items
- Certain Outstanding settlements

Optiver is of the opinion that by utilising the prudential measures as prescribed within the Leverage Ratio calculations, they will meet the methodology prescribed within Article 3(2) of the Calculation RTS.

Using the approach taken in the calculation of the Total Exposure Measure and applying it to calculate the Total Assets, the Institution would exclude the Off-Balance Sheet, SFTs, add-ons and outstanding settlements; and as such the calculation of 'Total Assets' would be the sum of the following:

- Total Assets as reported in the financial statemen; excluding derivatives.
- Total Derivatives Exposure using the SA-CCR methodology

IMPACT

In calculating the Leverage Ratio Exposure Measure for derivatives, one calculates the Exposure using the Standardised Approach for Counterparty Credit Risk (SA-CCR), as defined in Title II of Part Three Section 3 of CRR. To align the methodology to the updated regulatory framework; Optiver would stipulate the use of the SA-CCR methodology when calculating the value of derivatives, as part of the total asset value, noting that for non-derivatives positions, the proposed methodology requires us to apply IFRS.

Pros:

- Tied to risk profile and better reflection of the actual risk of the position.
- Considers netting (specifically the option Delta) between offsetting positions.
- Considers future positions, which are not presented on the balance sheet.

Cons:

- The Total Exposure Measure only applies a prudential methodology for derivative contract, and does not take into account the risk mitigation within the non-derivatives part of the trading book.

Example calculation illustrating the impact of applying SA-CCR on a derivatives position

Position	Position	RC	Notional	Sup Delta	Mat Factor	Eff Notional
Long Call	1	116.67	3300	0.5	0.208013	343.2207
Short Put	-1	-116.67	3300	0.5	0.208013	343.2207
Short Future	-1	0	3300	-1	0.208013	-686.441
Total	-1	0	9900			**0**

ANNEX 1

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

COMMISSION DELEGATED REGULATION (EU) No …/.. of XXX […] supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards for the calculation of the threshold referred to in Article 8a(6)(b) of the CRD

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, Having regard to Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU, and in particular Article 62[(6)] thereof, Whereas:

(1) Under Article 8a of Directive 2013/36/EU, investments 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 an 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 average of monthly total assets, calculated over a period of 12 consecutive months, ~~total value of the consolidated assets~~ is equal to or exceeds EUR 30 billion ~~at solo or group level~~.

(2) This Regulation is intended to provide a methodology for calculating the thresholds upon which investment firms under point (1)(b) of Article 4(1) of Regulation (EU) No. 575/2013 shall apply for an authorisation of credit institutions.

~~(3) The methodology for calculating the thresholds should take into account that the total value of the consolidated assets of all undertakings of 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 to avoid double counting and ensure that consolidated assets can be determined at group level.~~

(4) For the purposes of defining the concept of assets, this Regulation takes into account the different accounting standards applicable to investment firms and credit institutions and adopts a hierarchical approach to ensure consistency 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) For the purposes of determining the average of monthly total assets, the level one text refers to "monthly total assets", which would justify the stricter requirement of 12 monthly data points, although this is not explicitly stated. Calculated over a period of 12 consecutive months, a monthly calculation may be very burdensome in particular for complex groups, and it would not produce results substantially different from a quarterly calculation, as in both cases an average over a 12 months window has to be considered. A quarterly calculation requires 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 provision of the level one text (in particular with the reporting requirements in Article 55(5) of the IFR aimed at monitoring the significance of an IF).

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

(7) 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 perform the calculation laid down Article 8a of Directive 2013/36/EU.

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

(9) 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 1093/201015].

HAS ADOPTED THIS REGULATION:

Chapter 1

Scope and definitions

Article 1

Subject matter and scope

1. This Regulation specifies the methodology to calculate the threshold referred to in Article 8a(1) of Directive 2013/36/EU, by identifying:

(a) The definition of assets and calculation of assets' values;

(b) The perimeter of undertakings to consider in the calculation of the threshold; and

(c) The calculation of assets of relevant branches of third-country groups.

