

MiFID II – Application and notification user guide



January 2017

Contents

	Abbreviations used in this document	3
	1 About this guide	5
	2 Key changes	9
	3 Investment Firms	12
	4 Fees	19
	5 Article 3 MiFID exempt firms	21
	6 Approved Persons	23
	7 Structured deposits	27
	8 Passport Notifications and Tied Agents	29
	9 Data Reporting Services Providers (DRSPs)	35
	10 Market Data Processor (MDP) on-boarding and market data reporting	37
	11 Trading Venues and Systematic Internalisers	40
	12 Transparency waivers and deferrals	45
	13 Commodity regime	49
	14 Non-discriminatory clearing access for financial instruments	51
	Annexes	
	1 Notification Table	53
	2 Authorisation application process and forms	62
	3 Technical standards under MiFID II and MiFIR	80
	4 Prudential Categorisations	82

You should direct any questions you may have about the impact of this guide on your firm's business to the Firms' Contact Centre (FCC):

Firm Contact Centre
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Telephone: 0300 500 0597 or +44 207 066 1000 from abroad
E-mail: firm.queries@fca.org.uk

Any general questions on this guide should be addressed to:

MiFID Coordination
Markets Policy Department
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Telephone: 020 7066 9758
Email: MiFIDII@fca.org.uk

All our publications are available to download from www.fca.org.uk. If you would like to receive this paper in an alternative format, please call 020 7066 9644 or email: publications_graphics@fca.org.uk or write to: Editorial and Digital team, Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS

Abbreviations used in this document

AIFM	Alternative Investment Fund Manager
APA	Approved Publication Arrangement
ARM	Approved Reporting Mechanism
CCP	Central Counterparty
COLS	Change of legal status
Commission	European Commission
CRD	Capital Requirements Directive
CTP	Consolidated Tape Provider
DRSP	Data Reporting Service Provider
EEA	European Economic Area
ESMA	European Securities and Markets Authority
ETD	Exchange Traded Derivative
EU	European Union
FCC	Firm Contact Centre
FIRDS	Financial Instrument Reference Data System
FSMA	Financial Services and Markets Act 2000
HFT	High Frequency Trading
IF	Investment Firm
ITE	Industry Test Environment
ITS	Implementing Technical Standard

OTF	Organised Trading Facility
MAR	Market Conduct Sourcebook
MDP	Market Data Processor
MiFID	Markets in Financial Instruments Directive
MiFIR	Markets in Financial Instruments Regulation
MIS	Market Interface Specification
MTF	Multilateral Trading Facility
RIE	Recognised Investment Exchange
RM	Regulated Market
RRRs	FSMA (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001
RTS	Regulatory Technical Standard
RAO	Regulated Activities Order
SI	Systematic Internaliser
SME Growth Market	Small and Medium- Sized Enterprise Growth Market
SMR	Senior Managers Regime
TDM	Trade Data Monitor
The Treasury	Her Majesty's Treasury
TREM	Transaction Reporting Exchange Mechanism
VoP	Variation of Permission

1. About this guide

Background

- 1.1** The Markets in Financial Instruments Directive (MiFID) became law in the UK in November 2007. It was designed to encourage competition between Europe's trading venues for financial instruments. It also aimed to ensure appropriate levels of protection for investors and consumers of investment services across the European Union (EU).
- 1.2** The European Commission (Commission) reviewed MiFID after the 2008 financial crisis and concluded that change was needed, setting out four objectives for MiFID II to:
- strengthen investor protection
 - reduce the risks of a disorderly market
 - reduce systemic risks
 - increase the efficiency of financial markets and reduce unnecessary costs for participants
- 1.3** MiFID II applies from 3 January 2018, and will deliver some important changes to the scope of regulation in the UK. It introduces new processes for authorising investment firms and will require investment firms and others to make a range of notifications. As a result, it will have a significant impact for a range of authorised persons, recognised investment exchanges, and some currently unauthorised businesses. MiFID II includes:
- The Directive (MiFID – 2014/65/EU) revises and expands the existing directive. The UK has to decide how to change its laws and regulations to give effect to its provisions and to consult on the changes.
 - The Regulation (MiFIR – 600/2014/EU) is a binding legislative act which directly applies across the EU. Its aim is to harmonise key provisions for the trading of financial instruments across the EU.
 - The Implementing measures^{1 2} are over 40 pieces of secondary legislation almost all of which directly apply across the EU and specify in greater detail the operation of MiFID and MiFIR.

