

EBA/CP/2024/14

8 July 2024

Consultation Paper

Draft Regulatory Technical Standards on credit valuation
adjustment risk of securities financing transactions under Article
382(6) of Regulation (EU) No 575/2013

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1. Responding to this consultation

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

Comments are most helpful if they:

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

Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 8.10.2024. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

Publication of responses

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

Data protection

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

2. Executive Summary

Regulation (EU) No 575/2013 (Capital Requirements Regulation – CRR) as amended by the CRR3¹, implements in the EU the revised framework for the determination of own funds requirements for credit valuation adjustment (CVA) risk. In accordance with Article 382(2) of the CRR, an institution shall include in the calculation of the own funds requirements for CVA risk securities financing transactions that are fair-valued under the accounting framework applicable to the institution where the institution's CVA risk exposures arising from those transactions are material.

Article 382(6) of the CRR mandates the EBA to develop draft regulatory technical standards to specify the conditions and the criteria that the institutions shall use to assess whether the CVA risk exposures arising from fair-valued securities financing transactions are material, as well as the frequency of that assessment. The legal deadline for the submission of the draft RTS is set to two years after the entry into force of the CRR3.

The draft RTS included in this consultation paper propose to employ a quantitative approach for the determination of the materiality of CVA risk exposures arising from fair-valued securities financing transactions. In particular, they propose to perform the assessment on the basis of a ratio that quantifies the amount of CVA risk arising from fair-valued securities financing transactions relative to the CVA risk of transactions in scope of the own funds requirements for CVA risk. With regard to the frequency of the assessment, the draft RTS propose to set this on a quarterly basis, to ensure consistency with the regular calculation and reporting cycle of own funds requirements by institutions.

Next steps

The EBA will assess the feedback received during the public consultation before submitting the draft RTS in their final form to the European Commission for adoption.

¹ Regulation (EU) 2024/1623, available at:
https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202401623

3. Background and rationale

1. Regulation (EU) No 575/2013 (Capital Requirements Regulation – CRR) as amended by the CRR3, implements in the EU the revised framework for the determination of own funds requirements for credit valuation adjustment (CVA) risk. In accordance with Article 382(2) of the CRR, an institution shall include in the calculation of the own funds requirements for CVA risk securities financing transactions (SFTs) that are fair-valued under the accounting framework applicable to the institution where the institution's CVA risk exposures arising from those transactions are material.
2. Article 382(6) of the CRR mandates the EBA to develop draft regulatory technical standards (RTS) to specify the conditions and the criteria that the institutions shall use to assess whether the CVA risk exposures arising from fair-valued SFTs are material, as well as the frequency of that assessment. The combined reading of the provisions in Article 382(2) and (6) of the CRR envisage that an institution shall include in scope of the capital requirements for CVA risk the fair-valued SFTs once the CVA risk exposures arising from them is deemed to be material in accordance with the RTS.
3. The draft RTS included in this consultation paper propose to perform the determination of the materiality of CVA risk exposures arising from fair-valued SFTs through a ratio to be compared against a materiality threshold. More specifically, it proposes to determine the capital requirements for CVA risk arising from fair-valued SFTs relative to the capital requirements for CVA risk of transactions in scope of those capital requirements (including the fair-valued SFTs). If such share were to exceed the threshold, the CVA risk exposures arising from fair-valued SFTs are considered material, and the fair-valued SFTs are to be included in scope of the capital requirements for CVA risk in accordance with Article 382(2) of the CRR.
4. The approach proposed is quantitative and is based on the CVA capital requirement metric. This enables to quantify the CVA risk exposures arising from fair-valued SFTs in line with the mandate in Article 382(6) of the CRR, and to determine whether they are material in the determination of the capital requirement for CVA risk. In addition, being a quantitative approach, it envisages the application of an objective methodology for the determination of the materiality, which should ensure a level playing field across institutions.
5. In accordance with the draft RTS, the materiality of CVA risk exposures arising from the fair-valued SFTs is assessed on the basis of the aggregate CVA risk exposures arising from them. In this regard, the specific CVA risk exposure arising from each transaction is implicitly considered within the calculation of the aggregate CVA risk exposures. Accordingly, if the materiality threshold is exceeded, all fair-valued SFTs should be included in scope of the capital requirement for CVA risk, unless they are exempted under Article 382(3) and (4) of the CRR. Likewise, if the materiality threshold is not exceeded, no fair-valued SFT should be included in scope of the capital requirement for CVA risk.

