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**NOTE**

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From:	General Secretariat of the Council
To:	Delegations
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Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on structural measures improving the resilience of EU credit institutions <i>- General Approach</i>

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Delegations will find attached the general approach as adopted by the Council (Economic and Financial Affairs).

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on structural measures improving the resilience of EU credit institutions**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee <sup>1</sup>,

Having regard to the opinion of the European Central Bank<sup>2</sup>,

After consulting the European Data Protection Supervisor<sup>3</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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<sup>1</sup> OJ C 451, 16.12.2014, p. 45–50.

<sup>2</sup> OJ C 137, 25.4.2015, p. 2–25.

<sup>3</sup> OJ C 328, 20.9.2014, p. 3–4.

- (1) The Union's financial system includes over 8,000 banks of different sizes, corporate structures and business models, a few of which exist in the form of large banking groups carrying out an all-encompassing set of activities including a large amount of trading activities. Those groups comprise a complex web of legal entities and intra-group relationships. They are highly connected to each other through interbank borrowing and lending and through derivatives markets. The impact of possible failures of these large banks can be extremely widespread and significant.
- (2) The financial crisis has demonstrated the interconnected nature of Union banks and the resulting risk to the financial system. As a result, resolution has to date been challenging, involved entire banking groups, as opposed to only the non-viable parts, and has relied significantly on public support.
- (3) Since the start of the financial crisis, the Union and its Member States have engaged in a fundamental overhaul of bank regulation and supervision including the setup of the first steps towards a banking union. Given the depth of the financial crisis and the need to ensure that all banks can be resolved, there was a call for assessing whether more measures are necessary to further reduce the probability and impact of failure of the largest and most complex banks. A High-Level Expert Group ("HLEG") chaired by Erkki Liikanen was mandated for this purpose. The HLEG recommended the mandatory separation of proprietary trading and other high-risk trading activities into a separate legal entity within the banking group for the largest and most complex banks.

- (4) The on-going banking regulatory reform agenda will significantly increase the resilience of both individual banks and the banking sector as a whole. However, a limited subset of the largest and most complex Union banking groups still remain too-big-to-fail, too-big-to-save and too-complex to manage, supervise and resolve. Structural reform is therefore an important complement to other regulatory initiatives and measures, as it would offer one way of more directly addressing intra-group complexity, intra-group subsidies, and excessive risk-taking incentives in relation to proprietary trading and other trading activities. A number of Member States have adopted or are considering adopting measures to introduce structural reform in their respective banking systems.
- (5) On 3 July 2013, the European Parliament called on the Commission to provide for a principles-based approach to structural reform of the European banking sector.
- (6) The legal basis for this Regulation is Article 114(1) of the Treaty of the Functioning of the European Union (TFEU), which provides for the adoption of measures for the approximation of provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.

- (7) Inconsistent national legislation that does not pursue the same policy goals in a manner that is compatible and equivalent with the mechanisms envisaged in this Regulation increases chances that capital movements decisions of market participants are negatively affected because different and inconsistent rules and practices may significantly raise operational costs for credit institutions that are operating across borders and hence lead to a less efficient allocation of resources and capital compared to a situation where capital movement is subject to similar and consistent rules. For the same reasons, different and inconsistent rules will also negatively affect decisions of market participants relating to where and how to provide cross-border financial services. Different and inconsistent rules may also unintentionally encourage geographic arbitrage. The movement of capital and the provision of cross-border services are essential elements for the proper functioning of the Union internal market. Without a Union-wide approach credit institutions will be forced to adapt their structure and operations along national boundaries, thereby making them even more complex and leading to increased fragmentation of the internal market. Inconsistent national legislation also undermines efforts to achieve a single rulebook applicable throughout the internal market
- (8) Harmonisation at Union level ensures that Union banking groups, many of which operate in several Member States, are regulated by a common framework of structural requirements and other prudential measures thereby avoiding competitive distortions, reducing regulatory complexity, avoiding unwarranted compliance costs for cross-border activities, promoting further integration in the Union market place and contributing to the elimination of opportunities for regulatory arbitrage.

(9) Consistent with the goals of contributing to the functioning of the internal market in the light of the principles of subsidiarity and proportionality, and in order to take fully into account the different regulatory and business models across the Union, this Regulation should allow for two different methods to ensure that in appropriate circumstances trading activities are located in an entity legally, economically and operationally separate from the credit institution that carries out core retail banking activities, as long as both methods effectively achieve the aims of this Regulation. To that end, a competent authority should identify and separate proprietary trading from the remaining banking operation, to identify excessively risky trading activities and impose measures, including separation of those activities to address those excessive risks. Alternatively, Member States should be able to choose to ring-fence core retail banking activities in accordance with national law. Conversely, any discrepancy that might arise from the erroneous or inconsistent application of those methods, in particular by departing from the requirements that are laid down in that respect, could seriously hamper the efficiency of this Regulation. For this reason, the Commission should be empowered to monitor and assess the application of this provision by means of regular information from Member States. Such discrepancies might also preclude the proper application of the Regulation in cases involving credit institutions that are subject to different regimes. Therefore, this Regulation equally should lay down clear and comprehensive rules for such cases.

- (10) Taking into account its far-reaching consequences, when setting up a harmonised European regime on bank structural reform, special attention has to be paid to already existing regulatory approaches in the different Member States. This Regulation strikes the balance between taking into account existing national legislation and creating a common European approach without unnecessarily doubling regulatory burden for the banks affected. The way chosen is due to the special circumstances of this Regulation. It is in no way a precedent for future financial services regulation. Moreover, while allowing for two different methods in achieving some of its objectives, this Regulation remains applicable in its entirety and directly applicable in all Member States, and, therefore, it cannot be construed neither as providing for exemptions from some of its provisions nor as allowing for a differentiated geographical scope of its application.
- (11) In accordance with Article 4 (1)(i) of Regulation (EU) No 1024/2013 the ECB is empowered to carry out supervisory tasks in relation to structural changes required from credit institutions to prevent financial stress or failure when those tasks are explicitly stipulated by Union law for competent authorities.

- (12) This Regulation intends to reduce excessive risk taking as a result of trading activities and to shield institutions carrying out activities that deserve a public safety net from losses incurred as a result of other activities. It also intends to reduce interconnectedness among institutions. Necessary rules should therefore contribute to refocusing banks on their core relationship-oriented role of serving the real economy, and avoid that bank capital be excessively allocated to trading at the expense of lending to the non-financial economy. This Regulation should accordingly contribute to facilitating supervision, monitoring of credit institutions by market participants, reducing conflicts of interests within credit institutions and reducing distortions of competition in the market place.
- (13) This Regulation should apply only to credit institutions and groups with trading activities that meet thresholds set out therein. This is in line with the explicit intention to focus on a limited subset of the largest and most complex credit institutions and groups that, in spite of other Union legislative acts, remain too-big-to-fail, too-big-to-save and too complex to manage, supervise and resolve. This Regulation should accordingly only apply to those EU credit institutions and groups that either are deemed of global systemic importance or exceed certain relative and absolute accounting-based thresholds in terms of trading activity or absolute size. Assets and liabilities of insurance and reinsurance undertakings and non-financial undertakings should not be included in the calculation of the thresholds of the scope and these undertaking should therefore not be within the scope of this Regulation. Member States may decide to impose similar measures also on smaller credit institutions that are outside of the scope of this Regulation.



- (14) The territorial scope of this Regulation should be sufficiently wide in order to ensure that competition is not distorted and circumvention is prevented. However, if the subsidiaries of EU parents in third countries or EU branches of credit institutions established in third countries falling within the scope of this Regulation are subject to measures that in the opinion of the Commission are deemed to have equivalent effect to those set out in this Regulation, they should be exempted. Competent authorities should in addition be able to exempt foreign subsidiaries of groups with an EU parent if those are autonomous and if the impact of their failure would have limited effects on the group as a whole. Because this Regulation should protect eligible deposits from losses resulting from trading activities, it is reasonable that this Regulation exclude from its scope groups that contain at least one credit institution established in the Union and where on a consolidated group level total eligible deposits amount to a minimum or where the total eligible retail deposits are not significant.
- (15) Proprietary trading carried out in a group that contains credit institutions that take retail deposits should be carried out in a trading entity that is legally, economically and operationally separate from the core credit institutions, as such trading activities have limited or no added value for the public good and are inherently risky.

- (16) While some trading activities could be risky, trading activities are generally beneficial to the real economy and the public good, both in enabling banks to hedge the inherent risks in their businesses as well as enabling client activity. It is difficult to distinguish proprietary trading from other trading activities, especially market making. To overcome this difficulty and to dissuade core credit institutions from engaging in proprietary trading, core credit institutions should provide detailed reporting on: the provision of funding, hedging and investment services to clients, market making activities, hedging of its own and its subsidiaries' own risks, on treasury management activities, buying and selling of financial instruments acquired for long term investment purposes and trading in financial instruments issued by national entities established for the purpose of restructuring the national banking recovery, to demonstrate that they do not constitute proprietary trading. Competent authorities should assess and verify that information and where the competent authority concludes the existence of proprietary trading within the core credit institution it should require that the core credit institution ceases carrying out those activities.
- (17) All natural or legal persons who are clients within the meaning of point (9) of Article 4(1) of Directive 2014/65/EU of the European Parliament and of the Council<sup>4</sup> should be considered clients for the purpose of this Regulation. An EU credit institution that is a market maker within the meaning of point (7) of Article 4(1) of Directive 2014/65 EU, or a systematic internaliser within the meaning of point (20) of Article 4 of that Directive, or pursues a market making strategy in accordance with Article 17(4) of that Directive should be considered a market maker for the purpose of this Regulation.

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<sup>4</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, pp. 349 to 496).

(18) An intra-group transaction is a transaction between two undertakings which are included in the same consolidation on a full basis and are subject to appropriate centralised risk evaluation, measurement and control procedures. In a case where the two undertakings are part of the same institutional protection scheme as referred to in Article 113 (7) of Regulation (EU) No 575/2013 or of a structure formed of a central body and credit institutions permanently affiliated to the central body as referred to in Article 10 of Regulation (EU) 575/2013 it is recognised that intra-group transactions can be necessary for aggregating risks within a group structure and that intra-group risks can therefore be specific. If a contract is considered an intra-group transaction in respect of one counterparty, it should also be considered an intra-group transaction in respect of the other counterparty to that contract as well. Would those transactions be subject to the mandatory separation requirement set out in this Regulation it could limit the efficiency of intra-group risk-management processes. For that reason, intra-group transactions should not be presumed to constitute proprietary trading. A long term investment should be considered an investment which the core credit institution has made with a long-term perspective and which it intends to hold in principle up to maturity. In that regard, it should be recognized that equity securities have no maturity and cannot be classified as held to maturity. This should not mean that such an investment cannot constitute a long term investment when it is made with a longer term perspective. Clearing transactions, which involve the own account of the core credit institution, in particular regarding post-trade transactions, should not be considered as trading activities and should not be considered to constitute proprietary trading.

- (19) Core credit institutions should not be able to circumvent the prohibition by owning, operating or benefiting from investments in non-bank entities engaging in proprietary trading.
- (20) To ensure that core credit institutions subject to the prohibition of proprietary trading can continue to contribute toward the financing of the economy, they should be allowed to invest in funds which are on an exhaustive list set out in this Regulation. That exhaustive list should comprise undertakings for the collective investment of transferable securities, alternative investment funds (AIFs) that are not substantially leveraged, closed-ended and unleveraged AIFs, European Venture Capital Funds, European Social Entrepreneurship Funds and European Long Term Investment Funds. To ensure that such funds do not endanger the viability and financial soundness of the credit institutions that invest in them, it is essential that closed-ended and unleveraged AIFs and AIFs that are not substantially leveraged in which credit institutions can still invest are managed by AIF managers that are authorised and supervised in accordance with the relevant provisions of Directive 2011/61/EU of the European Parliament and of the Council<sup>5</sup>, and that those AIFs are established in the Union or, if they are not established in the Union, they are marketed in the Union according to the rules of that Directive. It should not be the purpose of this Regulation to impose requirements on the ownership of insurance companies by credit institutions or to impose limitations on investments by insurance companies within banking groups.

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<sup>5</sup> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

- (21) Remuneration policies which encourage excessive risk-taking can undermine sound and effective risk management of banks. By complementing relevant existing Union law in this area, remuneration provisions should contribute to preventing circumvention of the prohibition for the core credit institution to engage in proprietary trading.
- (22) The core credit institution or the EU parent should ensure that the management body of the core credit institution that is subject to the prohibition of proprietary trading ensures compliance with that prohibition.
- (23) Trading activities other than proprietary trading are often related to client activity but may nevertheless give rise to concerns. Considering, however, the potentially useful nature of such activities, especially market making, they should not be subject to mandatory separation. Instead, such activities should remain subject to a risk assessment both at granular level and for the group as a whole by the competent authority. In case excessive risk can be established there should be a requirement to be either separated from the rest of the core credit institution's activities or other prudential measures, particularly a requirement for the core credit institution to increase its own funds, are imposed to mitigate the excessive risk.