¹ The three MiFID II delegated acts adopted by the Commission are available here: http://ec.europa.eu/finance/securities/isd/mifid2/index_en.htm.

² Please also see Annex 3 Technical standards under MiFID II and MiFIR

What this guide contains

- 1.4** This guide deals with:
- Applications – for new authorisation as investment firms or data reporting service providers, recognition of investment exchanges, Variation of Permission (VoPs) and change of legal status.
 - Notifications – to provide regulatory information to us by firms authorised by us, recognised investment exchanges and others, including passporting notifications.
- 1.5** In each chapter, and in Annex 1, we indicate the date by which firms should submit an application or notification to us and, where relevant, the forms to be used.
- 1.6** This guide does not make any policy proposals or amend or qualify any rules and guidance in the Handbook. It is purely a guide to help firms decide what MiFID-related notifications and applications they should make. Please note that it is not an exhaustive document and it is firms' responsibility to take the necessary action to ensure that their authorisation is appropriate for the business that they plan to carry on in the UK, and other Member States where applicable, from 3 January 2018.
- 1.7** Our work and that of the European Securities and Markets Authority (ESMA) is ongoing on the processes around the implementation of MiFID II. As such, the information in this guide is a snapshot of where things currently stand. Between now and the MiFID II implementation date we will provide updates, on processes for applications and notifications where necessary, through putting information on our FCA website.
- 1.8** We are still in the process of changing our Handbook to implement MiFID II. We have consulted on those changes through various consultation papers (CPs).³ We expect to publish two policy statements in March and June 2017 finalising the changes to our Handbook.

Who should read this guide

- 1.9** This guide is aimed at the following (unless otherwise mentioned, it covers persons operating from the UK):
- **investment firms** – making VoPs, including extending their permissions to operate Multilateral Trading Facilities (**MTFs**) or Organised Trading Facilities (**OTFs**), or making one or more regulatory notifications under MiFID II
 - **existing authorised persons falling under the scope of MiFID for the first time** – these are firms either currently authorised under FSMA or other legislation (such as the Payment Services Regulations), and must either apply for a VoP or authorisation under FSMA to continue carrying out their activities under MiFID II, or wish to extend their activities in a way which will fall under MiFID II
 - currently **unauthorised businesses** seeking to become authorised as investment firms or recognition as an investment exchange operating a **regulated market (RM)**

³ CP 15/43 – www.fca.org.uk/publication/consultation/cp15-43.pdf, CP 16/19 – www.fca.org.uk/publication/consultation/cp16-19.pdf, CP16/29 – <https://www.fca.org.uk/sites/default/files/cp16-29.pdf>, CP 16/43 – <https://www.fca.org.uk/publication/consultation/cp16-43.pdf>