6. The proposed methodology also envisages that the last four ratios – referring to the four most recent quarters of a year – should each be lower than the materiality threshold, in order not to consider the CVA risk exposures arising from fair-valued SFTs to be material. This should ensure some stability and avoid frequent cliff effects with regard to the inclusion/exclusion of the fair-valued SFTs in scope of the CVA capital requirement, and to the impact that this would produce on that requirement.

7. In terms of frequency to assess the materiality of the CVA risk exposures arising from fair-valued SFTs in accordance with the conditions and criteria, it is proposed that this is carried out at every quarter of the year in conjunction with the quarterly calculation of capital requirements for CVA risk for supervisory reporting (COREP), which should ensure consistency with the regular calculation and reporting cycle of own funds requirements by institutions.

4. Draft regulatory technical standards

In between the text of the draft RTS that follows, further explanations on specific aspects of the proposed text are occasionally provided, which either offer examples or provide the rationale behind a provision, or set out specific questions for the consultation process. Where this is the case, this explanatory text appears in a framed text box.

COMMISSION DELEGATED REGULATION (EU) .../...**of XXX**

supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards specifying the conditions and the criteria to assess whether the CVA risk exposures arising from fair-valued securities financing transactions are material, and the frequency of that assessment, under Article 382(6) of Regulation (EU) No 575/2013

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,
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 amending Regulation (EU) No 648/2012, and in particular Article 382(6), third subparagraph thereof,

Whereas:

- (1) In accordance with Article 382(2) of Regulation (EU) No 575/2013 an institution shall include in the calculation of own funds required for CVA risk securities financing transactions that are fair-valued under the accounting framework applicable to the institution where the institution's CVA risk exposures arising from those transactions are material. In this regard, it is appropriate to compute the ratio of own funds requirements for CVA risk that would be associated to those transactions if they were included in scope of those capital requirements, and to compare it against a materiality threshold, as this will allow to assess the materiality of the CVA risk exposures arising from fair-valued securities financing transactions vis-à-vis other CVA risk exposures of the institution. In addition, to ensure stability and avoid frequent cliff effects with regard to the inclusion of fair-valued securities financing transactions in scope of the own funds requirements for CVA risk, the ratios referring to the four most recent quarters should be compared against the threshold.
- (2) Institutions are required to determine own funds requirements for CVA risk at least on a quarterly frequency to comply with supervisory reporting requirements. To ensure consistency with the frequency of those calculations, the same frequency should be established for assessing the materiality of CVA risk exposures arising from fair-valued securities financing transactions.
- (3) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority.
- (4) The European Banking Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council,

HAS ADOPTED THIS REGULATION:

Article 1

Conditions and criteria to assess whether the CVA risk exposures arising from fair-valued securities financing transactions are material

The CVA risk exposures arising from fair-valued securities financing transactions are material where the ratio of own funds requirements for CVA risk of fair-valued securities financing transactions to the total own funds requirements for CVA risk, including fair-valued securities financing transactions, is equal to or higher than [1% – 5%] at the current reference date, or was equal to or higher than [the same threshold] at any of the three previous reference dates.

Article 2

Frequency of the assessment of the materiality of CVA risk exposures arising from fair-valued securities financing transactions

The assessment referred to in Article 1 shall be performed on a quarterly basis. The reference dates for that assessment shall be the following: 31 March, 30 June, 30 September and 31 December.

Article 3

Transitional arrangements

The ratio referred to in Article 1 shall be considered lower than [1% – 5%] at any reference date prior to the date of entry into force of this Regulation.