- (24) The thorough granular risk assessment of trading activities other than proprietary trading should apply to those entities whose trading activities are believed to pose the greatest risk to the retail deposits in core credit institutions and the financial system or the real economy of the Member States concerned. Entities not belonging to this group should not undergo a thorough granular risk assessment, but should be subject to an assessment to identify hidden proprietary trading and subject to reporting obligations. However, the competent authority should be able to decide to do a more thorough granular risk assessment in exceptional circumstances, if the assessment of trading activities to identify proprietary trading or an assessment of the information submitted under the reporting obligation reveals potential excessive risks. Prior to taking such a decision, the competent authority should take into consideration proportionality.
- (25) Market making activities or activities that are aimed at generating liquidity buffers in order to ensure the fulfillment of other prudential requirements are crucial to the financing of the economy. Competent authorities should accordingly pay particular attention to preserving market making activities that serve to maintain or increase asset and market liquidity, moderate price volatility and increase security markets' resilience to shocks and should ensure that there are no negative consequences for market making activities that are not justified by excessive risks. When performing the assessment of market making activities at especially granular but also aggregate level competent authorities should pay careful attention to the potential effects of these activities on the financial system or the real economy of the Member States concerned. Notwithstanding, market making activities that will remain in the core credit institution should be consistent with the purposes of this Regulation. In particular, such activities should not lead to the creation of a credit institution that is too-big-to-fail or too-interconnected-to-fail, and should not include proprietary trading, under the guise of market making.

(26) The assessment of trading activities should be carried out primarily at the level of a trading unit as well as aggregated for the core credit institution and the group as a whole using both quantitative and qualitative indicators such as value at risk, daily profit and loss and governance structures, and complemented by the exercise of discretion by the competent authority. Following the assessment, where the competent authority concludes that excessive risk exists on concerned trading activities, it should impose an effective and proportionate measure to address that risk. The proportionality principle should apply, as it does in the case of the scope, also for the purpose of adapting the measures to the assessment of the risks of particular trading activities in accordance with Article 10. If excessive risk is identified and if most of the quantitative indicators show high risk and the qualitative indicators do not demonstrate an appropriate level of control, a separation of those trading activities or a significant capital add-on on those trading activities appropriate in relation to the identified risks should be regarded as measures of choice. In that case, other prudential measures in accordance with Article 104 of the Directive 2013/36/EU should only be used in addition to any of these two measures. This assessment is without prejudice to the supervisory review and evaluation process pursuant to Directive 2013/36/EU of the European Parliament and of the Council. The reference in this Regulation to the value-at-risk methodology to assess the riskiness of a trading portfolio or the financial institutions as a whole do not prevent the competent authorities from using expected shortfall as an additional tool of analysis.

- (27) The assessment of trading activities under this Regulation should be without prejudice to assessments of trading risk under Directive 2013/36/EU as a result of which a competent authority may adopt prudential measures in accordance with Article 104 of the Directive 2013/36/EU.
- (28) To ensure an effective separation in legal, economic, governance and operational terms, core credit institutions and trading entities should meet capital, liquidity, and large exposure requirements on a sub-group basis as well as on individual and consolidated basis. They should have strong independent governance and separate management bodies.
- (29) A group should be free to choose the appropriate legal corporate structure of its operations. When proprietary trading or trading activities or both have been separated from the core credit institution to a trading entity, the group should remain free to choose its structure, unless the consolidating supervisor, following the joint decision process requires changes to the legal corporate structure of the group, following a conclusion that this would be necessary to achieve the objectives of this Regulation and provided that such requirement would be proportionate and reasoned. A group containing core credit institutions and trading entities should be structured so that on a sub-consolidated basis distinct sub-groups are created so that no sub-group contains both a core credit institution and a trading entity. Notwithstanding this, the requirement to create distinct sub-groups should not necessarily result in a requirement to adopt a holding structure or other specific corporate legal structures. After a separation of the trading entity from the core credit institution, a core credit institution or a trading entity should still be able to be a parent undertaking of either the trading entity or the core credit institution.



(30) Large exposure limits aim at protecting core credit institutions against the risk of incurring losses because of an excessive concentration of risks with regard to one client or a group of connected clients. The application of such limits between the separated parts within the credit institution or group is an integral part of this Regulation. In order to limit the application of the public safety net to the activities subject to separation and to clearly distinguish the activities of a trading entity from the core credit institution, trading entities should be prohibited from taking retail deposits eligible for deposit insurance. That prohibition should not prevent trading entities from taking non-retail deposits eligible for deposit insurance or from exchanging collateral strictly related to their trading activities. However, in order not to close down an additional source of credit, trading entities should be allowed to extend credit to all clients. Furthermore, whereas trading entities may need to provide wholesale payment, clearing and settlement services, they should not be involved in retail payment services. A core credit institution should be the only credit institution within a group that can take retail deposits eligible for deposit insurance, without prejudice to the exception specified in Article 20(a).

- (31) A decision to require the separation of proprietary trading and other trading activities, an increase of own funds or imposing other prudential measures on a core credit institution should be made as a joint decision among competent authorities. Notwithstanding, different decision making procedures applicable in the absence of a joint decision should be laid down in this Regulation. The consolidating supervisor should be empowered to take a decision in the absence of a joint decision in circumstances where the decision is applied to the entire group. In the absence of a joint decision, a competent authority responsible for the supervision of a subsidiary on an individual basis should be able to take a decision applicable to that subsidiary in order to impose measures to address excessively risky trading activities, especially when the decision would impinge on the financing of the real economy in the Member State of that subsidiary or otherwise negatively affect the real economy or the fiscal responsibility within that Member State
- (32) In the absence of a joint decision under Article 26a, the consolidating supervisor should address the decision applicable to the entire group to the EU parent and not directly on entities other than the EU parent. The EU parent should be responsible for ensuring the compliance of the decision throughout the group. Any decision by the consolidating supervisor should take into account the possible effect on the fiscal responsibility of the Member States concerned. Competent authorities may agree on a Memorandum of Understanding to facilitate an effective cooperation to ensure that decisions are applied in a consistent and effective manner.

- (33) Where an institution subject to measures under paragraph 2(a) of Article 5a forms part of a group of entities, those measures imposed should not affect the structure or activities of group entities subject to measures in paragraph 2(b) of Article 5a. Where an institution subject to measures under paragraph 2(b) of Article 5a forms part of a group of entities, the measures imposed should not affect the structure of entities subject to measures in paragraph 2(a) of Article 5a.
- (34) The requirement for structural separation set out under Article 5a(2)(a) is such that a credit institution should be sufficiently separated from other entities in its group and should as far as reasonably practicable be independent in terms of governance and resources. This is to ensure effective separation and the continuity of core services while in appropriate circumstances allowing for some residual connection to the wider banking group especially so that the rest of the group can support the ring-fenced bank in times of stress.
- (35) Decisions by competent authorities pursuant to this Regulation should be taken having regard to the safeguards set out in this Regulation and the potential impact on the financial systems and the real economy of the in Member States concerned as well as on the potential effect that such decision may have on all entities in a group. Where the European Banking Authority (EBA) is involved in decision making, competent authorities and EBA should cooperate with trust and full mutual respect, in particular in ensuring the flow among them of appropriate and reliable information on those matters.

- (36) To enhance the effectiveness of the decision making procedure set out in this Regulation as well as to ensure to the greatest extent possible that there is consistency between measures imposed under this Regulation, under Regulation (EU) No 1024/2013 and under Directive 2014/59/EU of the European Parliament and of the Council<sup>6</sup>, competent authorities and relevant resolution authorities should closely cooperate in all circumstances using all powers conferred upon them in relevant Union law. The duty to cooperate should cover all stages of the procedure leading up to a competent authority's final decision to impose structural measures or other prudential measures. Where different separation decisions are taken by the competent authority in accordance with this Regulation and by the resolution authority in accordance with Directive 2014/59/EU those authorities should, where appropriate, strive to ensure that there is a minimum common ground between those decisions, in particular concerning content and timing.
- (37) In order to promote transparency and legal certainty for the benefit of all market stakeholders, EBA should publish and keep up-to-date on its website a list of core credit institutions and groups subject to this Regulation and to the requirements concerning mandatory separation of proprietary trading.

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<sup>6</sup> Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190)

- (38) To the extent that the disclosure of information relating to prudential supervision and for the application of this Regulation involves processing of personal data, such data is to be fully processed in accordance with the Union legal framework for data protection. In particular, personal data shall be retained by the competent authority only for the period necessary, in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>7</sup>.
- (39) The provision of all or part of the investment services or activities as a regular occupation or business on a professional basis by different entities identified under this Regulation as a result of structural changes or other prudential measures imposed on large, complex and interconnected credit institutions, should be performed in accordance with the provisions of Directive 2004/39/EC of the European Parliament and of the Council<sup>8</sup>. Where this Regulation provides further restrictions on the ability of those entities to perform investment services than those defined in Directive 2014/65/EC, the provisions of this Regulation should prevail. The performance of those investment services or activities is subject to prior authorisation in accordance with Directive 2014/65/EC except with regard to credit institutions that are authorised under Directive 2013/36/EU.

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<sup>7</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p.1).

<sup>8</sup> Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, (OJ L 145, 30.4.2004, p.1).

- (40) The Commission should cooperate with third-country authorities in order to explore mutually supportive solutions to ensure consistency between the provisions in this Regulation and the requirements established by third countries. To that end, the Commission should be able to determine that a third country legal framework is equivalent to this Regulation, also with respect to its legal, supervisory and enforcement arrangements.
- (41) In order to ensure that entities subject to this Regulation comply with the obligations deriving from it and to ensure that they are subject to similar treatment across the Union, Member States should lay down rules on administrative sanctions and other measures which are effective, proportionate and dissuasive. Therefore, administrative sanctions and other measures adopted pursuant to this Regulation should satisfy certain essential requirements in relation to addressees, the criteria to be taken into account when applying a sanction or measure, publication of sanctions or measures, key powers to impose sanctions and the levels of administrative pecuniary sanctions. Where Member States decide not to lay down rules for administrative sanctions for breaches which are subject to national criminal law they shall communicate to the Commission the relevant criminal law provisions.

- (42) In order to specify the requirements set out in this Regulation, the power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission in respect of the following non-essential elements: amending the components of trading activities for the calculation of thresholds to take into account changes in the applicable accounting regimes, expanding the type of government bonds that are not subject to the requirements in Chapter II of this Regulation, and specifying the criteria for assessing the equivalence of third country legal and supervisory frameworks. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (43) In order to ensure uniform conditions for the implementation of this Regulation, in particular with regard to the provisions set out in Article 14(5) and Article 27, implementing powers should be conferred on the Commission.
- (44) Regulatory technical standards in financial services should ensure consistent harmonisation and adequate protection of depositors, investors and consumers across the Union. As bodies with highly specialised expertise, it is efficient and appropriate to entrust EBA with the elaboration of draft regulatory technical and implementing standards, which do not involve policy choices. EBA should ensure efficient administrative and reporting processes when drafting technical standards. EBA should also ensure that draft regulatory technical standards are based on clear principles in terms of predictability and transparency, and that existing data should be used to the extent possible to avoid duplication of reporting requirements. EBA should also take into consideration international developments related to the policy areas it is reporting and drafting on. EBA should not pre-empt the work of competent authorities by any definition of thresholds regarding excessive risks.

- (45) The empowerment of EBA to develop implementing technical standards for the methodology of the calculation of the thresholds in the scope should not force institutions to apply accounting frameworks differing from those applicable to them pursuant to other acts of Union and national law.
- (46) The Commission should adopt regulatory technical standards developed by EBA with regard to the requirements on reporting for the purpose of identifying proprietary trading and other high risk trading activities, by means of delegated acts pursuant to Article 290 of the TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council<sup>9</sup>. The Commission and EBA should ensure that those standards can be applied by all credit institutions concerned in a manner that is proportionate to the nature, scale and complexity of those credit institutions and their activities.
- (47) The Commission should be empowered to adopt implementing technical standards developed by EBA with regard to the methodology for calculating the amount of trading activities engaged in by credit institutions and groups for purposes of the thresholds in Article 3, the uniform template for disclosure of total amount and the components of credit institutions' and parent companies' trading activities for purposes of calculating the thresholds in Article 3 and for the standardisation of reporting formats, templates and definitions for the transmission of information by core credit institutions and trading entities to competent authorities by means of implementing acts pursuant to Article 291 of the TFEU and in accordance with Article 15 of Regulation (EU) No 1093/2010.

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<sup>9</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).



- (48) Where provided for in this Regulation, it is appropriate that EBA promote convergence of the practices of national authorities through guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010. This convergence of practices is particularly important to ensure appropriate application of the two options under article 5a. EBA should therefore issue guidelines to both frame the risk assessment under chapter 2 in view of taking appropriate measures including separation and the risk assessment under article 5a paragraph 5 for the purpose of applying large exposure limits, so as to achieve the same quality of identification of trading risks. In areas not covered by regulatory or implementing technical standards, EBA is able to issue guidelines and recommendations on the application of Union law under its own initiative.
- (49) Since the objectives of this Regulation, namely to prevent systemic risk, financial stress or failure of large, complex and interconnected credit institutions by preventing excessive risk from trading activities within credit institutions and by reducing interconnectedness within the financial sector, cannot be sufficiently achieved by the Member States but can rather by reason of the scale or effects of this Regulation be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the TEU. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (50) The freedom to conduct a business in accordance with Union law and national laws and practices is recognised under Article 16 of the Charter of Fundamental Rights of the European Union (the Charter). Each person within the Union has the right to start-up or to continue a business without being subject to either discrimination or unnecessary restriction. Moreover, share ownership is protected as property under Article 17 of the Charter. Shareholders have the right to own, use, and dispose of their property, and the right not to be deprived involuntarily of this property. The mandatory separation of proprietary trading and the separation of certain excessively risky trading activities provided for in this Regulation may affect the freedom to conduct a business as well as the property rights of shareholders who, in such situation, cannot freely dispose of their property.