- financial advisers, corporate finance and venture capital firms exempt from authorisation as MiFID investment firms under the optional exemption in **Article 3** of MiFID II
 - operators of RMs seeking to extend their activities by operating new MTFs or OTFs, or making one or more regulatory notifications
 - Data Reporting Service Providers (**DRSPs**) – seeking authorisation, which include Approved Publication Arrangements (**APAs**), Consolidated Tape Providers (**CTPs**) and Approved Reporting Mechanisms (**ARMs**), and investment firms operating a trading venue or market operators seeking verification to provide data reporting services
 - persons performing investment activities/services on a professional basis who are exempt from authorisation as an investment firm because they meet the terms of the '**ancillary exemption**' (Article 2(1)(j) of MiFID II) when trading commodity derivatives or emission allowances
 - persons undertaking high frequency trading (**HFT**) who are not currently required under MiFID to be authorised as investment firms
 - persons seeking to connect and report to us through our Market Data Processor system (**MDP**)
 - commercial firms trading commodity derivatives who wish to apply for an exemption from the commodity derivative **position limit** regime
 - members of the management body and persons who direct the business of MiFID investment firms who will hold control functions under the Approved Persons regime
- 1.10** Annex 1 of the guide provides a list of authorisation and notification requirements introduced in MiFID II.

What firms need to consider

- 1.11** While 3 January 2018 seems reasonably far in the future, in fact the timetable for both firms and us is short. A key challenge is to ensure that firms, including potential DRSPs are able to do the business that they want to. To achieve this will require both firms and us to undertake some key activities in 2017. Firms will need to consider the impact on them of the following:
- **The changes to the scope of regulation.** MiFID II changes the scope of activities, services and financial instruments in a range of different ways. Firms need to be aware of and carefully consider the full range of changes and not purely the obvious ones, such as the creation of the new activity of operating an OTF.
 - **Changes to forms.** There will be major changes to the forms required for authorisation of investment firms. We will be using the new forms for most authorisations and VoPs involving investment services and activities **from 30 January 2017**. Passporting forms are also changing with, in particular, investment firms required to submit one service passport notification for each country in which they intend to provide cross-border services.
 - **Early applications.** Allowing firms to make early applications will help deliver a smooth process to ensure they have the necessary permissions and passports on 3 January 2018. Therefore, we will allow applications for authorisations and VoPs to begin **on 30 January**

2017 and passport notifications **from 31 July 2017**. We strongly encourage firms to take advantage of this.

- **Fully compliant applications.** We can process good quality applications more speedily than those which have incomplete information. Firms that start early can ensure they collect and present the necessary information on time and to a high standard, helping avoid unnecessary delays in the application process.

1.12 Deadlines. We prefer firms to submit early applications and notifications. The key authorisation and passporting deadlines are:

- complete applications for authorisation of investment firms and DRSPs or VoPs must be submitted **by 3 July 2017** to ensure we will assess them **before 3 January 2018**
- notifications of cross-border service passports must be submitted by **2 December 2017** to enable us to send them to relevant European Economic Area (EEA) regulators by 3 January 2018
- notifications of establishment passports for branches must be submitted to us as early as possible after the passporting gateway opens on 31 July 2017

The Authorisation Gateway

1.13 We will open the authorisation gateway for draft applications for FCA solo regulated firms on 30 January 2017. We give further details about this in Chapter 3.

What do you need to do next?

1.14 Firms and individuals will need to consider the changes being introduced by MiFID II, in particular which applications and notifications they will need to make to us and by when. Any general questions about the impact of this guide should be addressed to the Firm Contact Centre (FCC), and any general questions on this guide should be addressed to our MiFID II Coordination team, the contact details are on page 2.

1.15 Our CPs on MiFID II implementation contain draft perimeter guidance. Although these may change based on responses to our consultations, they should help both authorised and unauthorised firms to understand the scope changes that MiFID II brings and the links to the UK permission regime.

1.16 If you would like to stay up to date with any changes, please sign up to our MiFID II mailing list at: <https://www.fca.org.uk/markets/mifid-ii/email-updates>.

2. Key changes

Who should read this chapter

Existing UK investment firms and UK firms not authorised as investment firms but who conduct investment services and activities

What is covered in this chapter

- 2.1** This chapter summarises the main changes which MiFID II, and the UK's implementation of it, will introduce to the scope of regulation in the UK and to the forms to be used to be authorised as a MiFID investment firm in the UK.

