

## II

(Non-legislative acts)

## REGULATIONS

## COMMISSION DELEGATED REGULATION (EU) 2022/2328

of 16 August 2022

**supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards specifying exotic underlyings and the instruments bearing residual risks for the purposes of the calculation of own funds requirements for residual risks**

(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 <sup>(1)</sup>, and in particular Article 325u(5), fourth subparagraph, thereof,

Whereas:

- (1) The specification of instruments referencing an exotic underlying provided in Article 325u(2), point (a), of Regulation (EU) No 575/2013 is sufficiently clear to allow institutions to identify what an exotic underlying is for the purposes of the calculation of the own funds requirements for residual risks set out in Article 325u. Therefore, no further specification of the meaning of an exotic underlying is necessary.
- (2) In particular, longevity risk, weather, natural disasters and future realised volatility meet the specification of an exotic underlying, in line with the indication provided in the relevant international framework defined by the Basel Committee on Banking Supervision (BCBS).
- (3) The definition of instruments bearing residual risks provided for in Article 325u(2), point (b), of Regulation (EU) No 575/2013, is not sufficiently clear to allow institutions to identify certain instruments bearing residual risks. Therefore, a list of instruments bearing residual risks, albeit non-exhaustive, should be specified to ensure a certain degree of harmonisation and consistency in the treatment of instruments bearing those risks across the Union. The elements of such a list should be selected considering the relevant international BCBS framework. For other instruments with a presumption to bear residual risks, institutions should assess whether those instruments meet the definition set out in Article 325u(2), point (b), of that Regulation.
- (4) Given the non-standard nature of many of the instruments bearing residual risk, a non-exhaustive list of risks which should not in themselves trigger the inclusion of an instrument under the definition of instruments bearing residual risks should also be specified in order to provide greater legal certainty and transparency. However, institutions should assess whether an instrument exposed to those risks could still be considered as an instrument exposed to residual risk if the instrument meets one of the other conditions referred to in Article 325u(2) of Regulation (EU) No 575/2013.

<sup>(1)</sup> OJ L 176, 27.6.2013, p. 1.

- (5) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority.
- (6) 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 <sup>(2)</sup>.

HAS ADOPTED THIS REGULATION:

*Article 1*

**Specification of exotic underlyings**

Longevity risk, weather, natural disasters and future realised volatility shall be considered as exotic underlyings for the purposes of Article 325u(2), point (a), of Regulation (EU) No 575/2013.

*Article 2*

**Specification of instruments bearing residual risks**

The instruments listed in the Annex to this Regulation shall be considered as instruments meeting the conditions set out in Article 325u(2) of Regulation (EU) No 575/2013 and constituting instruments bearing residual risks.

*Article 3*

**Specification of instruments without presumption of bearing residual risks**

An instrument shall not be considered as meeting the conditions set out in Article 325u(2), points (b)(i) and (ii) of Regulation (EU) No 575/2013 solely on the grounds that it bears one or more of the following risks:

- (a) risk arising from transactions where the delivery obligation can be fulfilled within a range of deliverable instruments and where the counterparty has the possibility to deliver the least valuable of those instruments;
- (b) risk of a change in the implied volatility of an instrument with optionality, relative to the implied volatility of other instruments with optionality with the same underlying and maturity, but different moneyness;
- (c) correlation risk arising from an index option, where the index meets the conditions set out in Article 325i(3) of Regulation (EU) No 575/2013;
- (d) correlation risk arising from an option in a collective investment undertaking tracking an index benchmark, where the tracking meets the conditions set out in Article 325j(2) of Regulation (EU) No 575/2013 and the index meets the conditions set out in Article 325i(3) of that Regulation;
- (e) dividend risk arising from a derivative instrument whose underlying does not consist solely of dividend payments.

*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*.

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<sup>(2)</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).

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

Done at Brussels, 16 August 2022.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

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## ANNEX

**List of instruments bearing residual risks referred to in Article 2**

The instruments referred to in Article 2 shall be any of the following:

1. options where the pay-offs depend on the path followed by the price of the underlying asset and not just its final price on the exercise date;
2. options that start at a predefined date in the future and whose strike price is not yet determined at the time at which the option is in the trading book of the institution;
3. options whose underlying is another option;
4. options with discontinuous pay-offs;
5. options allowing the holder to modify the strike price or other terms of the contract before the maturity of the options;
6. options that can be exercised on a finite set of predetermined dates;
7. options whose underlying is denominated in one currency but whose pay-offs are settled in a different currency, with a predetermined exchange rate between the two currencies;
8. multi-underlying options, excluding those referred to in Article 3, points (c) and (d);
9. options subject to behavioural risk, only where all of the following conditions are met:
  - (a) the option lies with a retail client;
  - (b) a significant amount of these options are held in the trading book;
  - (c) the behavioural risk of these options is assessed by the institution to be material.

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