- (51) The limitations on the freedom to conduct a business and the rights of shareholders should comply with Article 52 of the Charter. Interference with these rights should not be disproportionate. Accordingly, the separation of trading activities should only be required when it is in the public interest and promotes the good functioning of the Union banking market and financial stability. Affected shareholders should not be prevented from exercising their other rights, such as the right to an effective remedy and to a fair trial.
- (52) This Regulation respects the fundamental rights and observes the principles recognised in the Charter, in particular the right to respect for private and family life, the right to the protection of personal data, the freedom to conduct a business, the right to property, the right to an effective remedy and to a fair trial as well as the right of defence and the respect of the *ne bis in idem* principle. This Regulation must be applied in accordance with those rights and principles.
- (53) Core credit institutions concerned by the mandatory separation of proprietary trading will require sufficient time to implement the separation. Similarly, the procedures foreseen in this Regulation with regard to the provisions that lead to a decision by the competent authority that proprietary trading or other trading activities need to be separated from the core credit institution, and the procedures that apply to groups following the adoption of such a decision, are complex and require time not only to carry out but also to implement those measures in a responsible and sustainable manner. It is therefore appropriate that the provisions on mandatory separation of proprietary trading, as well as the provisions that lead to a decision by the competent authority that proprietary trading or other trading activities need to be separated should apply from [*OP please introduce exact date 36 months after publication of this Regulation*].

HAVE ADOPTED THIS REGULATION:

## **Chapter I**

### **General provisions**

#### *Article 1*

#### *Objectives*

This Regulation aims at preventing systemic risk, financial stress or failure of large, complex and interconnected credit institutions, by preventing excessive risk from trading activities within credit institutions and by reducing interconnectedness within the financial sector.

#### *Article 2*

#### *Subject matter*

This Regulation lays down rules on:

- (a) the mandatory separation of proprietary trading and related trading activities from certain activities of core credit institution in accordance with of Article 6(1);

- (b) the framework for competent authorities to take measures to reduce excessive risk taking due to certain trading activities, including the powers to request the separation of certain trading activities.

### *Article 3*

#### *Scope*

1. This Regulation shall apply to any entity which fulfils the conditions in point (a) or (b) of the second paragraph and is:
  - (a) a credit institution established in the Union, including all its branches irrespective of where they are located;
  - (b) an EU parent, including all its branches and subsidiaries irrespective of where they are located, where at least one of the group entities is a credit institution established in the Union;
  - (c) a branch in the Union of a credit institution established outside the Union; or
  - (d) an institution established in the Union that is a subsidiary of a parent undertaking established outside the Union where at least one subsidiary of that parent undertaking is a credit institution established in the Union.

2. This Regulation shall apply to any entity referred to in the first paragraph provided such an entity:
  - (a) has been identified as a global systemically important institution (G-SIIs) in accordance with Article 131 of Directive 2013/36/EU; or
  - (b) over the period of the last three years has total assets amounting to at least EUR 30 billion and has trading activities amounting to at least EUR 70 billion or to 10 per cent of its total assets.

*Article 3a*

***Rules governing the calculation of thresholds***

1. With regard to the entities set out in Article 3(1)(b), the thresholds set out in Article 3(2)(b), shall be calculated based on the world-wide consolidated accounts of the EU parent.
2. With regard to the entities set out in Article 3(1)(c), the thresholds set out in Article 3(2)(b) shall be calculated based on the activities carried out in the Union.

- 2a. In cases where more than one entity mentioned in points (a) to (d) of Article 3(1) belongs to the same parent undertaking that is established outside the Union and where these entities do not belong to the same sub-groups within the Union, for the purpose of Article 3(2)(b) these entities shall be assessed together. For the sole purpose of this assessment, competent authorities shall, taking into account the institutions and the relative importance of their activities in different countries, by common agreement, designate one of these institutions as the EU parent, which shall put together an aggregated balance sheet for all entities established in the Union, including all its branches irrespective of where they are located. Before taking their decision, the competent authorities shall give each relevant institution, an opportunity to state its opinion on that decision.
- 2b. The calculation of thresholds for entities that have effected a concentration during the previous year shall for the two years prior to the concentration be based on the combined accounts of the merged entities.
3. Assets and liabilities of insurance and reinsurance undertakings and non-financial undertakings shall not be included in the calculation.
4. By [*OP insert the correct date* by 24 months of publication of this Regulation], the competent authority shall identify credit institutions and groups that are subject to this Regulation in accordance with Article 3 and notify them immediately to the EBA.
- After having been notified by the competent authority, the EBA shall immediately publish the list referred to in the first subparagraph.
5. Credit institutions and groups identified by competent authorities as being subject to this Regulation for the first time shall be reviewed and updated, at least annually, by the competent authorities. Competent authorities shall keep under review the list referred to in the first subparagraph of paragraph 4 and shall notify the EBA immediately of any changes and provide an updated list, in which case the EBA shall publish that list.

*Article 3b*

***Calculation of trading activities for purposes of the thresholds in Article 3 and Article 4a***

1. For the purposes of calculating the thresholds in Article 3(2)(b) and in Article 4a(2), trading activities shall be calculated as follows in accordance with the applicable accounting regime and by using a moving average of quarterly data over the last three years.

Trading Activities = (TSA + TSL + DA + DL)/2, where:

- (a) Trading Securities Assets (TSA) are assets that are acquired principally for the purpose of selling in the near term and on initial recognition and are part of a portfolio of identified financial instruments managed together and for which there is evidence of a recent actual pattern of short-term profit taking, excluding derivative assets;
- (b) Trading Securities Liabilities (TSL) are liabilities taken with the intent of repurchasing in the near term and are part of a portfolio of identified financial instruments managed together, and for which there is evidence of a recent actual pattern of short-term profit-taking, excluding derivative liabilities;
- (c) Derivative Assets (DA) are derivatives with positive replacement values not identified as hedging derivatives;
- (d) Derivative Liabilities (DL) are derivatives with negative replacement values not identified as hedging instruments.

2. Assets and liabilities of insurance and reinsurance undertakings and non-financial undertakings shall not be included in the calculation of trading activities.
3. EBA shall develop implementing technical standards to lay down the methodology for calculating the trading activities referred to in paragraph 1 taking into account the differences in the applicable accounting regimes and existing reporting practices. EBA shall ensure that the draft implementing technical standards take into consideration where possible existing data and reporting.
4. EBA shall submit those draft implementing technical standards to the Commission by [*OP please introduce exact date 10 months from the day of publication of the Regulation.*]

Power is delegated to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

5. The Commission shall be empowered to amend, by means of delegated acts in accordance with Article 35, the components of trading activities referred to in points (a) to (d) of paragraph 1 of this Article to take into account important changes in the applicable accounting regimes, should it be strictly necessary, in order to ensure the correct application of this Article.



*Article 3c*

***Submission of information on the trading activities necessary for calculating the thresholds to the competent authority***

1. Entities referred to in Article 3 shall submit, for the first time [*PO to insert a date 33 months after the date of publication of this Regulation*] and on a yearly basis thereafter, the relevant information concerning the total amount of their trading activities and the components thereof, as provided for in Article 3b(1), to the competent authority.
2. EBA shall develop draft implementing technical standards to specify uniform formats, templates and definitions for the submission of information referred to in paragraph 1.

EBA shall submit those draft implementing technical standards to the Commission by [*OP please introduce exact date, 10 months from the day of publication of the Regulation*].

Power is delegated to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

## *Article 4*

### *Negative scope*

1. This Regulation shall not apply to:
  - (a) branches established in the Union of credit institutions established in third countries if those branches are subject to a legal framework deemed equivalent in accordance with Article 27(1);
  - (b) subsidiaries of EU parents established in third countries if those subsidiaries are subject to a legal framework deemed equivalent in accordance with Article 27(1);
  - (c) entities referred to in points (2) to (23) of Article 2(5) of Directive 2013/36/EU;
  - (d) a group containing at least one credit institution established, or authorised, in the Union where on a consolidated group level:
    - (i) total eligible deposits under Directive 2014/49/EU amount to less than three percent per cent of its total assets; or
    - (ii) total retail deposits eligible under Directive 2014/49/EU amount to less than EUR 35 billion, or in the Member States whose currency is not the euro, the corresponding value in the national currency on the date this Regulation is published in the Official Journal.

- (e) to a credit institution that is neither a parent undertaking nor a subsidiary where its:
  - (i) total eligible deposits under Directive 2014/49/EU amount to less than three percent per cent of its total assets; or
  - (ii) total retail deposits eligible under Directive 2014/49/EU amount to less than EUR 35 billion, or in the Member States whose currency is not the euro, the corresponding value in the national currency on the date this Regulation is published in the Official Journal.

2. In addition to paragraph 1(b), a competent authority may exempt from the requirements of Chapter II subsidiaries of EU parents established in third countries where there is no legal framework deemed equivalent to this Regulation if that competent authority has established that both of the following conditions are fulfilled:

- (a) there is a resolution strategy agreed upon between the group level resolution authority in the Union and the third country host authority;
- (b) the resolution strategy for the subsidiary of an EU parent established in a third country has no adverse effect on the financial stability of the Member State(s) where the EU parent and other group entities are established.

#### *Article 4a*

#### *Allocation of entities into Tiers*

1. The competent authority shall allocate entities referred to in Article 3 that have not been excluded from the application of this Regulation by virtue of Article 4 either to Tier 1 or to Tier 2.

2. An entity, including a G-SII, is allocated into Tier 2 when its trading activities as defined in Article 3b over the period of the last three years exceed EUR 100 billion, or in the Member States whose currency is not the euro, the corresponding value in the national currency on the date this Regulation is published in the Official Journal.
3. Entities are allocated to Tier 1 when they are not allocated to Tier 2 in accordance with paragraph 2 of this Article or with Article 8(4).
4. By [*OP insert the correct date* by 24 months of publication of this Regulation], and every three years thereafter, the competent authority shall identify in what tier entities are allocated and notify them immediately to the EBA.

After having been notified by the competent authority, the EBA shall immediately publish the list referred to in the first subparagraph.

5. Entities identified by competent authorities as being allocated to a tier for the first time shall be reviewed and updated, every three years, by the competent authorities. Competent authorities shall keep under review the list referred to in the first subparagraph of paragraph 4 and shall notify the EBA immediately of any changes and provide an updated list, in which case the EBA shall publish that list.

## Article 5

### *Definitions*

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

1. "credit institution" means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council<sup>10</sup>;
2. "group" means a parent undertaking and its subsidiaries;
3. "resolution" means resolution as defined in point (1) of Article 2(1) of Directive 2014/59/EU;
4. "proprietary trading" means using own capital or borrowed money to enter into any type of transaction to purchase, sell or otherwise acquire or dispose of any financial instrument or commodities for the sole purpose of making a profit for own account, and without any connection to actual or anticipated client activity or for the purpose of hedging the entity's risk as result of actual or anticipated client activity;
5. "unleveraged" means unleveraged at the level of the fund in situations involving a closed ended and unleveraged fund as referred to in Article 6(4);
6. "trading unit" means the smallest, discrete unit of organization within a group containing a core credit institution, that is used to trade in homogenous financial instruments. Trading unit is not defined by reference to legal entities.

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<sup>10</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L176, 27.6.2013, p.1).

7. "EU parent" means a parent undertaking in a Member State which is not a subsidiary of another undertaking within any Member State;
8. "subsidiary" means a subsidiary undertaking as defined in point (10) of Article 2 of Directive 2013/34/EU of the European Parliament and of the Council<sup>11</sup>;
9. "competent authority" means a competent authority as defined in point (40) of Article 4(1) of Regulation (EU) No 575/2013, including the ECB in accordance with Council Regulation (EU) No 1024/2013;
10. "institution" means an institution as defined in point (3) of Article 4(1) of Regulation (EU) No 575/2013;
11. "parent undertaking" means a parent undertaking as defined in point (9) of Article 2 of Directive 2013/34/EU, including an institution, a financial holding company, a mixed financial holding company and a mixed activity holding company;
12. "UCITS" means a UCITS as defined in Article 1(2) of Directive 2009/65/EC;
13. "financial instruments" means the financial instruments listed in Section C of Annex I to Directive 2014/65/EU;

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<sup>11</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, OJ L 182, 29.6.2013, p. 19.

14. "management body" means a management body as defined in point (7) of Article 3(1) of Directive 2013/36/EU or an equivalent body when the entity concerned is not an institution;
15. "market making" means a financial institution's commitment to provide market liquidity on a regular and on-going basis, by posting two-way quotes with regard to a certain financial instrument, or as part of its usual business, by fulfilling orders initiated by clients or in response to clients' requests to trade, or in reasonable anticipation of potential client activity, and by hedging positions arising from the fulfilment of those tasks;
16. "core credit institution" means a credit institution that takes retail deposits eligible under the deposit guarantee scheme in accordance with Directive 2014/49/EU;
17. "trading entity" means an entity that is legally, economically and operationally separate from the core credit institution, that does not belong to the same subgroup as a core credit institution and that cannot take retail deposits as defined in point 18 of this Article or provide payment services as defined in Article 4(3) of Directive 2007/64/EC associated with these retail deposits with the exceptions set out in point (a) and point (b) of Article 20;
18. "retail deposits" means eligible deposits held by natural persons and micro, small and medium-sized enterprises;
19. "micro, small and medium-sized enterprises" means micro, small and medium-sized enterprises as defined with regard to the annual turnover criterion referred to in Article 2(1) of the Annex to Commission Recommendation 2003/361/EC<sup>12</sup>;

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<sup>12</sup> Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

20. "sub-consolidated basis" means sub-consolidated basis as defined in point (49) of Article 4(1) of Regulation (EU) No 575/2013;
21. "commodity" means commodity as defined in point (1) of Article 2 of Commission Regulation (EC) No 1287/2006<sup>13</sup>;
22. "concentration" means a concentration as determined in accordance with Council Regulation (EC) No 139/2004;
23. "group entity" means a legal entity that is part of a group;
24. "AIFs" means AIF as defined in point (a) of Article 4(1) of Directive 2011/61/EU;
25. "non-financial undertaking" means an undertaking that is not a financial institution within the meaning of point (26) of Article 4(1) of Regulation (EU) No 575/2013;
26. "consolidating supervisor" means a consolidating supervisor as defined in point (41) of Article 4(1) of Regulation (EU) No 575/2013;
27. "long term investment" means an operation in financial instruments carried out as part of the investment portfolio where the credit institution has the firm and explicit intention to hold those instruments in long-term/long-lasting perspective, where possible, up to maturity;

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<sup>13</sup> Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards recordkeeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive (OJ L241, 2.9.2006, p. 1).