Changes to scope in MiFID II

- 2.2** MiFID II, and the UK's implementation of it, makes a number of changes to the scope of MiFID for investment firms. These include:

Services and activities

- the new investment service of operating an OTF
- confirmation that dealing on own account includes back-to-back trading
- clarification that execution of orders on behalf of clients includes agreements to sell financial instruments issued by an investment firm at the moment of their issuance
- removal of the qualification that a recommendation is not a personal recommendation within the scope of investment advice if it is issued exclusively through distribution channels
- a requirement that all multilateral systems for the trading of financial instruments are a RM, MTF or OTF operated by an authorised firm or a RM
- the introduction of the data reporting services of operating an APA, a CTP and an ARM

Financial instruments

- the new financial instrument of emission allowances
- an increase in the scope of commodity derivatives, particularly for cash-settled forwards traded on OTFs

- an increase in the scope of foreign exchange instruments that will be regarded as derivatives
- an increase in the scope of exotic derivatives to include longevity swaps
- MiFID II applies certain obligations to firms selling or advising on structured deposits and to implement this in the UK the Treasury is creating a new investment type in the Regulated Activities Order (RAO)⁴ for structured deposits for specific regulated activities
- alongside the implementation of MiFID II, the Treasury is including certain types of binary options in the investment type of Contracts for Difference in Article 85 of the RAO

Exemptions

- clarification of the meaning of ‘incidental’ for the purposes of the exemption for investment services provided in an incidental manner in the course of a professional activity
- removing the exemption for dealing on own account where a person in the EU applies a high-frequency algorithmic trading strategy, executes client orders in the course of dealing on own account, is a member of or participant in a RM or MTF, or have direct electronic access to a trading venue (the latter two restrictions on the exemption do not apply to commercial firms hedging their risk)
- changes to the exemptions for commercial firms trading in commodity derivatives or emission allowances, particularly to clarify where such activity is ancillary to their main business
- the deletion of the exemption for ‘locals’, dealing on own account on derivatives markets whose transactions are cleared by other members of the market (we are introducing a new requirement for local firms authorised as investment firms that reflects what a local firm should meet in order to benefit from the capital requirements under Article 30 of the CRD IV (Directive 2013/36/EU))
- the inclusion of an exemption for transmission system operators as defined under energy legislation, persons acting as service providers to transmission system operators, and operators or administrators of energy balancing mechanisms, pipeline networks or systems to balance energy supplies

Application form changes

- 2.3** Currently Member States have discretion on the type of information they require prospective MiFID investment firms to provide in order to demonstrate that they meet the conditions for authorisation under MiFID and the format for the collection of the information.

⁴ The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, the piece of secondary legislation that determines the perimeter of financial services regulation.

- 2.4** The authorisation technical standards⁵ ('the authorisation RTS' and 'the authorisation ITS'⁶) under MiFID II will standardise the information applicants need to provide across EU, and will set out the forms to be used to collect such information.
- 2.5** In particular, Annex I of the authorisation ITS will mandate the application form that firms must submit to us to make an application for initial authorisation under MiFID. This form will enable applicants to provide the information specified in the authorisation RTS. We refer to the form in Annex I of the authorisation ITS as the 'MiFID authorisation form'.
- 2.6** The MiFID authorisation form gives the option of either inserting the relevant information in the form itself or using annexes containing the relevant information and noting this in the form.
- 2.7** Applicants will need to provide all the relevant information required by both the authorisation RTS under MiFID II and the FCA for domestic purposes (including information relating to fees, limitations and/or requirements and applications for non-MiFID permissions).
- 2.8** To ensure they can do so efficiently, we have created a specific annex ('the FCA MiFID Annex') which applicants can attach to their MiFID authorisation form. Applicants will complete each section of the MiFID authorisation form by cross referencing to where the information has been provided in the FCA MiFID Annex. Clearly, this means that firms must take care to satisfy themselves that they have included all the information required by the authorisation RTS when completing the FCA MiFID Annex. To help them do so, each section of the FCA MiFID Annex corresponds to a section of the authorisation RTS.
- 2.9** The use of an FCA MiFID Annex will enable us to gather all the required information we need in a clear and structured way. In turn, this will help our assessment of each aspect of the application.
- 2.10** The authorisation RTS and ITS do not necessarily cover all the information firms need to provide and the forms they must complete to be authorised. For example, firms that want to operate an MTF or OTF will need to provide an additional form describing specified aspects of the operation of their trading venue, and may also need to submit applications for pre-trade transparency waivers.

