

## II

(Non-legislative acts)

## REGULATIONS

## COMMISSION DELEGATED REGULATION (EU) 2022/76

of 22 September 2021

**supplementing Regulation (EU) 2019/2033 of the European Parliament and of the Council with regard to regulatory technical standards specifying adjustments to the K-factor 'daily trading flow' (K-DTF) coefficients**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 <sup>(1)</sup>, and in particular the third subparagraph of Article 15(5) in conjunction with point (c) of Article 15(5) thereof,

Whereas:

- (1) The daily trading flow (DTF) is calculated based on the volume of transactions. Circumstances leading to higher trading volumes may therefore force investment firms dealing on own account, including market makers, to reduce their trading activities. This may lead to a risk of reduced market liquidity, with potential detriments to financial stability. Consequently, as a result of those circumstances, the K-DTF coefficients should be adjusted in a way that does not disincentivise trading activities. Where circumstances lead to lower trading volume, those considerations do not apply and therefore, the adjustments to the K-DTF coefficients should be based only on the trades volumes occurring during periods of high volatility.
- (2) If the K-DTF requirements in stressed market conditions are overly restrictive and detrimental to financial stability, the coefficient referred to in Article 15(2) of Regulation (EU) 2019/2033 should be adjusted to be smaller than the one provided in Table 1 of that Article, in order to avoid making the K-DTF a disincentive to trading.
- (3) Given that point (c) of Article 15(5) of Regulation (EU) 2019/2033 refers to stressed market conditions as referred to in Commission Delegated Regulation (EU) 2017/578 <sup>(2)</sup>, the start and end time of the periods of stressed market conditions should be in line with Article 6(2) of Delegated Regulation (EU) 2017/578 on the identification of stressed market conditions by a trading venue.

<sup>(1)</sup> OJ L 314, 5.12.2019, p. 1.

<sup>(2)</sup> Commission Delegated Regulation (EU) 2017/578 of 13 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying the requirements on market making agreements and schemes (OJ L 87, 31.3.2017, p. 183).

- (4) For the purposes of calculating the adjusted K-DTF, stressed market conditions should cover cases where short-term changes in trading volume and price have a significant impact for the calculation for the K-DTF. As stressed market conditions may last for an indeterminate period of time, including periods as short as a few minutes, the adjusted coefficients should be capable of reflecting the value of the daily trading flow that takes place during periods of any different duration.
- (5) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority after having consulted the European Securities and Markets 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>(3)</sup>,

HAS ADOPTED THIS REGULATION:

#### Article 1

##### Adjustments to the K-DTF coefficients

1. The adjustments to the K-DTF coefficients referred to in Table 1 of Article 15(2) of Regulation (EU) 2019/2033 shall in the event that in stressed market condition as referred to in Delegated Regulation (EU) 2017/578 the K-DTF requirements seem overly restrictive and detrimental to financial stability as referred to in point (c) of Article 15(5) of Regulation (EU) 2019/2033, be determined using the following formula:

(a) for the coefficient of the K-DTF cash trades:

$$C_{adj} = C * (DTF_{excl}/DTF_{incl})$$

where:

$C_{adj}$  = adjusted coefficient

$C$  = coefficient in Table 1 of Article 15(2) of Regulation (EU) 2019/2033

$DTF_{excl}$  = the DTF of cash trades measured in accordance with Article 33 of Regulation (EU) 2019/2033, excluding the value of any cash trade that occurred during a stressed market condition as referred to in Article 2; and

$DTF_{incl}$  = the DTF of cash trades measured in accordance with Article 33 of Regulation (EU) 2019/2033, including the value of any cash trade that occurs during a stressed market condition as referred to in Article 2.

(b) for the coefficient of the K-DTF derivatives:

$$C_{adj} = C * (DTF_{excl}/DTF_{incl})$$

where:

$C_{adj}$  = adjusted coefficient

$C$  = coefficient in Table 1 of Article 15(2) of Regulation (EU) 2019/2033

$DTF_{excl}$  = the DTF of derivatives measured in accordance with Article 33 of Regulation (EU) 2019/2033, excluding the value of any derivatives trade that occurred during a stressed market condition as referred to in Article 2; and

$DTF_{incl}$  = the DTF of derivatives measured in accordance with Article 33 of Regulation (EU) 2019/2033, including the value of any derivatives trade that occurs during a stressed market condition as referred to in Article 2.

<sup>(3)</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).

The calculation of DTfexcl shall include only the value of daily trading flow that relates to financial instruments or underlyings of financial instruments traded on a trading segment within the relevant trading venue during an event for which a stressed market condition has been deemed to occur by that trading venue.

*Article 2*

**Period of stressed market condition**

For the purposes of Article 1, an event of stressed market condition means a situation where the parameters referred to in Article 6(2) of Delegated Regulation (EU) 2017/578 are met and where those stressed market conditions lead to increased trading volumes.

The start and end time of an event of stressed market condition shall be the time which the trading venue has identified in accordance with Article 6(2) of Delegated Regulation (EU) 2017/578.

*Article 3*

**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, 22 September 2021.

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

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