

<b>Question ID</b>	2021_6316
<b>Status</b>	Final Q&A
<b>Legal act</b>	Regulation (EU) No 2019/2033 (IFR)
<b>Topic</b>	K-factor requirements
<b>Article</b>	4
<b>Paragraph</b>	1
<b>Subparagraph</b>	30
<b>COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations</b>	Not applicable
<b>Article/Paragraph</b>	Draft RTS to specify the methods for measuring the K-factors (Article 15(5) point (a) of the IFR) / Section 1 / Article 7 / 2
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<b>Disclose name of institution / entity</b>	Yes
<b>Name of institution / submitter</b>	Autorité de Contrôle Prudentiel et de Résolution (ACPR)
<b>Country of incorporation / residence</b>	FRANCE
<b>Type of submitter</b>	Competent authority
<b>Subject matter</b>	Scope of COH definition under IFR
<b>Question</b>	Are pure intermediation transactions processed in name give-up taken into account in the K-COH calculations?
<b>Background on the question</b>	For the purpose of calculating K-COH, COH shall be the rolling average of the value of the total daily client orders handled. In accordance with Article 20 of Regulation (EU) 2019/2033 where an investment firm is receiving and transmitting a client order, such an order shall be included at the point at which the investment firm transmits the order to another investment firm or executing broker. COH shall exclude transactions handled by the investment firm that arise from the servicing of a client's investment portfolio where the investment firm already calculates K-AUM in respect of that client's investments or where that activity relates to the delegation of management of assets to the investment firm not contributing to the AUM of that

investment firm by virtue of Article 17(2) IFR. COH shall exclude transactions executed by the investment firm in its own name either for itself or on behalf of a client. Investment firms may exclude from the measurement of COH any orders which have not been executed, where such non-execution is due to the timely cancellation of the order by the client. Through the name give-up brokerage model, an investment firm (the broker) takes on an arranging role in a transaction between two or more counterparties. The broker, through price dissemination, distributes quotes to other market participants showing both price and volume. Once the trade price, volume and terms have been agreed, the counterparties' names are disclosed and the broker steps away from the transaction. Bilateral agreements are then enforced between the counterparties and the broker invoices its brokerage fee. Therefore, it is not a question of receiving an order and transmitting it to another broker, which is the main purpose of K-COH. Based on the article 7(2) of the Draft RTS to specify the methods for measuring the K-factors, "An investment firm shall not include orders received and transmitted in the measurement of COH where it is bringing together two or more investors to bring about a transaction between those investors, such as in the case of corporate finance or private equity transactions". Even if the end of the sentence in the RTS starts with "such as", which indicates that the services offered in corporate finance/private equity are only non-limiting examples, could we consider that "name give-up" brokerage services are therefore not within the scope of K-COH?

**Final answer**

The following elements should be taken into account:

1. Article 4(1), point (30), of Regulation (EU) 2019/2033 (IFR) defines 'client orders handled' (COH) as the value of orders that an investment firm handles for clients, through the reception and transmission of client orders and through the execution of orders on behalf of clients.
2. To avoid double counting, Article 7(2) of the Commission Delegated Regulation (EU) 2022/25 states "that an investment firm shall not include orders received and transmitted in the measurement of COH where it is bringing together two or more investors to bring about a transaction between those investors, such as in the case of corporate finance or private equity transactions".
3. Article 20(2), sixth subparagraph of the IFR states that transactions that are executed by the investment firm in its own name, must be included in the calculation of the Daily Trading Flow (DTF) and excluded from the COH calculation.

The question of the inclusion of orders related to a 'name give up' activity in the measurement of COH therefore depends on whether this type of activity falls under one of the above-mentioned provisions. As this depends on how the transaction is carried out, the COH calculation should be performed as follows:

1. Where the investment firm receives, transmits or executes orders in relation to the transaction on behalf of the counterparties, that transaction has to be included in the COH calculation (Art. 4(1)(30) of the IFR).
2. If the investment firm takes on an arranging role in a transaction between two or more counterparties, bringing their interests together, but without any reception, transmission or execution of orders in relation to the transaction on behalf of the counterparties, that activity should not be included in the COH calculation.
3. If a transaction is executed by the investment firm in its own name, that transaction should be excluded from the COH calculation in accordance with Article 20(2), sixth subparagraph of the IFR.

**Link**

[https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2021\\_6316](https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2021_6316)

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