

Question ID	2013_76
Status	Final Q&A
Legal act	Regulation (EU) No 575/2013 (CRR)
Topic	Other issues
Article	95
Paragraph	2
Subparagraph	-
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	N/A
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Disclose name of institution / entity	No
Type of submitter	Investment firm
Subject matter	Application of article 95 (2) of Regulation (EU) No 575/2013
Question	<p>Shall firms referred to in point (2)(c) of Article 4(1) of the CRR meet the requirements in Article 92(1) and (2) based on the total risk exposure amount referred to in Article 95(2) if they: - provide both the investment services and activities listed in points (2) and (4) of Section A of Annex I to Directive 2004/39/EC? or - provide one or both of the investment services and activities listed in points (2) and (4) of Section A of Annex I to Directive 2004/39/EC?</p>
Background on the question	<p>Take an investment firm domiciled in one Member State that provides: 1) portfolio management services (point (4) of Section A of Annex I to Directive 2004/39/EC); 2) ancillary foreign exchange services connected to the provision of portfolio management services (point (4) of Section B of Annex I to Directive 2004/39/EC). The company is not authorised to provide the ancillary service referred to in point (1) of Section B of Annex I to Directive 2004/39/EC, i.e. safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management. Nor is the company is authorised to provide services referred to in point (2) of Section A of Annex I to Directive 2004/39/EC (execution of orders on behalf of clients) although when</p>

	providing portfolio management services it places orders on the market in the name of its client on the basis of powers of attorney.
Final answer	<p>The condition set out in the second sub-paragraph of Article 95(2) of Regulation (EU) No 575/2013 (CRR) applies to investment firms that provide any of the services listed in points (2) and (4) of Section A of Annex I to Directive 2004/39/EC. In other words, a firm that only provides services listed in point (4) is still subject to the requirement laid down in the aforementioned sub-paragraph.</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	https://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2013_76

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