28. “trading activities” means an activity that result in positions in financial instruments held on a trading book in accordance with point (86) of Article 4(1) of Regulation (EU) No 575/2013;
29. "excessive risk" means a threat to the financial stability of the core credit institution or to the whole or part of the Union financial system;
30. "resolution authority" means an authority designated by a Member State in accordance with Article 3 of Directive 2014/59/EU and Single Resolution Board in accordance with Article 1 of Regulation 806/2014;
31. “dealing in investments as a principal” means buying, selling, subscribing for or underwriting securities or contractually based investments as a principal.

#### *Article 5a*

#### ***General principles for separation***

1. With a view to preventing systemic risk, and financial stress or failure of large, complex and interconnected credit institutions established within their state by preventing excessive risk from trading activities within a credit institution that undertakes core retail banking activities and reducing interconnectedness within the financial sector, Member States shall ensure that in appropriate circumstances, as set out in the following provisions, those particular trading activities are located in a separate legal entity from the credit institution that undertakes core retail banking activities.

2. Member States must achieve this through one of the following:

- (a) the requirement, in accordance with national law, that core retail banking activities undertaken by credit institutions are mandatorily located in a legally, economically and operationally separate entity from the remaining activities of the institution. A credit institution shall be considered to provide core retail banking activities where that institution engages in activities that consist of accepting deposits, providing facilities for withdrawing money or making payments from a deposit account or providing overdrafts associated with such deposit-taking, and where an interruption in the provision of those activities or service by that institution in the Member State could have a significant adverse effect, in the assessment of the Member State, on the stability of the financial system of that Member State or a significant part of that system; or
- (b) a competent authority not subject to the requirement referred to in point (a) of paragraph 2 identifies and separates proprietary trading and identifies and takes measures in respect of excessively risky trading activities, including legal, economic and operational separation of those trading activities from the core credit institution, measures to increase the core credit institution's own funds requirements or other prudential measures, in accordance with Chapter II of this Regulation.

A credit institution whose core retail banking activities are not separated in accordance with the national law referred to in point (a) shall, irrespective of its location, be subject to point (b) and the application of Chapter II if that credit institution, on a group or standalone basis, meets the thresholds set out in Article 3 and Article 4. No entity shall be subject to measures under both point (a) and point (b).

For the purpose of this Article, Section 2 of Chapter III of this Regulation shall apply.

Where a competent authority responsible for supervising a group entity in a Member State that applies paragraph 2(a) or 2(b) has a concern that the safeguard in the subparagraph above may be breached, the joint decision-making procedure referred to in Article 26ga shall apply specifically for resolving this matter.

3. National law and the accompanying supervisory regime adopted under paragraph 2(a) to achieve the objectives of this Regulation shall comply with the following requirements:
  - (a) they prevent a credit institution which undertakes core retail banking activities from engaging at least in proprietary trading as defined in point 4 of Article 5 and in the regulated activity of dealing in investments as principal, subject to exceptions for risk-mitigating activities for the purpose of prudently managing capital, liquidity and funding and for providing limited services to customers;
  - (b) if a credit institution undertaking core retail banking activities belongs to a group, it requires that credit institution to be sufficiently legally, economically and operationally separated from any entity in its group which engages in proprietary trading as defined in point 4 of Article 5 or in the regulated activity of dealing in investments as principal including by providing:
    - (i) structural governance arrangements, including for the purposes of monitoring and managing risk, which ensures as far as necessary that the credit institution undertaking core retail banking activities is able to take decisions independently of other entities in its group;

- (ii) that a credit institution undertaking core retail banking activities transacts with other entities in its group only on arm's length term;
- (iii) that the carrying on of the activities of a credit institution undertaking core retail banking activities is, as far as necessary, not dependent on the resources, acts or omissions of other members of its group, such that in the event of insolvency of another entity in its group the credit institution would be able to continue to carry on providing core retail banking activities;
- (iv) which entity may own or be owned by a credit institution undertaking core retail banking activities, and in order to achieve a sufficient separation between such an institution and any entity in the credit institution's group which engages in activities that would be prohibited for a credit institution under point (a);

In case the Member State chooses to apply the requirement referred to in paragraph 2(a), the obligations laid down in Parts Two, Three and Four and Parts Six, Seven and Eight of Regulation (EU) No 575/2013 and in Title VII of Directive 2013/36/EU shall apply also on a sub-consolidated basis. The competent authority of the EU parent shall verify that the EU parent's trading entity has implemented throughout the group the sub-consolidation requirements provided for in with Articles 13 and 14.

However, where a credit institution established in a Member State that has chosen to apply the option referred to in paragraph 2(b) does not have to separate any activities and where that credit institution's parent is a trading entity established, or authorised, in a Member State that has chosen to apply the option referred to in paragraph 2(a), the credit institution and the trading entity shall be considered to be in different sub-groups.

4. The choice by a Member State to apply the requirement referred to in paragraph 2(a) shall be made by notifying the relevant draft provisions of its national law and accompanying supervisory regime to the Commission.

A Member State that has adopted national law and accompanying supervisory regime before the entry into force of this Regulation, shall notify them to the Commission by two months after the entry into force of this Regulation.

Where the Member State intends to amend its national law and accompanying supervisory regime it shall notify the intended amendments to the Commission at least three months before their intended entry into force.

Powers are delegated to the Commission to adopt, within three months of the receipt of the notification referred to in the first, second and third subparagraphs, including all the relevant supplementary information, a reasoned decision in a form of an implementing act stating that the national legislation and accompanying supervisory regime, their drafts or intended amendments do not fulfil the requirements set out in paragraph 3.

The Member State may start a new notification procedure after taking into account the reasons set out in the Commission decision.

The Member State may apply the requirement referred to in paragraph 2(a) in the absence of a decision referred to in subparagraph 4.

5. The competent authority of the Member State applying the requirements referred to paragraph 2(a) shall apply intra-group exposure limits after taking into account the effect of credit risk mitigation and exemptions in accordance with Articles 399 to 403 of Regulation (EU) No 575/2013.

By way of derogation from Article 400(2)(c) and Article 493(3) of Regulation (EU) No 575/2013, the competent authority concerned, applying the requirements referred to in paragraph 2(a), shall, with the exception of cases referred to in paragraph 5a, notify the Commission at least two months prior to its intention of applying the exemption to the limit of intra-group large exposures from credit institutions undertaking core retail banking activities to trading entities that are separated in accordance with paragraph 2(a) and submit the relevant quantitative or qualitative evidence of all of the following:

- (a) an explanation as to why the proposed measure is deemed to be appropriate;
- (b) an assessment of the likely positive or negative impact of the proposed measure on the internal market based on the information available to the competent authority;
- (c) an assessment how the risks stemming from activities in any entity in the credit institution's group that are prohibited for a credit institution under paragraph 3a are appropriately managed and controlled and how it is ensured that the credit institution providing core banking activities is adequately protected from the risks posed by the trading entity with the proposed large exposure limit.

Powers are delegated to the Commission to adopt, within three months of the receipt of the notifications referred to in the first subparagraph, including all the relevant supplementary information, a reasoned decision in a form of an implementing act rejecting the intended exemption if it considers that the proposed measure does not ensure compliance with the objectives of this Regulation and is not compatible with the requirements set out in this Article.

For the purpose of point c), the European Banking Authority shall issue guidelines to specify how the competent authorities should perform the risk assessment.

- 5a. In case the exemption is used in serious and unforeseeable circumstances, which justify urgency of the intended measure, the Commission shall, in case of rejection, adopt the implementing act within five working days. The competent authority, when notifying the intended measure to the Commission, shall give reasons which warrant the urgency of those measures in addition to submitting the information required in points (a) to (c) in paragraph 5.
6. The Member States applying the requirement referred to in point (a) of paragraph 2 shall review the application of their national laws and accompanying supervisory regime every three years and shall notify the Commission of the outcome of this review. The Commission shall take account of these reviews when monitoring the effects of this Regulation as required by Article 34.

## Chapter II

### Proprietary trading and other trading activities

#### SECTION ONE

#### IDENTIFICATION OF PROPRIETARY TRADING AND EXCESSIVE RISK IN TRADING ACTIVITIES

##### *Article 5b*

##### *Exemption for certain financial instruments*

1. The requirements of Chapter II shall not apply to financial instruments issued by Member States' central governments and regional governments or by entities listed in point (2) of Article 117 and in Article 118 of Regulation (EU) No 575/2013.
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 35 to exempt:
  - (a) financial instruments issued by governments of third countries that apply supervisory and regulatory arrangements at least equivalent to those applied within the Union, exposures to which are assigned a 0 per cent risk weight in accordance with Article 114(7) of Regulation (EU) No 575/2013;



- (b) financial instruments issued by Member States' local authorities, exposures to which are assigned a 0 per cent risk weight in accordance with Article 115 of Regulation (EU) No 575/2013.

*Article 6*

***Mandatory separation of proprietary trading from a core credit institution***

1. A core credit institution shall not:
  - (a) engage in proprietary trading;
  - (b) with its own funds or borrowed money and for the purpose of making a profit for own account:
    - (i) acquire or retain units or shares of an AIF, where that AIF employs leverage on a substantial basis within the meaning of Article 111 of Regulation (EU) No 231/2013;
    - (ii) invest in derivatives, certificates, indices or any other financial instrument the performance of which is linked to shares or units of an AIF where that AIF employs leverage on a substantial basis within the meaning of Article 111 of Regulation (EU) No 231/2013;

- (iii) acquire or retain units or shares in an entity that engages in proprietary trading or that acquires units or shares in AIFs where that AIF employs leverage on a substantial basis within the meaning of Article 111 of Regulation (EU) No 231/2013, unless that entity is part of the subgroup containing trading entities and the conditions in Article 13 and Article 14 are met with regard to that entity;
- (iv) incur exposures (by granting loans and issuing guarantees) that are not fully collateralized to AIFs which employ leverage on a substantial basis within the meaning of Article 111 of Regulation (EU) No 231/2013.

To the extent that activities set out in points (a) or (b) of the first subparagraph are carried out by entities in the same group as a core credit institution, they shall be carried out in a trading entity. Article 13 and Article 14 shall apply as between the trading entity and the core credit institution.

2. For the purpose of the first sub-paragraph of paragraph 1 the following activities shall not be considered proprietary trading:
  - (a) the provision of funding, hedging and investment services to clients;
  - (b) market making;

- (c) the hedging of the core credit institution's and its subsidiaries' own risks as well as those of a financial holding group, a mixed financial holding group or institutions belonging to the same institutional protection scheme as referred to in Article 113(7) of Regulation (EU) No 575/2013, a central body and all credit institutions permanently affiliated to the central body as referred to in Article 10 of Regulation (EU) No 575/2013, and of the risks arising from the activities mentioned under (a), (b), (d), (e), (f) of this paragraph;
- (d) the sound and prudent treasury management, including the compliance with the liquidity coverage requirement as laid down in Article 412 of Regulation (EU) No 575/2013, and including activities which are related to a sound and prudent treasury and liquidity management of the core credit institution or its subsidiaries, of a financial holding group, a mixed financial holding group or institutions belonging to the same institutional protection scheme as referred to in Article 113(7) of Regulation (EU) No 575/2013 or a central body and all credit institutions permanently affiliated to the central body as referred to in Article 10 of Regulation (EU) No 575/2013;
- (e) the buying and selling of financial instruments acquired for long term investment purposes;

- (f) trading in financial instruments issued by national entities established for the purpose of restructuring the national banking recovery, to the extent those instruments are guaranteed by a Member State central government and approved by the Commission as a state aid measure.

For purpose of point (a) and point (b), a core credit institution shall ensure that it maintains all documentation necessary to demonstrate to the competent authority that market making and services undertaken for a client have been requested by the client, including through a general agreement mandating the core credit institution to carry out activities on behalf of a client, or are based on reasonable anticipated potential client activity. In addition, notwithstanding point (c) of the first subparagraph, a core credit institution shall not hedge the own risk of the trading entity.

3. For the purpose of paragraph 2, the core credit institution shall demonstrate to the competent authority that its activities fall into the categories listed in that paragraph. To that end, it shall comply with the reporting requirements set out in Article 6b. Upon request of the competent authority, the core credit institution shall provide further data and explanations deemed necessary by the competent authority.

4. The restrictions laid down in paragraph 1(b) shall not apply with regard to AIFs which do not employ leverage on a substantial basis within the meaning of Article 111 of Regulation (EU) No 231/2013, to closed-ended and unleveraged AIFs where those AIFs are established in the Union or, if they are not established in the Union, they are marketed in the Union in accordance with Articles 35 or 40 of Directive 2011/61/EU, to UCITS, to qualifying venture capital funds as defined in point (b) of the first paragraph of Article 3 of Regulation (EU) No 345/2013, to qualifying social entrepreneurship funds as defined in point (b) of Article 3(1) of Regulation (EU) No 346/2013, and to AIFs authorized as ELTIFs in accordance with Regulation (EU) No [XXX/XXXX].

