EBA/GL/2015/05

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Guidelines

on the determination of when the liquidation of assets or liabilities under normal insolvency proceedings could have an adverse effect on one or more financial markets under Article 42(14) of Directive 2014/59/EU

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Status of these guidelines

This document contains guidelines issued pursuant to Article 16 of 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 ('the EBA Regulation'). In accordance with Article 16(3) of the EBA Regulation, competent authorities and financial institutions must make every effort to comply with the guidelines.

Guidelines set out the EBA's view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. The EBA therefore expects all competent authorities and financial institutions to which guidelines are addressed to comply with guidelines. Competent authorities to which guidelines apply should comply by incorporating them into their supervisory practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

Reporting requirements

Pursuant to Article 16(3) of the EBA Regulation, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise provide reasons for non-compliance, by 07.10.2015. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form provided in Section 5 to compliance@eba.europa.eu with the reference 'EBA/GL/2015/05'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities.

Notifications will be published on the EBA website, in line with Article 16(3).

Title I - Subject matter, scope and definitions

1. The guidelines promote the convergence of supervisory and resolution practices in accordance with Article 42(5) of Directive 2014/59/EU regarding the determination of when the liquidation of assets or liabilities under normal insolvency proceedings could have an adverse effect on the financial market.

2. The guidelines apply to resolution authorities.

Title II - Adverse effect of the liquidation of assets or liabilities on the financial market

3. When assessing whether the market for certain assets or liabilities is of such a nature that the liquidation of these assets under normal insolvency proceedings could have an adverse effect on one or more financial markets, resolution authorities should assess the situation of the market for these assets, and the impact of a disposal of these assets on the markets where they are traded and on financial stability. However, resolution authorities should not assume a deterioration in the quality of the assets concerned or dysfunctional markets as necessary requirements for the conclusion that the liquidation could have an adverse effect on one or more financial markets.

4. Resolution authorities should assess at least the following elements, taking into account the urgency of the resolution action:

   (a) whether the market for these assets is impaired, based on the following indicators:

      (i) the development of the liquidity of the markets for these assets or comparable asset classes;

      (ii) whether these assets or comparable asset classes have been classified as impaired for accounting purposes and whether provisions have been set up by institutions in respect of these assets;

      (iii) incurred losses and unstable cash flows under these assets;

      (iv) downward value adjustments of the assets or corresponding price developments of associated hedges or comparable asset classes;

      (v) high volatility in prices compared to the market in general, in particular uncommonly high price differences between different markets that typically show an identical development;

      (vi) reduction of share prices and deterioration of ratings and refinancing conditions of institutions holding high amounts of these assets, compared to the rest of the market;

(b) the impact of a disposal of these assets on the markets where they are traded, taking into account:

  (i) the size of the markets concerned and the range of potential purchasers;

  (ii) the impact the liquidation of the assets is expected to have on prices for comparable asset prices;

  (iii) the expected timeframe for the liquidation of the assets under normal insolvency proceedings, including a potential accelerated distress sale;

(c) the situation of the financial markets and the direct or indirect effects of a disposal of these assets, taking into account:

  (i) the risk of a systemic crisis, as evident from the number, size or significance of institutions that are at risk of meeting the conditions for early intervention or the resolution conditions or at risk of undergoing an insolvency procedure, or as evident from public financial support to institutions or extraordinary liquidity facilities provided by central banks;

  (ii) whether the sale of the assets or an impairment of markets can result in contagion, in particular with regard to the amount of assets or comparable asset classes held by institutions, or where these holdings are valued at market prices;

  (iii) a reduction in or an increase in prices of short- or medium-term funding available to institutions;

  (iv) an impairment to the functioning of the interbank funding market, as particularly apparent from an increase in margin requirements, a decrease in ratings of institutions and a decrease in collateral available to institutions.

5. The elements listed in the paragraph above are without prejudice to further elements, the assessment of which resolution authorities will deem relevant in each specific case having regard to the particular circumstances.

6. Where the resolution authority is considering the transfer of assets and liabilities, in particular a portfolio of derivatives or trading assets and liabilities, that are legally or economically interlinked, the resolution authority should assess the elements under paragraph 3 also with respect to the portfolio as a whole and to comparable portfolios. In addition, the resolution authority should assess the impact that unwinding the portfolio could have on the financial markets, taking into account the effect on counterparties to these assets and liabilities, such as the discontinuance of hedging relations and the need to find a replacement for them, or the impact on or special requirements of central counterparties.

Title III - Final provisions and implementation

These guidelines shall apply as of 1 August 2015.

These guidelines should be reviewed by 31 July 2017.