Explanatory box for consultation purposes

The proposed methodology for the assessment of the materiality of CVA risk exposures arising from fair-valued SFTs envisages that at every quarter of the year, the following ratio is determined and compared against the materiality threshold:

$$\text{Ratio} = \frac{\text{CVA risk own funds requirement (fair – valued SFTs)}}{\text{CVA risk own funds requirement (derivatives and fair – valued SFTs)}}$$

The draft RTS envisage that the calculation of the own funds requirement for CVA risk should be performed in accordance with the requirements in the CRR applicable to the institution. Accordingly institutions should employ the relevant approaches and requirements that they would apply if the fair-valued SFTs were included in scope of the CVA own funds requirements irrespective of the materiality of the CVA risk exposures arising from them. This should ensure harmonisation across institutions, and consistency with the approaches and methodology

otherwise used for calculating capital requirements for CVA risk. This also means that fair-valued SFTs that would be excluded from the scope of the own funds requirements for CVA risk because falling under the exemptions in Article 382(3) and (4) of the CRR should not be included in the calculation of the ratio, as they would not attract capital requirements for CVA risk under the CRR (unless the institution chooses to include them in accordance with Article 382(4a) of the CRR). Similarly, the derivatives in scope of the denominator of the ratio are those that are included in scope of the own funds requirements for CVA risk.

In terms of frequency of the assessment, the draft RTS envisage that this is to be performed at the end of every quarter of the year, that is on 31 March, 30 June, 30 September and 31 December, to ensure consistency with the frequency of calculation and reporting of capital requirements for CVA risk for supervisory reporting (COREP). This would mean that, at the end of every reporting quarter, it should be determined the ratio on the basis of the portfolio of transactions that is held at that date, and this is compared against the materiality threshold. If such ratio was lower than the threshold, to exclude the fair-valued SFTs from the scope of the capital requirement for CVA risk, also the three preceding ratios referring to the previous three quarters would each need to be lower than the threshold. It should be noted that the three preceding ratios were determined at the end of the three preceding quarters, hence would not need to be recalculated at the end of the current quarter.

In terms of the ratios to be quantified at the time when the draft RTS will enter into force, a transitional arrangement is introduced whereby quarters that ended prior to the one in which the RTS entered into force will not be considered for the purposes of the materiality assessment.

The materiality threshold is proposed to be set in the range [1% – 5%]. Views from stakeholders is sought on the proposed threshold interval, including on any rationale and evidence supporting their proposal.

Question 1. At which level would you suggest to set the materiality threshold? When providing your answer, please provide any rationale and evidence supporting your proposal.

Question 2. Do you have any additional comments on this consultation paper? If yes, please specify and motivate.

Article 4

Entry into force

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.
Done at Brussels,

*For the Commission
The President*

*[For the Commission
On behalf of the President*

5. Accompanying documents

5.1 Draft cost-benefit analysis / impact assessment

8. Article 382(6) of the CRR mandates the EBA to develop draft RTS to specify the conditions and the criteria that the institutions shall use to assess whether the CVA risk exposures arising from fair-valued securities financing transactions are material, as well as the frequency of that assessment.
9. Article 10(1) of Regulation (EU) No 1093/2010 (EBA Regulation) provides that any RTS developed by the EBA should be accompanied by an analysis of 'the potential related costs and benefits'. This analysis should provide an overview of the findings regarding the problem to be dealt with, the options proposed and the potential impact of these options.
10. This section presents the cost-benefit analysis of the main policy options included in this CP, and an impact assessment of the proposed rules based on data from the Basel III monitoring exercise.

A. Problem identification

11. In accordance with Article 382(2) of the CRR as amended by the CRR3, an institution shall include in the calculation of the own funds requirements for CVA risk the SFTs that are fair-valued under the accounting framework applicable to the institution where the institution's CVA risk exposures arising from those transactions are material. Article 382(6) of the CRR mandates the EBA to develop draft regulatory technical standards (RTS) to specify the conditions and the criteria that the institutions shall use to assess whether the CVA risk exposures arising from fair-valued securities financing transactions are material, as well as the frequency of that assessment.
12. The combined reading of Article 382(2) and (6) of the CRR envisages that an institution shall include in scope of the capital requirements for CVA risk the fair-valued SFTs once the CVA risk exposures arising from them is deemed material in accordance with the draft RTS developed under Article 382(6) of the CRR. The draft RTS included in this document address the mandate in Article 382(6) of the CRR and will accordingly play a role in the determination of whether fair-valued SFTs should be included in scope of the own funds requirements for CVA risk.