Article 2

Definitions

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

'relevant undertaking' means any undertaking ~~carrying out the services~~ referred to in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013 ~~and~~ which has already obtained an authorisation pursuant to Title II of Directive 2014/65/EU;[1]

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

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

'relevant institution' means any credit institution as defined in point (1) of Article 4 of Regulation (EU) No 575/2013 or investment firm as defined in point (1) of Article 4(1) of Directive 2014/65/EU which is established in the Union[2] and ~~carrys~~ carries out relevant activities[3];

'relevant third-country branch' means a branch of an undertaking that is part of a third-country group~~s~~ and which is authorised to carry out relevant activities in the Union ~~and that~~ where the undertaking is not a commodity and emission allowance dealer, a collective investment undertaking or an insurance undertaking;

'third-country group' means a group as defined in point 64 of Article 3(1) of Directive 2013/36/EU;

'group' means any group referred to in point (138) of Article 4(1) of Regulation (EU) No 575/2013 or in point (13) of Article 3(1) of Directive 2019/2034/EU or an investment firm group as defined in Article 4(1)(25) of Regulation (EU) No 2019/2033, as applicable;

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[1] The amendments align the text with the wording of the introductory wording to Article 8a(1) CRD.

[2] This amendment makes clear that the definition of 'relevant institution' is limited to EU entities.

[3] It may also be desirable to align the definition of 'relevant institution' with the definition of 'third country branch' to exclude undertakings that are not commodity and emission allowance dealers, collective investment undertakings or insurance undertakings. It may also be desirable to add wording to make clear that it is only necessary to aggregate assets of entities required to be authorised under MiFID.

'subsidiary' means a subsidiary as defined in point 16 of Article 4(1) of Regulation (EU) No 575/2013.

~~‘relevant subsidiary in third country’ means the subsidiary established in a third country that carries out relevant activities, that is not a commodity and emission allowance dealer, a collective investment undertaking or an insurance undertaking and that is either part of a group established in the Union or the subsidiary of a firm established in the Union;~~

~~‘intragroup exposure’ means any exposures that occur between relevant institutions, relevant third country branches and relevant subsidiaries in third countries, including adjustments based on the applicable accounting standards.~~

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 shall calculate the total value of the assets of relevant institutions at any relevant date in accordance with paragraphs 2 to ~~4~~ 6 (using the total value of the consolidated assets of the relevant institution where the relevant institution has subsidiaries).

2. The total value of the assets of a relevant institution shall be determined on the basis of the prudential individual or, where the relevant institution has subsidiaries, consolidated reporting in accordance with applicable law.

3. If the total value of the assets of the relevant institution cannot be determined on the basis of the data referred to in paragraph 2, the total value of the assets shall be determined on the basis of the ~~most recent~~[4] audited individual or, where the relevant institution has subsidiaries, consolidated annual accounts of the relevant institution as of the relevant date prepared in accordance with International Financial Reporting Standards (IFRS) as applicable within the Union in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council.

4. If those annual accounts are not available, the total value of the assets of the relevant institution shall be determined ~~report~~ on the basis of the individual or, where the relevant institution has subsidiaries, consolidated annual accounts of the relevant institution as of the relevant date prepared in accordance with applicable national accounting laws.

[4] Under Article 10, the relevant date is the quarter end date.

5. If the relevant institution has subsidiaries but the total value of its assets cannot be determined on the basis of the consolidated data referred to in paragraph 2 and the consolidated annual accounts referred to in paragraph 3 or 4 are not available, the total value of the assets of the relevant institution shall be determined on the basis of the total value of the consolidated assets that would be shown in the consolidated annual accounts of the relevant institution as of the relevant date if it were required to prepare such consolidated accounts in accordance with the financial reporting standards applicable to its individual accounts.[5]

6. Where Article 10 requires the total value of the assets of a relevant institution to be determined as at the end of any quarter which is not the end of the relevant institution's financial year, the total value of the assets of the relevant institution shall be determined on the basis of the total value of the assets that would have been calculated in accordance with paragraphs 2 to 5 if the end of that quarter were the end of the relevant institution's financial year.

Article 4

Relevant exchange rate

~~Relevant undertakings shall perform the calculation laid down in this Regulation converting any amount into the institution's reporting currency at the spot exchange rate prevailing at the date that amount is recorded.~~[6]Relevant undertakings calculating the total value of the assets of relevant institutions 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,~~ convert~~ing~~ the ~~threshold amount~~ result of the calculation in accordance with Article 3 into euro at the spot exchange rate prevailing at the reporting reference date.

