

Single Rulebook Q&A

Question ID	2014_1102
Status	Final Q&A
Legal act	Regulation (EU) No 575/2013 (CRR)
Topic	Market risk
Article	305
Paragraph	2
Subparagraph	c
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	Clarification regarding the legal opinion mentioned in Article 305 of Regulation (EU) No 575/2013 (CRR)
Question	<p>Is it correct to assume that the specific legal opinion mentioned as a prerequisite in Article 305(2)(c) CRR only needs to confirm that the other prerequisites 'individual client segregation' in Art 305(2)a) and the facilitation of the portability of client assets under Art 305(2)(b) are in place and fulfilled (in a sense that the respective legal position of the client is enforceable under respective law(s)), or does the legal opinion need to address additional legal questions beyond that scope? In the latter case what kind of legal questions beyond Art 305(2)(a) and (b) would such legal opinion need to address?</p>
Background on the question	<p>Art. 305(2)(c) requires a client to obtain a legal opinion which needs to address a very general question (under potentially various jurisdictions) which in the opinion of many lawyers is too vague to be satisfactorily answered in such a general sense. Consequently if the scope of the legal opinion would go beyond the fact that segregation and portability are in place then such legal opinions would potentially need to be produced under various caveats resulting in a very broad and general statement which would very much impact the significance of the legal opinion while</p>

	disproportionally inflating the costs of creating it.
Final answer	<p>While the legal opinion has to conclude what is explicitly required under Article 305(2)(c) of Regulation (EU) No. 575/2013, the focus should indeed be on the segregation and portability arrangements entered into by the client (i.e. that the conditions in points (a) and (b) of Article 305(2) are fulfilled), including the effectiveness/enforceability of those arrangements.</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>
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