B. Policy objectives

13. The objective of the draft RTS included in this consultation paper is to establish a common approach for assessing the materiality of CVA risk exposures arising from fair-valued SFTs, which will determine whether they should be included in scope of the own funds requirements for CVA

risk. In this way, the draft RTS contribute to ensure a consistent implementation of the own funds requirements for CVA risk in the EU.

14. Generally, these draft RTS aim to create a level playing field, promote convergence of institutions practises and enhance comparability of own funds requirements across the EU. Overall, these draft RTS are expected to promote the effective and efficient functioning of the EU banking sector.

C. Options considered, assessment of the options and preferred options

General approach of the assessment of the materiality of CVA risk exposures

15. Regarding the general approach to determine the materiality of the CVA risk exposures arising from fair-valued SFTs, the following options were considered:

Option A. Qualitative approach, that is an approach based on qualitative conditions and criteria.

Option B. Quantitative approach, that is an approach based on quantitative conditions and criteria.

Option C. Mixed qualitative and quantitative approach.

16. Option A may involve less quantitative calculations, hence may reduce the computational burden. However the specification of qualitative criteria for the determination of the materiality of CVA risk exposures arising from SFTs may not allow to objectively measure that risk. In addition, qualitative criteria may lead to different interpretations (with costs linked to these interpretations and to the implementation of the related process), which run against a level playing field across institutions and may be expected to require increased supervisory scrutiny.

17. Option B involves some computational burden, however it allows to quantify the CVA risk arising from fair-valued SFTs. In addition computations may be expected to be performed anyway under a qualitative approach to demonstrate the non-materiality of CVA risk exposures arising from fair-valued SFTs. Option B also ensures a level playing field across institutions given the objective criteria, and it should require lower supervisory scrutiny.

18. Option C is considered more complex, and it is unclear whether qualitative criteria would be necessary in addition to a quantitative assessment. This option would also involve some computational burden and could introduce variability of practices if qualitative criteria were to involve different interpretations. Taking into account these considerations, Option B has been chosen as the preferred option.

Metric employed for the assessment of CVA risk exposures of fair-valued SFTs

19. With regard to the metric to assess the materiality of the CVA risk exposures arising from fair-valued SFTs, the following options were considered:

Option A. Use exposure values of fair-valued SFTs.

Option B. Use own funds requirements for counterparty credit risk arising from fair-valued SFTs.

Option C. Use own funds requirements of CVA risk arising from fair-valued SFTs.

20. Basing the metric on the same nature of risk that is subject of the assessment of the materiality (i.e. the own funds requirements of CVA risk) should be the more relevant alternative taking into account the text of the mandate in Article 382(6) of the CRR. With regard the costs foreseen to produce the calculations under Option C, it is noted that those calculations would in any case be performed for the revised COREP template for CVA risk, since they provide a relevant information for supervisory purposes, as well as raise awareness to institutions regarding their CVA risk exposures to fair-valued SFTs.² Taking these considerations into account, Option C has been chosen as the preferred option.

Ratio to be tested to assess the materiality

21. With regard to the metric to assess the materiality of the CVA risk exposures arising from fair-valued SFTs, the following options were considered:

Option A. Assess the amount of own funds requirements for CVA risk arising from fair-valued SFTs with respect to the total own funds requirements for CVA risk.

Option B. Assess the amount of own funds requirements for CVA risk arising from fair-valued SFTs with respect to the total own funds requirements.

22. Option B would make the assessment dependent on the business model of the institution and the amount of own funds requirements in areas other than CVA risk. On the contrary, under Option A the materiality is assessed with respect to the business subject to CVA risk. While also combinations of the options could be introduced, Option A was considered more in line with the text of the mandate in Article 382(6) of the CRR (which refers to CVA risk exposures). Accordingly, the benefits of Option A were deemed greater than the benefits of Option B. On the costs side, they are supposed to be equivalent for both Options as total own funds requirements for CVA risk and total own funds requirements should be already available to institutions. Based on the above, Option A have been chosen as the preferred option.