The restrictions laid down in point (b) of paragraph one shall also not apply for the duration of one year when the core credit institution can demonstrate to the competent authority that the purpose of the acquisition or investment is limited to the creation or dissolution of an AIF. The competent authority may extend the initial one year period by an additional period up to two years.

5. The core credit institution or the EU parent shall ensure that its management body is accountable for and ensures compliance with paragraph 1.
6. Once the core credit institution has been notified that it falls within the scope of this Regulation as referred to in Article 3a, it shall comply with the requirements in this Article within 12 months.

*Article 6a*

**Requirements for the identification of proprietary trading and excessive risk in trading activities**

1. The requirements in this Article shall serve the competent authority to identify potential proprietary trading in activities listed in points (a) to (f) of Article 6(2), or excessive risk in trading activities.
2. In order for the competent authority to decide that the activities listed in points (a) to (f) of Article 6(2) do not constitute proprietary trading or that trading activities do not carry excessive risk, the core credit institution shall at least demonstrate that the following principles are complied with:
  - (a) for each trading unit carrying out activities listed in points (a) and (b) of Article 6(2) and trading activities, that the core credit institution has defined the nature of the services and products provided to clients or for market making purposes, and that those services and products are justified by the need to provide liquidity to the markets; and that the core credit institution maintains sufficient documentation to demonstrate that transactions undertaken for a client has indeed been requested by that client, including through a general agreement mandating the core credit institution to carry out activities on behalf of a client, or are based on reasonable anticipation of potential client activity;
  - (b) for market making, that the conditions laid down in point (15) of Article 5 are met;

- (c) with respect to the institution's investment portfolio, that the investment strategy, including the specific nature and the risks of the instruments used, are defined, that the intention to purchase financial instruments for long term investment purposes is demonstrated and that the investment complies with point (d) of Article 417 of Regulation (EU) No 575/2013;
- (d) with respect to liquidity management, that the liquidity management strategy, including with regards to the liquidity coverage requirement, and the specific nature and risks of the instruments used are defined;
- (e) that separate hierarchies and separate staff exist for those trading units providing services to clients or conducting market making and for those managing the core credit institution's liquidity or investments;
- (f) that the trading units that are responsible for managing the core credit institution's liquidity or investments only conduct activities referred to in point Article 6(2)(c) to the extent that the purpose is to hedge interest rate risk arising from the banking book or structural foreign exchange positions, and that this is conducted within a separate mandate of safe and prudent hedging and under a specific governance and control framework;

- (g) for each trading unit, that formal limits have been established regarding transaction types, amounts, allocated capital and risks, taking into account the needs of clients or market liquidity and sound risk management, and, where relevant, liquidity management needs or long term investment targets, and that hedging strategies are defined in order to reduce or significantly mitigate the risk arising from those activities;
- (h) that the core credit institution has put in place a compliance programme in accordance with Article 25(4).

*Article 6b*

***Reporting to identify proprietary trading and high risk trading activities***

1. The information provided in accordance with this Article shall serve the competent authority to identify potential proprietary trading in activities listed in points (a) to (f) of Article 6(2), or excessive risk in trading activities.
2. A core credit institution shall annually, or more frequently in case of any significant changes, provide the competent authority with its compliance programme, any material modifications to internal limits on or to the nature of activities listed in points (a) to (g) of Article 6(2) as well to trading activities, and the associated risk profile.

The annual notification of qualitative information shall at least include:

- (a) a description of the governance structure of the trading activities, including the remuneration policies of the staff performing trading activities within the trading units and the staff supervising them;



- (b) a description of the mandates, activities, strategies and procedures of each trading unit;
  - (c) a description of the system of risk limits, including stop loss limits imposed, and of the hedging strategy at the level of trading units;
  - (d) a description of the internal control measures undertaken to ensure conformity with the legal and internal compliance framework;
  - (e) a description of the risk models used and of factors that may influence model risk, including availability and reliability of historical data, the novelty and innovative nature of the financial instruments in the portfolio and parameters and assumptions in the models;
  - (f) results of quantitative and qualitative analyses made to ensure compliance with the legal and internal compliance framework, and the associated conclusions.
3. Tier 2 core credit institutions shall report for the first time [*OP please introduce exact date*, 33 months from the day of publication of the Regulation] and on a quarterly basis thereafter to the competent authority, for each trading unit and the total trading activities the following information:
- (a) daily profit and loss, distinguishing between profit from bid-ask spreads, profit from daily transactions and profit from changes in market valuations. The data on the contribution from bid-ask spreads and daily transactions to daily profit and loss shall primarily serve at identifying proprietary trading under Article 8, while the data on trading unit profit and loss, expressed as a ratio over open positions, and its volatility as expressed by the number of days at loss, shall primarily serve at identifying excessive risks from trading under Article 8a;

- (b) inventory turnover and ageing characteristics by instrument groups where relevant. The data shall primarily serve at identifying proprietary trading under Article 8;
- (c) value-at-risk of the total portfolio of the trading unit and by instrument groups expressed as a percentage relative to the respective open positions. The data shall primarily serve at identifying excessive risks under Article 8a;
- (d) daily open positions by instrument groups or risk factor groups, including level 2 and level 3 instruments. The data shall serve at homogenising the data received under point (a) and point (c) of this paragraph and at identifying conditions that can be expected to facilitate the taking on of excessive risks under Article 8a;
- (e) back-testing of risk measures reported under point (c), including the number of days when actual loss exceeds the earlier overall risk measure estimates over the relevant periods of time. The data shall serve at identifying conditions that can be expected to facilitate the taking on of excessive risks under Article 8a;
- (f) quarterly transaction volumes. The data shall serve at identifying conditions that can be expected to facilitate taking on excessive risks or proprietary trading under Article 8 and Article 8a.

- 3a. Tier 1 core credit institutions shall report for the first time [*OP please introduce exact date*, 33 months from the day of publication of the Regulation] and on a quarterly basis thereafter to the competent authority the information listed in points (a), (b), (c) and (f) of paragraph 3. Trading entities shall report for the first time [*OP please introduce exact date*, 33 months from the day of publication of the Regulation] and on a quarterly basis to the national authority responsible for its supervision the information listed in points (a), (b), (c) and (d) of paragraph 3. Where a core credit institution has been reallocated to Tier 2 in accordance with Article 8(4), these reporting due dates shall remain the same.
4. EBA shall develop draft regulatory technical standards to specify the following:
- (a) the requirements that core credit institutions and trading entities shall meet with regard to information to be reported at trading unit level, taking into account the requirements set out in paragraphs 2, 3 and 3a, and taking into account reporting requirements in other Union financial legislation to avoid duplications;
  - (b) the requirements referred to in point (a) shall ensure that competent authorities are provided with the reporting necessary to enable them to carry out the assessments laid down in Article 8 and 8a at the level of application laid down in paragraph 1a of each of those articles;
  - (c) the requirements for the calculation of open positions and inventory turnover for purposes of this Regulation, where the aim of the requirements for calculation of open positions is to accurately reflect market exposures from different instruments, and to facilitate accurate and comparable calculation of the relative data in accordance with points (a) and (c) of paragraph 3.

EBA shall submit those draft regulatory technical standards to the Commission by [*OP please introduce exact date* 16 months from the day of publication of the Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Article 10 of Regulation (EU) No 1093/2010.

5. EBA shall develop draft implementing technical standards to specify uniform formats, templates and definitions for the transmission of information by core credit institutions and trading entities to competent authorities. EBA shall submit those draft implementing technical standards to the Commission by [*OP please introduce exact date* 16 months from the day of publication of the Regulation].

Power is delegated to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

6. The competent authorities shall submit to the EBA the qualitative and quantitative information reported by the entities referred to in Article 6b(3) and Article 6b(3a) in accordance with this Article. The EBA shall aggregate the information by types of trading units in core credit institutions and in trading entities, by instrument groups and by risk factor groups and shall include information on mean, distribution and extreme tendencies in the statistics to enable competent authorities to compare trading activities among those banks that have provided information under this Article. EBA shall aggregate the quantitative information received and disseminate the aggregated information to the competent authorities. EBA shall elaborate guidelines in accordance with Article 16 of Regulation (EU) NO 1093/2010 to facilitate the implementation of this paragraph and ensure the consistency of interpretation of the information collected, and the application of the information disseminated by EBA in relation to the assessment referred to in Article 8a(1).

#### *Article 7*

##### ***Rules on remuneration***

Without prejudice to the remuneration rules laid down in Directive 2013/36/EU, the remuneration policy of the core credit institution shall be designed and implemented in such a way that employees are not, directly or indirectly, encouraged, rewarded or remunerated for engaging in the activities referred to in points (a) and (b) of Article 6(1).

## Article 8

### *Assessment of activities to identify proprietary trading and powers of a competent authority to require that a core credit institution does not carry out proprietary trading*

1. The competent authority shall assess the information provided by the core credit institution in accordance with Article 6b and determine whether the activities listed in points (a) to (f) of Article 6(2) carried out by the core credit institution constitute proprietary trading.

When assessing the information referred to in the first sub-paragraph concerning activities listed in points (a) and (b) of Article 6(2), the competent authority shall consult the relevant national authority designated in accordance with Directive 2014/65/EU, for the supervision of financial instruments.

- 1a. The competent authorities shall carry out the assessment referred to in paragraph 1 at the level of application of the review and evaluation process as laid down in Article 110 of Directive 2013/36/EU.

2. The assessment shall include, but not be limited to, an analysis of each trading unit's contribution of bid-ask spreads and profit from daily transactions to daily profit and loss, and the inventory turnover and aging per type of financial instrument in each trading unit.

The competent authority shall also assess whether the core credit institution's compliance programme fulfils the requirement laid down in Article 25 and assess its implementation and governance structure with a view to identifying conditions that can be expected to facilitate proprietary trading.

The competent authority shall carry out the assessment referred to in paragraph 1 in accordance with the regulatory technical standards referred to in Article 6b(4).

3. Where the competent authority, as a result of the assessment, concludes that trading units within the core credit institution carry out proprietary trading, the competent authority shall notify the core credit institution of its conclusions and provide the core credit institution with the opportunity to comment on those conclusions within two months of the notification.

Unless the core credit institution has been able to demonstrate to the satisfaction of the competent authority that the activities concerned do not constitute proprietary trading, the competent authority shall, where the core credit institution does not belong to a group, adopt a decision in accordance with Article 26(6) requiring that the core credit institution ceases to carry out the trading activities that constitute proprietary trading.

Where the core credit institution belongs to a group, the competent authority shall notify its conclusions to the college of supervisors so that the competent authorities adopt a joint decision on the separation of proprietary trading in accordance with the procedure set out in Article 26a. To the extent that the proprietary trading activities remain within the group, they shall be carried out by a trading entity.

4. If, as a result of the assessment referred to in paragraph 1, the competent authority concludes that there are doubts about the appropriate level of control in a Tier 1 core credit institution, or has established that other conditions exist that can be expected to facilitate the taking on of excessive risks or considering the complexity and interconnectedness of the entity, the competent authority may carry out an assessment to verify those doubts and conditions. If upon verification, the competent authority concludes the presence of excessive risks it shall allocate all entities in the group to Tier 2.
5. The competent authority shall conclude its assessments in accordance with paragraph 1 by [*OP – please introduce 48 months from the day of publication of the Regulation*] and shall carry out such assessments at least every year thereafter. The assessments shall be conducted in the context of the supervisory review and evaluation process referred to in Article 97 of Directive 2013/36/EU.
6. Having regard to the definition of proprietary trading set out in point (4) of Article 5, by [*OP – please introduce 18 months from the day of publication of the Regulation*] EBA shall issue guidelines specifying qualitative and quantitative criteria for assessing whether individual activities to constitute proprietary trading.

Those guidelines shall be adopted in accordance with Article 16 of Regulation (EU) No 1093/2010.



*Article 8a*

*Assessment of Tier 2 core credit institutions to identify excessive risk in trading activities*

1. The competent authority shall assess the information provided by the Tier 2 core credit institution in accordance with Article 6b, to determine whether the Tier 2 core credit institution's trading activities carry excessive risk to the core credit institution.
  - 1a. The competent authorities shall carry out the assessment referred to in paragraph 1 at the level of application of the review and evaluation process as laid down in Article 110 of Directive 2013/36/EU.
2. Without prejudice to paragraph 5, the assessment referred to in paragraph 1 shall be primarily based on, but not limited to, an assessment at trading unit level. The competent authority shall pay particular attention to analysing the value-at-risk relative to underlying open positions, and other characteristics of daily profit and loss relative to open positions at the respective trading unit and stop loss limits imposed on trading units. For the purposes of that analysis the competent authorities shall use the quantitative information aggregated and disseminated by EBA, as referred to in Article 6b(6), to allow for a peer analysis.
3. The competent authority shall also assess the governance, risk management policies and procedures of the core credit institution and variations of daily open positions relative to the respective open position, including those for level 2 and level 3 instruments and back testing of the value-at-risk indicators relative to the respective open positions to identify conditions that can be expected to facilitate the taking on of excessive risks.

4. If the assessment reveals highly risky trading activities or conditions that can be expected to facilitate the taking on of excessive risks from trading, the competent authority shall carry out due diligence to verify whether those trading activities are excessively risky. If the assessment confirms the existence of excessively risky trading activities the competent authority shall, for core credit institutions in a Tier 2 group of entities, take a decision in accordance with Article 10.

With regard to the assessment of market making activities and the provision of services to clients, if the competent authority determines that these market making activities, or client activities, carry high risks it shall, prior to making any decision in accordance with Article 10, consider the importance of those activities for the well-functioning of the financial system or real economy of the Member States concerned and the Union and weigh the additional benefits of a separation against other measures that may be taken to reduce the risks of the core credit institution.