Chapter 3

Branches of third country groups

Article 5

Activities of ~~of~~ branches of third-country groups

~~Where the type of activities carried out is not identified, the~~ The total assets of each relevant third-country branch of undertakings that are part of a ~~the~~ third-country group ~~operating in the Union~~ shall be considered for the calculation of the combined total assets in line with Article 9 ~~10~~ of this Regulation as if these branches were authorised in the Union and carrying out

[5] EU undertakings that have subsidiaries may not be required to produce consolidated accounts (e.g., where they are subsidiaries of another EU entity).

[6] This sentence is unnecessary. Where institutions report in euro, amounts will be converted into euro in accordance with the relevant accounting standards.

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.

Article 6

Criteria to measure the total value of assets of branches of third-country groups

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 Member States that are not part of the ~~non-~~ euro area, the same provisions shall apply with reference to the national currency.

Chapter 4

Definition of assets, scope of undertakings for the calculation of the threshold for the group test and calculation of the value of assets

Article 7

Calculation of total assets in accordance with Article 8a(1)(a) of Directive 2013/36/EU of the Draft RTS

1. ~~The relevant undertaking shall calculate the total value of assets pursuant to~~ For the purposes of the calculation of the threshold referred to in point (a) of Article 8a(1)~~(a)~~ of Directive 2013/36/EU, the relevant undertaking shall calculate the average of monthly total assets over a period of 12 months in accordance with Article 10 based on the total value of its assets calculated in accordance with Articles 3 and 4 at the beginning and end of and at each quarter end during that period ~~paragraphs 2 to 5 of this Article~~.

~~2. Each relevant undertaking shall look at the individual value of the total assets in accordance with Article 3 of this Regulation.~~

~~3. If the individual total value of the total assets is equal to or exceeds EUR 30 billion and the relevant undertaking is not part of a group, the relevant undertaking shall consider this as the total value of assets of the undertaking pursuant to Article 8a(1)(a) of Directive 2013/36/EU.~~

~~4. If the individual value of the total assets is equal to or exceeds EUR 30 billion and the relevant undertaking is part of a group, the relevant undertaking shall calculate the value of total assets pursuant to Article 8a(1)(a) of Directive 2013/36/EU by subtracting any intragroup exposures.~~

5. If as a result of the calculation under paragraph 1 4 of this Article, the ~~total value of the consolidated~~ average of monthly total assets of the relevant undertaking for a 12 month period is less than EUR 30 billion and the relevant undertaking is part of a group, the relevant undertaking ~~institution~~ shall apply Article 9 of this Regulation.

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Article 8

Scope of undertakings for the calculation of the threshold in accordance with Article 8a(1)(b) of Directive 2013/36/EU

~~1.~~ For the purposes of the group test, ~~the~~ a relevant undertaking~~s~~ shall include the following entities which are part of the same group as the relevant undertaking~~, defined as any group referred to in point (138) of Article 4(1) of Regulation (EU) No 575/2013 or in point (13) of Article 3(1) of Directive 2019/2034/EU or an investment firm group as defined in Article 4(1)(25) of Regulation (EU) No 2019/2033, as applicable,~~ in the calculation of the threshold~~s~~ referred to in point (b) of Article 8a(1) of Directive 2013/36/EU:

a. Relevant institutions, where~~as~~ the ~~individual total~~ average of monthly total assets over a period of 12 months calculated in accordance with Article 10 based on the total value of the assets of the relevant institution calculated in accordance with ~~as specified in~~ Articles 3 and 4 ~~Article 7(2) of this Regulation are~~ at the beginning and end of and at each quarter end during that period is less than EUR 30 billion and where the relevant institution is not a subsidiary of another relevant institution which is part of the same group as the relevant undertaking[7]; and

~~b. Relevant institutions as specified in Article 7(5) of this Regulation;~~

~~c. Relevant subsidiaries in third countries, whereas individually have total assets of less than EUR 30 billion as specified in Article 3 of this Regulation;~~

b ~~d~~. Where the relevant undertaking is part of a third-country group, ~~R~~relevant third-country branches.

