

Single Rulebook Q&A

Question ID	2013_37
Status	Final Q&A
Legal act	Regulation (EU) No 575/2013 (CRR)
Topic	Supervisory reporting - COREP (incl. IP Losses)
Article	99
Paragraph	1
Subparagraph	-
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Regulation (EU) No 680/2014 - ITS on supervisory reporting of institutions (repealed)
Article/Paragraph	N/A
Date of submission	05/07/2013
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Disclose name of institution / entity	No
Type of submitter	Competent authority
Subject matter	Applicability of Own Funds Reporting Requirements to Investment Firms Out of Scope
Question	Should the reporting requirements of Regulation (EU) No 575/2013 (CRR) for institutions be interpreted to include reference to both investment firms and firms referred to in point (2)(c) of Article 4(1) that provide the investment services and activities listed in points (2) and (4) of Section A of Annex 1 to Directive 2004/39/EC that are excluded from the definition of investment firm, yet subject to Pillar 1 capital requirements under Article 95(2)?
Background on the question	Article 4 (1) (2) of Regulation (EU) No 575/2013 (CRR) defines the term 'investment firm' and specifically excludes certain firms - referred to in Article 4 (1) (2) (c) - from this definition. Certain of these excluded firms are however subject to Pillar 1 capital requirements under Article 95 (2) which imposes capital requirements on both certain investment firms and 'firms referred to in point (2) (c) of Article 4 (1) that provide the investment services and activities listed in points (2) and (4) of Section A of Annex 1 to Directive 2004/39/EC'. There is a discretion in Article 95 to continue to apply existing CRD own funds requirement to these 'excluded' firms instead of the new Pillar 1 capital requirements, however if that discretion is not exercised,

	<p>a question arises in relation to the requirement on these 'excluded' firms to report information on their capital adequacy position under the new rules. Article 99 (1) imposes the requirement to report COREP information on all 'institutions' (i.e. credit institutions and investment firms as defined under the CRR), however it does not refer to those firms excluded from the definition of investment firm, yet subject to Pillar 1 capital requirements under Article 95(2).</p>
Final answer	<p>In accordance with point (2)(c) of Article 4(1), certain entities are excluded from the definition of investment firm. Since Regulation (EU) 575/2013 is applicable to investment firms it follows that those entities are not within the scope of that Regulation. The only exception to this is Article 95(2), where those entities are explicitly scoped in for the purpose of the calculation of own funds requirements. Where a Member State wishes to subject those entities to requirements other than own funds requirements, such as reporting, it has to do so through national legislation.</p> <p><u>DISCLAIMER:</u></p> <p>This question goes beyond matters of consistent and effective application of the regulatory framework. A Directorate General of the Commission (Directorate General for Internal Market and Services) has prepared the answer, albeit that only the Court of Justice of the European Union can provide definitive interpretations of EU legislation. This is an unofficial opinion of that Directorate General, which the European Banking Authority publishes on its behalf. The answers are not binding on the European Commission as an institution. You should be aware that the European Commission could adopt a position different from the one expressed in such Q&As, for instance in infringement proceedings or after a detailed examination of a specific case or on the basis of any new legal or factual elements that may have been brought to its attention.</p>
Link	<p>https://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2013_37</p>

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