This assessment shall at least include the contribution of the core credit institution's trading unit activity to the liquidity of a particular financial instrument in a particular market, and the significance of that financial instrument in that market for the functioning of the financial system or real economy of the Member States concerned and of the Union. The competent authority shall also take into account the aggregate liquidity conditions in the Member States concerned. The competent authority shall inform the consolidating supervisor of this assessment.

When making the assessment, the competent authority shall take into account the principles laid down in Article 26(6).

5. To support the assessment referred to in paragraph 1, the competent authority may use data available to the competent authority as part of the supervisory reporting of institutions according to Regulation (EU) No 575/2013 and shall use the results of stress tests carried out in accordance with Article 98 and Article 100 of Directive 2013/36/EU, in particular the results of the stress tests that relate to the overall risk of trading activities to the core credit institution.
6. The competent authority shall conclude its assessments in accordance with paragraph 1 by [*OP – please introduce* 48 months from the day of publication of the Regulation] and shall carry out such assessments at least every year thereafter. The assessments shall be conducted drawing from the supervisory review and evaluation process referred to in Article 97 of Directive 2013/36/EU. The competent authority shall in particular review the compliance programme of the core credit institution annually in order to ensure that it enables an effective enforcement of this Regulation.
7. EBA shall by [*OP – please introduce* 18 months from the day of publication of the Regulation] issue guidelines to specify quantitative and qualitative indicators and methodology for assessing the level of risk of activities specified in points (a) to (f) of Article 6(2) using the qualitative indicators referred to in Article 6b(2) and the quantitative indicators referred to in Article 6b(3). Those guidelines may include provisions to facilitate the convergence of supervisory practices with regard to the comparison of the information provided by a core credit institution pursuant to Article 6b and the information aggregated by the EBA in accordance with Article 6b(5).

Those guidelines shall be adopted in accordance with Article 16 of Regulation (EU) No 1093/2010.

[ARTICLE 9 DELETED]

## SECTION TWO

### MEASURES TO REDUCE EXCESSIVE RISK TAKING DUE TO CERTAIN TRADING ACTIVITIES FOR TIER 2 CORE CREDIT INSTITUTIONS

#### *Article 10*

##### ***Powers of a competent authority to impose measures on a Tier 2 core credit institution***

1. For those Tier 2 core credit institutions where the competent authority determines, on the basis of the assessment referred to in Article 8a(1), that the qualitative indicators referred to in Article 6b(2) and the quantitative indicators referred to in points (a), (c), (d), (e) and (f) of Article 6b(3) reveal that certain trading activities constitute excessive risk, the competent authority shall take appropriate action to address that excessive risk consisting in one or more of the following:
  - (a) separation of those trading activities;
  - (b) an increase of the core credit institution's own funds requirements;
  - (c) other prudential measures in accordance with Article 104 of the Directive 2013/36/EU.

The measures indicated in points (a) to (c) shall be applied in a way that is proportionate to the risk identified.

When most of the quantitative indicators show high risk and the qualitative indicators do not demonstrate an appropriate level of control, the competent authority shall require that the core credit institution separates the concerned trading activities or increases its own funds requirements to ensure that it can withstand losses from those activities or a combination thereof. In addition, the competent authority may choose to apply the measures indicated in point (c).

When the conditions in the third sub-paragraph are not met, the competent authority shall require the core credit institution to apply the measures indicated in point (c) and may apply the other measures indicated in point (a) and (b).

2. When the competent authority intends to impose one or more of the measures indicated in points (a) to (c) of paragraph one, it shall, no later than two months after the conclusion of the assessment referred to in Article 8a(4), start the procedure leading to a decision.

The competent authority shall notify its conclusions referred to in paragraph one to the core credit institution and provide it with the opportunity to submit written comments within two months from the date of the notification. Where the core credit institution belongs to a group of undertakings, the competent authority shall also notify its conclusions to the college of supervisors.

Where the competent authority has requested a separation, to the extent that the excessively risky trading activities remain within the group, they shall be carried out by a trading entity.

[ARTICLE 11 – DELETED]

[ARTICLE 12 – DELETED]

## Article 13

### *Rules applicable to group entities*

1. The requirements in this Article shall apply between a trading entity and a core credit institution that belong to the same group.

A trading entity shall be legally, economically and operationally separate from the core credit institution.

2. A group containing core credit institutions and trading entities shall be structured so that on a sub-consolidated basis distinct sub-groups are created so that no sub-group contains both a core credit institution and a trading entity.

3. The EU parent of the core credit institution shall, to the extent necessary, ensure that the core credit institution can carry on its activities in the event of the insolvency of the trading entity.

4. A group may choose the appropriate legal corporate structure of its operations. The consolidating supervisor shall have the power to require changes to the legal corporate structure of a group in accordance with the joint decision procedure set out in Article 26a when it concludes that this is necessary to achieve the objectives of this regulation as laid down in Article 1 and provided that such a requirement is proportionate.

- 4a. A decision made pursuant to paragraph 4 shall meet the following requirements:

- (a) it shall be supported by reasons for the assessment or determination in question;
- (b) it shall indicate how that assessment or determination complies with the principle of proportionality.

5. The core credit institution and the trading entity shall issue their own debt on an individual or sub-consolidated basis.
6. All contracts and other transactions entered into between the core credit institution and a trading entity shall be as favourable to the core credit institution as comparable contracts and transactions with or involving entities not belonging to the same group as the core credit institution and the trading entity.
7. A majority of the members of the management body of the core credit institution and of the trading entity respectively shall consist of persons who are not members of the management body of the other entity. No member of the management body of either entity shall perform an executive function in both entities except the risk management officer of the parent undertaking.
8. The core credit institution, the trading entity and their parent undertakings shall ensure that their management bodies are accountable for upholding the objectives of the separation.
9. In accordance with the applicable national law, the name or the designation of the trading entity and of the core credit institution shall be such that the public can easily identify which entity is a trading entity and which entity is a core credit institution.
10. The structurally separated institutions shall comply with the obligations laid down in Parts Two, Three and Four and Parts Six, Seven and Eight of Regulation (EU) No 575/2013 and in Title VII of Directive 2013/36/EU also on a sub-consolidated basis in conformity with paragraph 2 of this Article.

The requirement laid down in sub-paragraph 1 remains unaffected by any waiver granted under Article 7 or Article 8 of regulation (EU) No 575/2013.

## *Article 14*

### ***Intra-group large exposure limits***

1. The intra-group large exposure limit referred to in paragraph 3 of this Article shall apply at individual basis and at sub-consolidated basis in conformity with Article 13(2).
2. For the purpose of the calculation of the intra-group large exposure limit referred to in paragraph 3 of this Article, all entities belonging to the same subgroup pursuant to Article 13(2) are considered as one client or one group of connected clients within the meaning of point (39) of Article 4(1) of Regulation (EU) No 575/2013.
3. A core credit institution shall not incur an intra-group large exposure limit that exceeds 25 per cent of the core credit institution's eligible capital to trading entities. The intra-group exposure limit shall apply after taking into account the effect of the credit risk mitigation in accordance with Articles 399 to 403 of Regulation (EU) No 575/2013.
4. The competent authority may set the intra-group large exposure limit referred to in paragraph 3 lower than 25 per cent but not lower than 10 per cent. Where the intra-group large exposure limit is set lower than 25 per cent, the lower limit shall apply in a uniform manner to all large exposures incurred by core credit institutions belonging to the same subgroup to trading entities. That lower intra-group exposure limit shall apply after taking into account the effect of the credit risk mitigation in accordance with Articles 399 to 403 of Regulation (EU) No 575/2013.



5. The competent authority shall notify the Commission, the other competent authorities concerned and EBA at least two months prior to adoption of an large exposure limit below 25 per cent, and submit relevant quantitative or qualitative evidence of all of the following:
- (a) an explanation as to why the proposed exposure limit is deemed to be appropriate;
  - (b) an assessment of the likely positive or negative impact of the proposed large exposure limits on the internal market based on information available to the competent authority.

Powers are delegated to the Commission to adopt an implementing act to accept or reject the proposed limit. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 35a(2).

Within three months of receiving the notification, EBA shall provide its opinion on the explanations and assessments referred to in points (a) and (b) of the first subparagraph to the Commission. Competent authorities concerned may also provide their opinions on those explanations and assessments to the Commission.

Taking utmost account of the opinions of EBA and of the competent authorities concerned, the Commission shall adopt the implementing act referred to in the second subparagraph within two months of receiving the EBA opinion. The Commission's implementing act shall be valid for a period of two years.

The Commission shall only reject the proposed limit if it considers the proposed limit entail disproportionate adverse effects on the functioning of the internal market.

Before the expiry of the implementing act, the competent authority may propose a new large exposure limit to extend the period of application for an additional period of two years each time. In that case it shall notify the Commission, the competent authorities concerned and EBA. The approval of the new limit shall be subject to the process set out in this Article.

6. There can be no waivers from the intra-group large exposure limit referred to in this Article. Article 400(2)(c) and Article 493(3) of Regulation (EU) No 575/2013 shall not be used to waive the large exposure limit referred to in this Article.

However, where there are serious and unforeseeable circumstances which justify an urgent waiver of the intra-group large exposure rule referred to in paragraph 3, the competent authority shall notify the Commission of its intention to waive that limit and submit the relevant quantitative or qualitative evidence of all of the following requirements:

- (a) reasons which warrant the urgency of the waiver;
- (b) an explanation as to why the proposed waiver is deemed to be appropriate;
- (c) an assessment of the likely positive or negative impact of the proposed waiver on the internal market based on the information available to the competent authority;
- (d) an assessment how the risks stemming from activities in trading entity are appropriately managed and controlled and how it is ensured that the core credit institution are adequately protected from the risks posed by the trading entity with the proposed waiver.

Powers are delegated to the Commission to adopt an implementing act to reject the proposed waiver within five days of receiving the notification.

[ARTICLE 15 – DELETED]

[ARTICLE 16 – DELETED]

[ARTICLE 17 – DELETED]

[ARTICLE 18 – MOVED - NEW ARTICLE 26e]

[ARTICLE 18a – MOVED - NEW ARTICLE 26f]

[ARTICLE 18b – MOVED - NEW ARTICLE 26g]

[ARTICLE 19 – MOVED - NEW ARTICLE 26h]

*Article 20*

***Prohibited activities for the trading entity***

The trading entity shall not:

- (a) take retail deposits that are eligible under the Deposit Guarantee Scheme in accordance with Directive 2014/49/EC except where the said deposit relate to the exchange of collateral relating to trading activities;
- (b) provide payment services as defined in Article 4(3) of Directive 2007/64/EC associated with the activities referred to in point (a) except where the said payment services are ancillary and strictly necessary for the exchange of collateral relating to trading activities.

[Article 21- DELETED]

# Chapter III

## Compliance

### SECTION ONE

#### Entities

##### *Article 25*

##### *Duties of entities subject to this Regulation*

1. The entities subject to this Regulation shall have appropriate measures in place to enable the competent authorities to obtain the information needed to assess their compliance with this Regulation.
2. The entities subject to this Regulation shall provide the competent authority with all the information necessary for the assessment of their compliance with this Regulation, including the information referred to in Article 6b and the information necessary for the assessment referred to in Article 8. All entities covered by this Regulation shall also ensure that their internal control mechanisms and administrative and accounting procedures permit the monitoring of their compliance with this Regulation at all times whether a Member State chooses to implement this Regulation through Article 5a(2)(a) or Article 5a(2)(b).

3. The entities subject to this Regulation shall register all their transactions and provide documentations for the systems and processes used for purposes of this Regulation in such a manner that the competent authority is able to monitor compliance with this Regulation at all times.
4. The compliance programme referred to in point (h) of Article 6a(2) shall include at least the following information broken down at trading unit level:
  - (a) a definition of the missions of each trading unit, notably the types of financial activities and products offered, the nature of the clients and the market where the core credit institution is active;
  - (b) a framework of limits for the activities of each trading unit, adapted to the nature and volume of the client or market making activities, liquidity management, hedging of risks arising from the banking book or long term investment activities exercised by each trading unit;
  - (c) the definition of the strategy that each trading unit may use to reduce the risks associated with the client and market making transactions, liquidity management, asset and liability management when entrusted to the treasury function, and long term investment activities, including definitions of the products, instruments, or hedging strategies and techniques that can be used for that purpose;
  - (d) the establishment of an independent process to monitor and control the compliance of each trading unit with the specified limits and risk mitigation requirements set for each activity.

## SECTION TWO

### Competent authorities

#### *Article 26*

##### *Powers and duties of competent authorities*

1. In carrying out the duties assigned to them according to this Regulation, the competent authorities shall exercise their powers in accordance with relevant Union law.
2. The competent authority shall monitor the activities of the entities subject to this Regulation, and assess and ensure compliance with this Regulation on a continuous basis.
3. Competent authorities shall have the power to request an EU parent, that is not a regulated entity but that has at least one subsidiary which is a regulated entity, to ensure that its regulated subsidiaries comply with this Regulation.
4. The competent authority of the EU parent shall verify that the EU parent has implemented throughout the group the sub-consolidation requirements provided for in with Articles 13 and 14.
5. The consolidating supervisor and the competent authorities responsible for the supervision of subsidiaries of an EU parent in a Member State shall do everything within their power to reach a joint decision:
  - (a) on the separation of proprietary trading in accordance with Article 8;
  - (b) requiring an increase in own funds in accordance with Article 8a and Article 10;

- (c) requiring a separation of certain trading activities in accordance with Article 8a and with Article 10;
- (d) requiring the application of other prudential measures in accordance with Article 104 of Directive 2013/36/EU in accordance with Article 8a and Article 10.

In case a decision referred to in point (a) and point (c) is taken, the competent authorities shall specify in their decision how the requirements of Article 13(4) shall be applied after separation.