Article 9

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

~~1. The relevant undertaking shall calculate the total value of the consolidated assets pursuant to Article 8a(1)(b) of Directive 2013/36/EU in accordance with paragraphs 2 to 3 of this Article.~~ For the purposes of the calculation of the threshold referred to in point (b) of Article 8a(1) of Directive 2013/36/EU, the relevant undertaking shall calculate the average of monthly total assets over a period of 12 months in accordance with Article 10 based on the sum of:

a. the total value of the assets of each relevant institution referred to in point a) of Article 8 calculated in accordance with Articles 3 and 4; and

[7] This last part of the amendment is necessary to avoid double counting.

b. where the relevant undertaking is part of a third-country group, the total value of the assets of each relevant third-country branch determined in accordance with Article 6,

at the beginning and end of and at each quarter end during that period.

~~2. Each relevant institution that is part of the same group shall look at the value of the individual total assets in accordance with Article 7 of this Regulation.~~

~~3. For the purposes of the calculation of the total value of consolidated assets, relevant undertakings shall consider the value of intragroup exposures as in the formula:~~

[formula deleted]

~~where:~~

~~CA_u = the total value of the consolidated assets of the relevant undertaking u pursuant to Article 8a(1)(b) of Directive 2013/36/EU;~~

~~i = an entity as defined in points a and c of Article 8 of this Regulation;~~

~~N = the number of entities defined in point a and c of Article 8 of this Regulation;~~

~~IA = individual assets, as defined in Article 4 of this Regulation, of the entities defined in points a and c of Article 8 of this Regulation;~~

~~IE = intragroup exposures as defined in Article 2 of this Regulation between the entities as defined in points a and c of Article 8 of this Regulation;~~

~~j = an entity as defined in point b of Article 8 of this Regulation;~~

~~M = the number of entities defined in point b of Article 8 of this Regulation;~~

~~CA_j = the value of the consolidated assets of the relevant undertaking j pursuant to Article 7(5) of this Regulation.~~

~~Article 10~~

~~Calculation of combined assets of third country groups in accordance with Article 4(1)(b) of Regulation (EU) No 575/2013~~

~~Where the relevant undertaking is part of a third-country group, the relevant undertaking shall calculate the combined total value of the assets of all the undertakings of the group pursuant to point b) of Article 4(1) of Regulation (EU) No 575/2013 by including the total assets of each relevant third- country branch as in the formula:~~

[formula deleted]

~~where:~~

~~CTA_u = the combined total value of the assets of the relevant undertaking u as defined in point b of Article 4(1) of Regulation (EU) No 575/2013;~~

~~CA = total value of the consolidated assets as defined in Article 9(3) of this Regulation;~~

~~TCB_j = a relevant third-country branch j as defined in Article 2 and Article 6 of this Regulation;~~

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

~~TA = the value of total assets are defined in Article 7 of this Regulation~~

Article ~~11~~ 10

Average of monthly total assets criterion

1. For the purposes of the calculation of the thresholds referred to in points (a) and (b) 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 liner 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:

$$MTA_{ut} = TA_{Q-1} + m * (TA_Q - TA_{Q-1})/3$$

MTA_{ut} = monthly total assets of relevant undertaking u in month t;

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

TA_Q = ~~total assets of the entities defined in Article 8 of this Regulation calculated as in Article 7 or Article 9 or Article 10 of this Regulation~~

for the purposes of Article 7 and point a) of Article 8, the total value of the assets of the relevant undertaking or relevant institution calculated in accordance with Articles 3 and 4 or, for the purposes of Article 8, the sum of:

a. the total value of the assets of each relevant institution referred to in point a) of Article 8 calculated in accordance with Articles 3 and 4; and

b. where the relevant undertaking is part of a third-country group, the total value of the assets of each relevant third-country branch determined in accordance with Article 6,

in each case, at the end of the quarter Q of month t; and

TA_{Q-1} = ~~total assets of the entities defined in Article 8 of this Regulation calculated as in Article 7 or Article 9 or Article 10 of this Regulation~~

for the purposes of Article 7 and point a) of Article 8, the total value of the assets of the relevant undertaking or relevant institution calculated in accordance with Articles 3 and 4 or, for the purposes of Article 8, the sum of:

a. the total value of the assets of each relevant institution referred to in point a) of Article 8 calculated in accordance with Articles 3 and 4; and

b. where the relevant undertaking is part of a third-country group, the total value of the assets of each relevant third-country branch determined in accordance with Article 6,

in each case, at the end of the previous quarter Q-1 of month t.

2. The average of monthly total assets calculated over a period of 12 consecutive months shall be calculated as the average of MTA_{ut} as defined in paragraph 1 of this Article over four consecutive quarters.

Article ~~12~~ 11

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.