

Single Rulebook Q&A

Question ID	2013_668
Status	Final Q&A
Legal act	Regulation (EU) No 575/2013 (CRR)
Topic	Market risk
Article	305
Paragraph	2, 3
Subparagraph	a
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	N/A
Date of submission	17/12/2013
Published as Final Q&A	23/05/2014
Disclose name of institution / entity	Yes
Name of institution / submitter	AFME - Association for Financial Markets in Europe
Country of incorporation / residence	UK
Type of submitter	Industry association
Subject matter	Conditions for application of 4% risk weight
Question	Please confirm that the criteria in Article 305(2)(a) is met with gross omnibus segregation solutions that provide the same level of segregation as individual segregation (e.g. account segregation with asset-tagging, where good individual asset attribution yields the same results as individual segregation).
Background on the question	Article 305(2)(a) and Article 305(3) together provide the risk weights for segregation, replacing (under certain circumstances) the 2% risk weight in Article 306 with 4% risk weight. We believe that Legal Segregation with Operation Comingling, for example, meets the criteria in Article 305(2)(a).
Final answer	Article 305, together with Article 306 of Regulation (EU) No. 575/2013 (CRR), allow a preferential treatment for client exposures towards a QCCP provided certain eligibility criteria are fully or partially met. Article 305(2)(a)

contains a core criteria that explicitly requests that:

"the positions and assets of that institution related to those transactions are distinguished and segregated, at the level of both the clearing member and the CCP, from the positions and assets of both the clearing member and the other clients of that clearing member and as a result of that distinction and segregation those positions and assets are bankruptcy remote in the event of the default or insolvency of the clearing member or one or more of its other clients;"

Therefore, the CRR clearly requires use of a clearing account that provides at least an equivalent level of client protection as individual client segregation. In order to benefit from the 2% risk weight the client must not be exposed to risk arising other than from its own positions and assets. If the client is exposed to a double default of its clearing member and another client, or to a loss of value of other clients' collateral, then it should not benefit from the 2% weighting. 'Asset-tagging' or 'good individual asset attributions' do not necessarily guarantee this condition nor the other conditions laid down in Article 305(2) of the CRR in practice.

In the instance where a client faces fellow client risk, as described in Article 305(3) of the CRR, where an institution that is a client is not protected from losses in the case that the clearing member and another client of the clearing member jointly default, they may benefit from the 4% risk weight so long as all other conditions of Article 305(2) are met. This would also include the condition that the positions and assets of that institution related to their CCP-related transactions are still distinguished and segregated at the level of both the clearing member and CCP, from the positions and assets of both the clearing member and the other clients of that clearing member. Following this, gross omnibus segregation (legal segregation & operational comingling) may be an acceptable level of segregation for institutions if they can demonstrate to offer the aforementioned level of protection.

Where the conditions of Article 305(2) or (3) of the CRR are not met, the institution shall calculate the own funds requirements in accordance with Article 305(1).

Link

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