

Q&A

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359

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Guidelines on classification of own funds

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308

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Question

I seek further clarification following EIOPA's response to the question on whether dividend pushers also have the effect of preventing an undertaking's equity from being classified as Tier 1 own-funds.

Do dividend pushers in new non-transitioned Solvency II Tier 2 own-fund instruments impinge on the "full flexibility" over distributions that is required for shareholders' equity to be classified as Tier 1 own-funds?

EIOPA answer

The statement that you quote from Q&A #4 is a general statement about the application of the transitional measures, i.e. that any Solvency II restrictions do not affect whether an existing own-fund item qualifies under the transitional measures, which is governed primarily by Article 308b of the Directive. The reference to dividend stoppers and pushers is only illustrative as examples of features whose use will be restricted under Solvency II.

On the specific Solvency II treatment of pushers: a pusher is a feature which

requires payment on the own-fund item in the event of a distribution on another own-fund item within a specified period of time.

Such pusher features are prohibited for Tier 1 own-fund items by the full flexibility criteria set out in Article 71(1)(n) of Commission Delegated Regulation 2015/35 and further specified in Guideline 4, para 1.25(e) and Guideline 5, para 1.32(a). For Tier 2 and Tier 3 own-fund items undertaking are not required to have full flexibility over distributions (there is no comparative requirement in Articles 73 and 77 of Commission Delegated Regulation 2015/35). However, Tier 2 and Tier 3 items must allow for the mandatory deferral of distributions as set out in Articles 73(1)(g) and 77(1)(g) of Commission Delegated Regulation 2015/35 and further specified in Guideline 10, para 1.49(b) and Guideline 11, para 1.56(b).

Therefore, for Tier 2 and Tier 3 items, a dividend pusher is not prohibited, but it would need to operate in such a way so as not to undermine the criteria relating to the deferral of distributions.

Whilst not required by Solvency II, the contractual arrangements of a capital instrument may allow the undertaking to cancel or defer payments on Tier 2 or Tier 3 items, even though they are not in breach of their SCR or MCR. This is an “optional” cancellation or deferral.

A dividend pusher in a Solvency II compliant instrument appears to be limited to such cases of “optional” cancellation or deferral of a distribution for a Tier 2 or Tier 3 instrument.

