

Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (Text with EEA relevance)

PART THREE

CAPITAL REQUIREMENTS

TITLE I

GENERAL REQUIREMENTS, VALUATION AND REPORTING

CHAPTER 1

Required level of own funds

Section 2

Own funds requirements for investment firms with limited authorisation to provide investment services

Article 95

Own funds requirements for investment firms with limited authorisation to provide investment services

1 For the purposes of Article 92(3), investment firms that are not authorised to provide the investment services and activities listed in points (3) and (6) of Section A of Annex I to Directive 2004/39/EC shall use the calculation of the total risk exposure amount specified in paragraph 2.

2 Investment firms referred to in paragraph 1 of this Article 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 I to Directive 2004/39/EC shall calculate the total risk exposure amount as the higher of the following:

- a the sum of the items referred to in points (a) to (d) and (f) of Article 92(3) after applying Article 92(4);
- b 12,5 multiplied by the amount specified in Article 97.

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 I to Directive 2004/39/EC shall meet the requirements in Article 92(1) and (2) based on the total risk exposure amount referred to in the first subparagraph.

Competent authorities may set the own fund requirements for 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 I to Directive 2004/39/EC as the own

fund requirements that would be binding on those firms according to the national transposition measures in force on 31 December 2013 for Directives 2006/49/EC and 2006/48/EC.

3 Investment firms referred to in paragraph 1 are subject to all other provisions regarding operational risk laid down in Title VII, Chapter 3, Section II, Sub-section 1 of Directive 2013/36/EU.

Article 96

Own funds requirements for investment firms which hold initial capital as laid down in Article 28(2) of Directive 2013/36/EU

1 For the purposes of Article 92(3), the following categories of investment firm which hold initial capital in accordance with Article 28(2) of Directive 2013/36/EU shall use the calculation of the total risk exposure amount specified in paragraph 2 of this Article:

- a investment firms that deal on own account only for the purpose of fulfilling or executing a client order or for the purpose of gaining entrance to a clearing and settlement system or a recognised exchange when acting in an agency capacity or executing a client order;
- b investment firms that meet all the following conditions:
 - (i) that do not hold client money or securities;
 - (ii) that undertake only dealing on own account;
 - (iii) that have no external customers;
 - (iv) for which the execution and settlement whose transactions takes place under the responsibility of a clearing institution and are guaranteed by that clearing institution.

2 For investment firms referred to in paragraph 1, total risk exposure amount shall be calculated as the sum of the following:

- a points (a) to (d) and (f) of Article 92(3) after applying Article 92(4);
- b the amount referred to in Article 97 multiplied by 12,5.

3 Investment firms referred to in paragraph 1 are subject to all other provisions regarding operational risk laid down in Title VII, Chapter 3, Section II, Sub-section 1 of Directive 2013/36/EU.

Article 97

Own Funds based on Fixed Overheads

1 In accordance with Articles 95 and 96, an investment firm 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 I to Directive 2004/39/EC shall hold eligible capital of at least one quarter of the fixed overheads of the preceding year.

2 Where there is a change in the business of an investment firm since the preceding year that the competent authority considers to be material, the competent authority may adjust the requirement laid down in paragraph 1.

3 Where an investment firm has not completed business for one year, starting from the day it starts up, an investment firm shall hold eligible capital of at least one quarter of the fixed overheads projected in its business plan, except where the competent authority requires the business plan to be adjusted.

4 EBA in consultation with ESMA shall develop draft regulatory technical standards to specify in greater detail the following:

- a the calculation of the requirement to hold eligible capital of at least one quarter of the fixed overheads of the previous year;
- b the conditions for the adjustment by the competent authority of the requirement to hold eligible capital of at least one quarter of the fixed overheads of the previous year;
- c the calculation of projected fixed overheads in the case of an investment firm that has not completed business for one year.

EBA shall submit those draft regulatory technical standards to the Commission by 1 March 2014.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 98

Own funds for investment firms on a consolidated basis

1 In the case of the investment firms referred to in Article 95(1) in a group, where that group does not include credit institutions, a parent investment firm in a Member State shall apply Article 92 at a consolidated level as follows:

- a using the calculation of total risk exposure amount specified in Article 95(2);
- b own funds calculated on the basis of the consolidated situation of the parent investment firm or that of the financial holding company or mixed financial holding company, as applicable.

2 In the case of investment firms referred to in Article 96(1) in a group, where that group does not include credit institutions, a parent investment firm in a Member State and an investment firm controlled by a financial holding company or mixed financial holding company shall apply Article 92 on a consolidated basis as follows:

- a it shall use the calculation of total risk exposure amount specified in Article 96(2);
- b it shall use own funds calculated on the basis of the consolidated situation of the parent investment firm or that of the financial holding company or mixed financial holding company, as applicable, and in compliance with Chapter 2 of Title II of Part One.