- 6. Where a decision referred to in paragraph 5 is made for a core credit institution which is not part of a group of undertakings, the competent authority shall take its decision within four months.
- 7. When taking a decision referred to in paragraph 5 of this Article and in Article 26f and Article 26g, competent authorities shall ensure that the following principles are taken into account:
  - (a) a decision shall be proportionate to the aim pursued and appropriate as regards the need for, and the choice of, any measures so as to effectively address the risks to the core credit institution emanating from proprietary trading and, when a decision under Article 10 is to be made, from excessively risky trading activities;
  - (b) the impact of the decision on all Member States in which the entities of the group concerned are located as well as on other Member States affected by the activities of group concerned, in particular its impact on the financial stability, the fiscal responsibility, and the financing of the real economy of those Member States, in particular with respect to market making, and on the provision of services in those Member States;



- (c) the need to balance the interests of the various Member States involved and to avoid unfairly prejudicing or unfairly protecting the interests of particular Member States;
- (d) the need to achieve an equitable outcome for all Member States concerned and to avoid regulatory arbitrage among entities in different Member States;
- (e) the impact of the decision on other group entities, by taking into account the group structure and any group-wide policies;
- (f) the need to ensure that a decision is consistent with the granular risk assessment across the entities of the group concerned, and that competent authorities for entities belonging to the same group apply tools in a coherent manner.

When assessing the impact referred to in point (b) of paragraph 7, competent authorities shall ensure that relevant national authorities of the Member States referred to and in which a group entity is located, or in which the group provides investment services, is a member of trading venues or central counterparties established therein, or trades in securities from issuers established therein, are consulted.

8. Member States shall designate the relevant national authorities for the purpose of paragraph 8.

*Article 26a*

***Procedure for joint decisions to separate proprietary trading***

1. The consolidating supervisor and the competent authorities responsible for the supervision of subsidiaries on an individual basis shall, following the assessment referred in Article 8, in accordance with the procedure set out in this Article, do everything within their powers to reach a joint decision on the separation of proprietary trading. The joint decision shall be applicable to the entire group and shall be taken within four months after the notification to the competent authorities of the college of supervisors referred to in the second subparagraph of Article 8(3).
2. The joint decision shall be fully reasoned and shall be addressed to the EU parent by the consolidating supervisor. The joint decision shall duly consider the assessment of subsidiaries performed by their respective competent authorities in accordance with Article 8. In the absence of a joint decision among the competent authorities within four months, the consolidating supervisor shall take a decision applicable to the entire group, including all the relevant individual subsidiaries and address it to the EU parent.

The decision shall be fully reasoned and shall take into account the views and concerns expressed by of the other competent authorities within the four-month period.

The decision shall be provided to the other relevant competent authorities by the consolidating supervisor.

If, at the end of the four-month period, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the consolidating supervisor shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation. The consolidating supervisor shall take its decision in conformity with the decision of EBA. The four-month period shall be deemed the conciliation period within the meaning of that Regulation. EBA shall take its decision within two months. The matter shall not be referred to EBA after the end of the four-month period or after a joint decision has been reached.

In the absence of an EBA decision within two months, the decision of the consolidating supervisor shall apply.

3. The decisions referred to in paragraphs 1 and 2 shall be recognized as determinative and shall be applied by the competent authorities in the Member States concerned.

#### *Article 26b*

#### ***Procedure for a joint decision requiring additional own fund requirements or other prudential measures in accordance with Article 10***

1. The consolidating supervisor and the competent authorities responsible for the supervision of subsidiaries on an individual basis shall, following the assessment carried out in accordance with Article 8a, do everything within their powers to reach a joint decision on imposing additional own fund requirements or other prudential measures in accordance with Article 104 of the Directive 2013/36/EU, both at consolidated level and at individual level, within four months after the group entities concerned have been given the opportunity to provide written comments in accordance with Article 10(2).

The joint decision shall be fully reasoned and shall be provided to the EU parent by the consolidating supervisor. In the absence of a joint decision among competent authorities within four months, the consolidating supervisor shall take a decision applicable at consolidated level.

The decision shall be fully reasoned and shall take into account the views and concerns expressed by the other competent authorities, as well as the relevant resolution authorities, within the four-month period. The decision shall be addressed to the EU parent.

If, at the end of the four-month period, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the consolidating supervisor shall defer its decision referred to in paragraph 2 and await any decision that EBA may take in accordance with Article 19(3) of that Regulation. The consolidating supervisor shall take its decision in conformity with the decision of EBA. The four-month period shall be deemed the conciliation period within the meaning of that Regulation. EBA shall take its decision within two months. The matter shall not be referred to EBA after the end of the four-month period or after a joint decision has been reached.

In the absence of an EBA decision within two months, the decision of the consolidating supervisor shall apply.

2. In the absence of a joint decision among competent authorities within four months, each competent authority concerned responsible for the supervision of an entity on an individual basis shall take its individual decision for the entities under its supervision.

Each of the individual decisions shall be fully reasoned and shall take into account the views and concerns expressed by the other competent authorities within the four-month period. Each competent authority shall notify its decision to the consolidating supervisor and all other competent authorities concerned.

If, at the end of the four-month period, any of the concerned competent authorities has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the competent authorities shall defer their decisions and await any decision that EBA may take in accordance with Article 19(3) of that Regulation. The competent authorities shall take their decisions in conformity with the decision of EBA. The four-month period shall be deemed the conciliation period within the meaning of that Regulation. EBA shall take its decision within two months. The matter shall not be referred to EBA after the end of the four-month period or after a joint decision has been reached.

In the absence of an EBA decision within two months, the decision of the competent authority responsible for the supervision of an entity on an individual basis shall apply.

3. The decisions referred to in paragraphs 1, 2 and 3 shall be recognized as determinative and shall be applied by the competent authorities in the Member States concerned.

***Procedure for a joint decision requiring separation of excessively risky trading activities in accordance with Article 10***

1. The consolidating supervisor and the competent authorities responsible for the supervision of subsidiaries on an individual basis shall, following the assessment carried out in accordance with Article 8a(4), do everything within their power to reach a joint decision to impose a measure referred to in point (a) of the first subparagraph of Article 10(1) within four months.

The joint decision shall be fully reasoned and shall be addressed to the EU parent and the core credit institution concerned.

The EBA may, at the request of any of the competent authorities involved, assist the competent authorities in reaching a joint decision in accordance with point (c) of Article 31 Regulation (EU) No 1093/2010.

2. In the absence of a joint decision among the competent authorities within four months, each competent authority responsible for the supervision of an entity on an individual basis shall adopt a decision regarding the separation of trading activities.

That decision shall be fully reasoned and shall set out why a joint decision was not reached and shall take into account the views and concerns expressed by the other competent authorities, including the consolidating supervisor, and the resolution authority, expressed within the four-month period. The decision shall be addressed to the EU parent and the core credit institution concerned. When setting out reasons why no joint decision was reached, the competent authority shall detail why the subject matter under disagreement would impinge on the financing of the real economy in its jurisdiction or otherwise negatively affect the real economy or the fiscal responsibility within its own jurisdiction.

3. The decisions referred to in paragraphs 1 and 2 shall be recognised as determinative and shall be applied by the competent authorities in the Member States concerned. The review of decision application by the competent authorities shall start at least 24 months after the separation plan is implemented.

#### *Article 26d*

#### ***Entities outside the Union***

1. A joint decision as referred to in Article 26a shall include proprietary trading carried out by legal entities of the group established outside the Union, subject to appropriate cooperation procedures agreed with authorities of countries outside the Union in colleges of supervisors.

2. When taking a joint decision as referred to in Article 26a, competent authorities shall also decide, subject to appropriate cooperation procedures agreed with authorities of countries outside the Union in colleges of supervisors, whether it is necessary or not to separate other excessively risky trading activities carried out by legal entities of the group established outside the Union. The joint decisions referred to in Article 26b shall include legal entities of the group established outside the Union, subject to appropriate cooperation procedures agreed with authorities of countries outside the Union in colleges of supervisors.

*Article 26e*

***Separation plan***

1. A core credit institution that does not belong to a group of undertakings shall submit a separation plan to the competent authority within 6 months from the date of a decision to require separation as referred to in Article 8 or Article 10.

Where a core credit institution belongs to a group of undertakings, the EU parent shall submit a separation plan to the consolidating supervisor, within 6 months of the date of a decision to require separation as referred to in Article 8 or in Article 10.

The consolidating supervisor shall immediately forward the separation plan to the other competent authorities concerned.

The separation plan shall explain in detail how the separation will be carried out.



2. The separation plan shall contain at least the following information:
  - (a) a specification of the assets and trading activities that will be separated from the core credit institution in accordance with the decision referred to in Article 8 or Article 10 and which is made in compliance with Articles 26, 26a and 26c;
  - (b) details on how the rules referred to in Article 13 is applied;
  - (c) a timeline for the separation not exceeding twelve months.

*Article 26f*

***Assessment of the separation plan where the core credit institution does not belong to a group of undertakings***

1. The competent authority shall assess the separation plan referred to in Article 26e and shall, within four months of the submission of the plan by core credit institution, adopt a decision approving or requiring changes to it.
2. Where the competent authority requires changes to the separation plan, the core credit institution shall resubmit it with the required changes within three months from the adoption of the decision referred to in paragraph 1.
3. A decision to approve or reject the re-submitted separation plan shall be taken within one month of the resubmission.

Where the separation plan is rejected the competent authority shall within one month of the rejection adopt a decision setting out a plan for separation introducing any necessary adjustments.

4. Where the core credit institution does not submit a separation plan as required in Article 26e(1), or does not resubmit the separation plan with the changes required within the time period referred to in paragraph 2 of this Article, the competent authority, shall, no later than three months thereafter, adopt a decision setting out a plan for the separation.
5. The management body of the core credit institution shall ensure that the separation plan has been implemented in accordance with the approval of the competent authority. The core credit institution shall demonstrate to the competent authority that it has implemented the approved plan within the agreed timeline.

*Article 26g*

***Assessment of the separation plan where a core credit institution belongs to a group of undertakings***

1. Competent authorities shall assess the separation plan referred to in Article 26e and shall do everything within their power to reach a joint decision approving the separation plan or requiring changes to it within four months of the submission of the plan.

The joint decision shall be fully reasoned and shall consider the assessments of the core credit institutions carried out by their respective competent authorities in accordance with Article 8(1) and Article 8a(1).

The decision shall take into account the views and reservations expressed by all competent authorities within the four months period.

The joint decision shall be provided to the EU parent and the other relevant competent authorities by the consolidating supervisor.

2. In the absence of a joint decision among the competent authorities within four months, the consolidating supervisor shall take a decision and address it to the EU parent.

The decision shall be fully reasoned and shall take into account the views and reservations expressed by all competent authorities within the four months period.

The decision shall be provided to the other relevant competent authorities by the consolidating supervisor.

If, at the end of the four months period, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the consolidating supervisor shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation. The consolidating supervisor shall take its decision in conformity with the decision of EBA. The four-month period shall be deemed the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the four month period or after a joint decision has been reached.

In the absence of an EBA decision within one month, the decision of the consolidating supervisor shall apply.

3. Where changes are required to the separation plan, the EU parent shall resubmit the separation plan with the required changes within three months from the decision referred to in paragraph 1.

4. A decision to approve or reject the separation plan shall be taken within one month of the resubmission in accordance with the procedures referred to in paragraphs 1 and 2.

Where the separation plan is rejected the competent authorities shall within one month of the rejection adopt a joint decision in accordance with the procedures referred to in paragraphs 1 and 2 setting out a plan for the separation.

5. Where the EU parent does not submit a separation plan as required in Article 26e(1), or does not resubmit the separation plan with the changes required within the time period referred to in paragraph 3 of this Article, the competent authorities shall, no later than three months thereafter and in accordance with the procedures referred to in paragraphs 1 and 2 of this Article, take a joint decision setting out a plan for the separation.
6. The decisions referred to in paragraphs 1 and 2 shall be recognized as determinative and shall be applied by the competent authorities in the Member States concerned.
7. The management body of a core credit institution or an EU parent shall ensure that the separation plan has been implemented in accordance with the approval of the competent authority. The EU parent shall demonstrate to the consolidating supervisor that it has implemented the approved plan within the agreed timeline.

***Procedure for a joint decision under Article 5a***

1. Where the measures referred to in paragraph 2(a) of Article 5a are applicable to an institution that forms part of a group of entities and where those measures may affect the structure or activities of entities forming part of that same group subject to measures under paragraph 2(b) of Article 5(a), or where the measures referred to in paragraph 2(b) of Article 5a are applicable to an institution that forms part of a group of entities and where those measures may affect the structure or activities of entities forming part of the same group subject to measures under 2(a) of Article 5a, the competent authority applying the measures and the competent authorities responsible for supervising the relevant other group entities shall do everything within their power to reach a joint decision on the matter within four months.

The joint decision shall be fully reasoned and shall be addressed to the EU parent and the concerned group entities.

2. In the absence of a joint decision within four months, each competent authority responsible for the supervision of an entity on an individual basis shall adopt a decision.

The decision shall be fully reasoned and shall take into account the views and reservations of the other competent authorities, including the consolidating supervisor, expressed during the four-month period. The decision shall be addressed to the EU parent and the concerned group entities.

The decisions referred to above shall be recognised as final and applied by the competent authorities in the Member States concerned.