² With regard to the determination of CVA own funds requirements associated to fair-valued SFTs, it is noted that this should be straightforward for institutions that apply the Simplified Approach, since for these institutions the own fund requirements for CVA risk are based on the own funds requirements for counterparty credit risk. Institutions that apply the standardised approach (SA-CVA) or the basic approach (BA-CVA) would on the contrary need to run an ad-hoc calculation. However, institutions that apply the standardised approach (SA-CVA) may exclude fair-valued SFTs from the SA-CVA and calculate their CVA capital requirements with the basic approach (BA-CVA), in accordance with Article 382a(3) of the CRR.

Changes of the ratio over time

23. In order to account for the fact that the ratio could change over time, the following options were considered:

Option A. Perform the determination of the materiality based solely on the last determined ratio.

Option B. Perform the determination of the materiality based on the preceding four ratios.

24. Option A could involve some instability and frequent cliff-effects regarding the inclusion/exclusion of fair-valued SFTs in scope of the own funds requirements for CVA risk, and in the amount of those requirements, if the materiality threshold was hit intermittently over consecutive measurements. Option B should on the contrary ensure more stability and avoid consecutive cliff-effects, since past ratios are taken into account for the determination of the materiality.

25. On the costs side, the determination of preceding ratios should not make a difference between Option A or Option B, as anyway they should be computed. Choosing Option B could trigger more costs of capital for some institutions (as there are more chances to be above the threshold given that more than one ratio is tested against the threshold), but the benefits of more stability described above is expected to exceed these costs. Based on the above, option B has been chosen as the preferred option.

Frequency of the assessment

26. With regard to the frequency of the materiality assessment the following options were considered:

Option A. Set a monthly frequency.

Option B. Set a quarterly frequency.

27. In accordance with Article 383(1)(c) and (d) of the CRR, an institution that employs the SA-CVA must be able to calculate at least on a monthly frequency the CVA sensitivities. However, the CRR appears silent regarding the calculation frequency of own funds requirements for CVA risk under the BA-CVA or the simplified approach. Accordingly, to avoid increasing the computational and operational burden – and as such the costs of Option B would be lower than those of Option A – Option B has been chosen, which also ensures consistency with the regular calculation and reporting cycle of own funds requirements by institutions.

D. Level of the threshold on data of the Basel III monitoring exercise

28. Table 1 gives an estimation of the institutions that could be above the materiality threshold, for the institutions that participate in the Basel III monitoring exercise, based on data as of December 2022. For those institutions, the ratio mentioned in the draft RTS was proxied with

the data available from that exercise. In particular, the numerator of the ratio has been set as the own funds requirements for CVA risk associated to fair-valued SFTs³. The denominator has been proxied as the sum of the numerator and the own fund requirements for CVA risk of derivatives under the CRR scope.

Table 1. Estimate of the impact of the materiality threshold for institutions in scope of the Basel III monitoring exercise

	Number of institutions	Proportion of number of institutions	Proportion of number of institutions with ratios
Number of institutions in the sample after basic data quality checks	144		
Number of institutions with ratios	120		
Number of institutions with ratios > 0	25	17%	21%
Number of institutions with ratio falling above the thresholds:			
Threshold = 0.5%	19	13%	16%
Threshold = 1%	19	13%	16%
Threshold = 5%	16	11%	13%
Threshold = 10%	14	10%	12%

Source: Basel III monitoring exercise with data as of December 2022.

29. As described by the figures of Table 1, a threshold set at 1% or 5% would be exceeded by respectively 19 or 16 institutions in the sample (representing 13% or 11% percent of the institutions in the sample, or 16% or 13% of the institutions in the sample that hold fair-valued SFTs or derivatives subject to own funds requirements for CVA risk).

E. Conclusion

30. The draft RTS on CVA risk of SFTs under Article 382(6) of Regulation (EU) No 575/2013 should provide the necessary information for assessing whether the CVA risk exposure arising from fair-valued SFTs are material, as well as the frequency of that assessment with the view of not triggering disproportionate costs for institutions. Overall, the impact assessment on the draft RTS suggests that the expected benefits are higher than the incurred expected costs.

³ SFTs exempted from CVA risk own funds requirements may not have been excluded by institutions to produce such value.

5.2 Overview of questions for consultation

Question 1. At which level would you suggest to set the materiality threshold? When providing your answer, please provide any rationale and evidence supporting your proposal.

Question 2. Do you have any additional comments on this consultation paper? If yes, please specify and motivate.