

EBA/RTS/2015/09

16 July 2015

Final Report

Final Draft Regulatory Technical Standards correcting Delegated Regulation (EU) No 528/2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for non-delta risk of options in the standardised market risk approach and correcting Delegated Regulation (EU) No 604/2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile

1. Background and rationale

1. In December 2013 the EBA submitted to the Commission two final draft RTS on: (i) the treatment of non-delta risk of options in the standardised market risk approach under Articles 329(3), 352(6) and 358(4) of Regulation (EU) No 575/2013 and on (ii) the criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile under Article 94(2) of Directive 2013/36/EU.
2. These RTS were published by the Commission on 20 May 2014 and 6 June 2014, respectively; during the legal adoption process, changes that altered the meaning of the technical standards were inadvertently introduced by the Commission.
3. The purpose of these RTS is to amend the text of the delegated acts adopted by the Commission when endorsing the original draft technical standards in order to ensure that the text of those delegated acts reflects the intention of the text originally submitted by the EBA. Accordingly, the EBA has not consulted on, or carried out an analysis of the costs and benefits of, these draft technical standards that have been submitted to the Commission since these RTS essentially revert to the original intention of the EBA.
4. Article 1 of these RTS modifies the language of Article 2 of the RTS on non-delta risks in order to ensure that the simplified approach can only be used by institutions that exclusively purchase options and warrants, without obliging them to use that approach. This rewording corrects the legally adopted text of Article 2 of Regulation (EU) No 528/2014, which, in practice, obliges such institutions to use the simplified approach, while not preventing other institutions from doing so.
5. Article 2 of these RTS changes the legal language of the RTS on criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile. The redraft ensures that for any staff whose total remuneration takes them into the same remuneration bracket as senior management and risk takers the refutable presumption exist that they constitute staff whose professional activities have a material impact on the institution's risk profile ('identified staff'). This corrects the drafting of 4(1)(c) of Regulation (EU) No 604/2014 which does not achieve this aim.



2. EBA draft Regulatory

Technical Standard correcting Delegated Regulation (EU) No 528/2014

supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for non-delta risk of options in the standardised market risk approach and correcting Delegated Regulation (EU) No 604/2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile



COMMISSION DELEGATED REGULATION (EU) No .../..

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correcting Delegated Regulation (EU) No 528/2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for non-delta risk of options in the standardised market risk approach and correcting Delegated Regulation (EU) No 604/2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC , and in particular Article 94(2) thereof,

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 , and in particular the third subparagraph of Article 329(3), the third subparagraph of Article 352(6) and the third subparagraph of Article 358(4) thereof,

Whereas:

- (1) Article 329(3), the third subparagraph of Article 352(6) and the third subparagraph of Article 358(4) of Regulation (EU) No 575/2013 provide for the European Banking Authority (EBA) to develop a range of methods to reflect other risks, apart from delta risk, in the own funds requirements of institutions, in a manner proportionate to the scale and complexity of institutions' activities in options and warrants. Accordingly, the EBA developed draft regulatory technical standards in this regard which the Commission endorsed and adopted in Commission Delegated Regulation (EU) No 528/2014.



- (2) The framework for prudential supervision established by Directive 2013/36/EU requires that all institutions identify all members of staff whose professional activities have a material impact on the institution's risk profile. In accordance with Article 94(2) of Directive 2013/36/EU, the EBA developed draft regulatory technical standards in this regard which the Commission endorsed and adopted in Commission Delegated Regulation (EU) No 604/2014 .
- (3) In Regulation (EU) No 528/2014 and Regulation (EU) No 604/2014 some errors occurred which need to be corrected.
- (4) This Regulation is based on the draft regulatory technical standards submitted by the EBA to the Commission.
- (5) EBA conducted open public consultations on the original draft regulatory technical standards which this Regulation corrects, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council .
- (6) In order to ensure that the regulatory technical standards can be applied correctly as soon as possible, this Regulation should enter into force on the day following that of its publication in the Official Journal of the European Union, Having regard to the Treaty on the Functioning of the European Union,

HAS ADOPTED THIS REGULATION:

Article 1
Correction of Regulation (EU) No 528/2014

Article 2 of Regulation (EU) No 528/2014 is replaced by the following:

“ Article 2

Only institutions that exclusively purchase options and warrants may use the simplified approach.”

Article 2
Correction of Regulation (EU) No 604/2014

In Article 4(1) of Regulation (EU) No 604/2014, point (c) is replaced by the following:

“(c) the staff member was in the preceding financial year awarded total remuneration that is equal to or greater than the lowest total remuneration awarded in that financial year to a member of senior management or to a member of staff who meets any of the criteria in points (1), (5), (6), (8), (11), (12), (13) or (14) of Article 3.”

Article 3

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

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

Done at Brussels,



*For the Commission
The President*

*[For the Commission
On behalf of the President*

[Position]