## Article 26h

### *Cooperation between competent authorities and relevant resolution authorities*

1. When carrying out the assessments referred to in Article 8 and Article 8a the competent authority shall cooperate with the relevant resolution authority and exchange information that is deemed necessary for the assessments. During those assessments, the competent authority shall also take into account any ongoing or pre-existing resolvability assessments carried out by any relevant resolution authority pursuant to Article 15 and Article 16 of Directive 2014/59/EU to ensure that any decision to separate does not impede a decision to take resolution action in accordance with Article 82 of Directive 2014/59/EU and in accordance with Article 29 of Regulation (EU) No 806/2014<sup>14</sup>.
2. Following its assessment and before taking a decision as referred to in the second subparagraph of Article 8(3), in Article 10, in Article 13(4), in Article 26f and in Article 26g, the competent authority shall consult the relevant resolution authority, and invite it to express any concerns about the decision that the competent authority intends to take with a view to identifying any actions which may adversely impact the resolvability of the institution. The competent authority shall take into account any comments with regard to those matters and, if relevant, explain its differing views to the relevant resolution authority.

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<sup>14</sup> Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225 30.7.2014, p.1)

3. The college of supervisors shall set in place a written arrangement in order to facilitate the cooperation and consultation with relevant resolution authorities.
4. While the competent authority shall cooperate with and consult the relevant resolution authority, the decisions referred to in paragraph 2 shall be taken by the competent authority. The relevant resolution authority shall be notified of any such decision.

## **Chapter V**

### **Relationships with third countries**

#### *Article 27*

##### *Equivalence of the legal framework of a third country*

1. At the request of a competent authority of a Member State or a third country, or on its own initiative, the Commission may adopt implementing acts determining that:
  - (a) the legal, supervisory and enforcement arrangements of a third country ensures that credit institutions and parent companies in that third country comply with binding requirements which are equivalent to the requirements laid down in this Regulation;
  - (b) the legal framework of that third country provides for an effective equivalent system for the recognition of structural measures provided under third-country national law regimes.

2. The Commission may amend or withdraw its decision if the conditions on the basis of which the decision has been taken are no longer fulfilled.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 35 of this Regulation to establish the criteria for assessing whether or not a third country legal and supervisory framework is equivalent to this Regulation.

The Commission shall adopt the delegated act [*OP please introduce the exact date within 24 months from the entry into force of this Regulation*].

4. The EBA shall establish cooperation arrangements with the relevant competent authorities of third countries whose legal and supervisory frameworks have been considered equivalent to this Regulation in accordance with paragraphs 1, 2 and 3. Such arrangements shall specify at least a minimum information sharing regime between relevant competent authorities of both jurisdictions.



## Chapter VI

### Supervisory powers, powers to impose sanctions and right of appeal

#### *Article 28*

##### *Administrative sanctions and other administrative measures*

1. Without prejudice to the supervisory powers of competent authorities under Article 26 and the right of Member States to provide for and impose criminal sanctions, Member States shall lay down rules on administrative sanctions and other administrative measures in respect of at least the following breaches:
  - (-a) breach of the requirement that particular trading activities are located in a separate legal entity from the credit institution that undertakes core retail banking activities as laid down in Article 5a(1);
  - (a) breach of the prohibition for core credit institutions to carry out proprietary trading and other related activities as laid down in Article 6;
  - (b) breach of the requirement to separate proprietary trading as laid down in Article 8(3);
  - (c) breach of the requirement to allocate additional own funds or apply other prudential measures to support the nature of the risk that the core credit institution's activity poses or requirement not to carry out certain trading activities as laid down in Article 10(1);

- (d) failure to submit or resubmit a separation plan in breach of Articles 26e, 26f and 26g;
- (e) performance of activities prohibited for the trading entity in breach of Article 20;
- (f) non-performance of requirements laid down in Article 6a(2).
- (g) breach of the reporting requirements laid down in Article 6b and Article 3c(1) and any manipulation of information to be submitted in accordance with those Articles.

Where the provisions referred to in the first subparagraph apply to legal persons, in case of a breach Member States shall provide for competent authorities the power to apply sanctions, subject to the conditions laid down in national law, on members of the management body and to other individuals who under national law are responsible for the breach.

2. Competent authorities shall exercise their powers to impose administrative sanctions and other administrative measures in accordance with this Regulation and with national law in any of the following ways:
  - (a) directly;
  - (b) in collaboration with other authorities;
  - (c) under their responsibility by delegation to such authorities;
  - (d) by application to the competent judicial authorities.
3. The administrative sanctions and other administrative measures imposed in accordance with paragraph 1 shall be effective, proportionate and dissuasive.

4. Where Member States decide not to lay down rules for administrative sanctions for breaches which are subject to national criminal law they shall communicate to the Commission the relevant criminal law provisions. Competent authorities may also cooperate with competent authorities of other Member States with respect to facilitating the exercise of their sanctioning powers.
5. Member States shall confer on competent authorities the power to apply at least the following administrative sanctions and other measures in the event of the breaches referred to in paragraph 1:
  - (a) an order requiring the natural or legal person responsible for the breach to cease the unlawful conduct and to desist from a repetition of that conduct;
  - (b) a public statement which indicates the natural or legal person responsible and the nature of the breach;
  - (c) in the case of an institution withdrawal or suspension of the authorisation;
  - (d) a temporary ban against a member of the institution's management body or any other natural person, who is held responsible, from exercising functions in institutions referred to in Article 3;
  - (e) administrative pecuniary sanction of up to twice the amount of the profits gained or losses avoided because of the breach where those can be determined;

- (f) in the case of a natural person, an administrative pecuniary sanctions of up to EUR 5 000 000 or in the Member States whose currency is not the euro, the corresponding value in the national currency on the date of entry to force of this Regulation;
- (g) in the case of legal persons, administrative pecuniary sanction of up to 10 per cent of the total annual net turnover of the legal person according to the last available accounts approved by the management body, including the gross income consisting of interest receivable and similar income, income from shares and other variable or fixed-yield securities, and commission or fees receivable in accordance with Article 316 of Regulation (EU) No 575/2013 of the undertaking in the preceding business year. Where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts according to Directive 2013/34/EU, the relevant gross income shall be the gross income resulting from the consolidated account of the ultimate parent undertaking in the preceding business year.

Member States may provide that competent authorities may have powers in addition to those referred to in this paragraph and may provide for a wider scope of penalties and higher levels of penalties than those established in this paragraph.

6. By [*OP please introduce the exact date* 18 months after entry into force of this Regulation] Member States shall notify the rules regarding paragraph 1 to the Commission and the EBA. They shall notify the Commission and the EBA without delay of any subsequent amendment thereto.

## *Article 28a*

### ***Right of appeal***

Member States shall ensure that decisions and measures taken in accordance with this Regulation are properly reasoned and subject to a right of appeal. The right of appeal shall apply where no decision is taken, within six months of its submission, in respect of an application for authorisation which contains all the information required under the provisions in force.

## *Article 29*

### ***Exercise of supervisory powers and sanctions***

When determining the type and level of administrative sanctions and other administrative measures, competent authorities shall take into account all relevant circumstances, including, where appropriate:

- (a) the gravity and duration of the breach;
- (b) the degree of responsibility of the natural or legal person responsible for the breach;
- (c) the financial strength of the natural or legal person responsible for the breach, by considering factors such as the total turnover in the case of a legal person, or the annual income in the case of a natural person;

- (d) the importance of the profits or losses which the competent authority estimates to have been gained or avoided by the natural or legal person responsible for the breach, insofar as they can be determined;
- (e) the losses for third parties, insofar as they can be determined;
- (f) the level of cooperation of the natural or legal person responsible for the breach with the competent authority;
- (g) previous breaches by the natural or legal person responsible for the breach;
- (h) measures taken by the natural or legal person responsible for the breach to prevent its repetition;
- (i) any potential systemic consequences of the breach.

*Article 30*

***Reporting of breaches***

1. A competent authority shall establish effective mechanisms to enable reporting of actual or potential breaches referred to in Article 28(1).
2. The mechanisms referred to in paragraph 1 shall include at least:
  - (a) specific procedures for the receipt of reports of breaches and their follow-up, including the establishment of secure communication channels for such reports;

- (b) appropriate protection for persons working under a contract of employment, who report breaches or who are accused of breaches, against retaliation, discrimination or other types of unfair treatment;
  - (c) protection of personal data both of the person who reports the breach and the natural person who allegedly committed the breach, including protection in relation to preserving the confidentiality of their identity, at all stages of the procedure without prejudice to disclosure of information being required by national law in the context of investigations or subsequent judicial proceedings or without prejudice to disclosure otherwise being permitted by national law.
3. Entities subject to this Regulation shall have in place appropriate internal procedures for their employees to report actual or potential breaches referred to in Article 28(1), through a specific, independent and autonomous channel.

### *Article 31*

#### ***Exchange of information with EBA***

1. Competent authorities shall inform the EBA of all administrative measures and sanctions imposed by them and the status of appeal and outcome thereof. EBA shall maintain a central database of sanctions reported to it solely for the purpose of exchange of information between competent authorities. The database shall be accessible to competent authorities only and it shall be updated on the basis of the information provided by competent authorities.

2. Where the competent authority has disclosed administrative sanctions, fines and other measures, as well as criminal sanctions to the public, it shall simultaneously notify EBA thereof.
3. EBA shall maintain a website with links to each competent authority's publication of administrative sanctions and shall show the time period for which each Member State publishes administrative sanctions.
4. By 24 months after the date of application of this Regulation, EBA shall submit a report to the Commission on the publication of sanctions by Member States on an anonymous basis, in particular, where there have been significant divergences between Member States in this respect. In addition, EBA shall submit a report to the Commission on any significant divergences in the duration of publication of sanctions under national law.

#### *Article 32*

##### ***Publication of decisions***

1. A competent authority shall publish at least any decision against which there is no appeal imposing an administrative sanction or other administrative measure referred to in Article 28(1) on its website without undue delay after the person subject to that decision has been informed of that decision.

Where competent authorities publish sanctions against which there is an appeal, they shall, without undue delay, also publish on their official website information on the appeal status and outcome thereof.



2. Competent authorities shall publish the sanctions on an anonymous basis, in a manner in accordance with national law, in any of the following circumstances:
- (a) where the sanction is imposed on a natural person and, following an obligatory prior assessment, publication of personal data is found to be disproportionate;
  - (b) where publication would jeopardise the stability of financial markets or an ongoing criminal investigation;
  - (c) where publication would cause, insofar as it can be determined, disproportionate damage to the institutions or natural persons involved.

Alternatively, where the circumstances referred to in the first subparagraph are likely to cease within a reasonable period of time, publication under paragraph 1 may be postponed for such a period of time.

3. Competent authorities shall ensure that information published under paragraphs 1 or 2 remains on their official website at least five years. Personal data shall be retained on the official website of the competent authority only for the period necessary, in accordance with the applicable data protection rules.

## Chapter VII

### Review

[ARTICLE 33 – DELETED]

#### *Article 34*

##### *Review*

The Commission shall review the effects of this Regulation in respect of the achievement of the objectives referred to in Article 1 and on the stability of the Union financial system as a whole, taking into account market structure developments as well as the development and activities of the entities subject to this Regulation, and make any appropriate proposals. The review shall in particular pay attention to the appropriateness of the scope and the application of the thresholds referred to in Article 3, the effectiveness of Article 4a including the consideration to exempt from the calculations of Article 4a financial instruments held for compliance with the requirements of the liquidity coverage ratio in accordance with Commission delegated Regulation 2015/61, the possible inflation adjustment of the thresholds set out in Article 3, Article 4 and Article 4a, the definition of trading unit in light of the work on the fundamental review of the trading book conducted by the Basel Committee on Banking Supervision, the appropriateness of the definition of trading activities under Article 5 when it comes to capturing all trading activities which may give rise to proprietary trading or excessive risks, the treatment of sovereign risk under Article 5b taking into account work conducted at European and international level and the possibility to confer a similar treatment to certain financial instruments held for compliance with the requirements of the liquidity coverage ratio in accordance with Commission delegated Regulation 2015/61<sup>15</sup> and taking into account the quality and risk weight of those financial instruments, the sustainability of having two options in

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<sup>15</sup> Commission Delegated Regulation 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council (OJ L 11, 17.1.2015, pp. 1 to 36).

Article 5a including how the two options are delivering on the objectives, the application and effectiveness of the mandatory separation of proprietary trading and related trading activities in accordance in Article 6, the appropriateness of the scope of trading activities referred to in Article 6, the impact of ownership and investment limits with regard to leveraged including substantially leveraged AIFs in Article 6(1)(b), the suitability of the reporting set out in Article 6b for purposes of assessing trading activities, and the effectiveness of the tools available to the competent authority under Article 10. By 1 January 2021 and on a regular basis thereafter, the Commission shall, after taking into account the views of the competent authorities and the EBA, submit to the European Parliament and to the Council a report, addressing the issues referred to in this Article, if appropriate accompanied by a legislative proposal.

## Chapter VIII

### Final provisions

#### *Article 35*

##### *Exercise of delegated powers*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Article 3b(5), Article 5b(2) ) and Article 27(3) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force referred to in Article 36.
3. The delegation of power referred to in Article 3b(5), Article 5b(2) and Article 27(3) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 3b(5), Article 5b(2) and 27(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

*Article 35a*

***European Banking Committee***

1. The Commission shall be assisted by the European Banking Committee established by Commission Decision 2004/10/EC. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

*Article 36*

***Entry into force and date of application***

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

It shall apply from the date of entry into force, with the exception of the following:

- Article 6a and Article 6b that shall apply [*OP please introduce exact date, 24 months after publication of this Regulation*]; and
- Article 5a, Article 6, Article 8, Article 8a, Article 10, Article 13, Article 14 and Article 20 that shall apply [*OP please introduce exact date, 36 months after publication of this Regulation*].

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

Done at Brussels,

*For the European Parliament*

*The President*

*For the Council*

*The President*

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