⁵ The authorisation Regulatory Technical Standard (RTS) was adopted by the European Commission on 14 July 2016: http://ec.europa.eu/finance/securities/docs/isd/mifid/rts/160714-rts-authorisation_en.pdf. The authorisation Implementing Technical Standard (ITS) has not yet been adopted by the European Commission but the draft ITS can be found in the ESMA Final Report on "MiFID II/MiFIR draft Technical Standards on authorisation, passporting, registration of third country firms and cooperation between competent authorities" of 29 June 2015 – ESMA/2015/1006 https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-esma-1006_-mifid_ii_final_report_on_mifid_ip_technical_standards.pdf.

⁶ Please see Annex 3 for more information on the legislative basis of the authorisation RTS and ITS

3. Investment Firms

Who should read this chapter

Firms applying for MiFID authorisation for the first time and existing investment firms who seek to vary the scope of their permission, or change their legal status

What is covered in this chapter

- 3.1** We cover the application packs that businesses⁷ must send to us to become authorised as investment firms, vary the scope of their existing scope of permission or change their legal status.
- 3.2** Further information is provided in Annex 2 about the application packs that investment firms will need to use.
- 3.3** To assist firms understand whether they need initial MiFID authorisation and/or their prudential categorisation based on regulated activities they wish to undertake, please see Annex 4 – prudential classifications.
- 3.4** Transitional arrangements for fees for applications for new regulated activities and investment types under MiFID II are dealt with in Chapter 4.
- 3.5** We do not cover the cancellation process because there are no changes in the existing forms and processes for firms who want to cancel their authorisation. For firms authorised under FSMA the parts of this section of the guide dealing with authorisation, VOPs and changes of legal status are addressed only to FCA solo regulated firms.
- 3.6** The Commission recently adopted RTS 20⁸ on the ancillary exemption for commercial firms trading commodity derivatives or emission allowances. This raises a number of distinct issues of interpretation and application in addition to the processes to be followed once a commercial firm trading commodity derivatives or emission allowances makes an application for authorisation. These issues specific to the ancillary exemption are currently being considered by ESMA and are not discussed further below.

⁷ Firms conducting investment services and activities but who are exempt from authorisation as a MiFID investment firm under Article 3 of MiFID II are dealt with in Chapter 5.

⁸ See Annex 3 for more information on the legislative basis

Investment firm notifications

- 3.7** A list of the new notifications that MiFID investment firms can be required to make is included in Annex 1 Table 1.

Different FCA application packs

- 3.8** We have developed different application packs for each of the following circumstances in order to implement the authorisation RTS and authorisation ITS in the UK:
- **Initial authorisation.** An unauthorised business, or a business authorised under legislation other than FSMA, applying for a first Part 4A permission under FSMA to be authorised as a MiFID investment firm.
 - **VoP to become a MiFID investment firm.** A firm with a Part 4A permission under FSMA but which is not currently a MiFID investment firm, applying for a VoP to become a MiFID investment firm. This is also classified under MiFID as an initial authorisation.
 - **VoP for a MiFID investment firm.** A firm with a Part 4A permission under FSMA which is already a MiFID investment firm, applying for a VoP to extend the range of activities it performs.
 - **Change of legal status (COLS).** A firm making an application to change its legal status that would also be classified under MiFID as an application for initial authorisation.

Initial authorisation

Who will have to apply for initial authorisation as an investment firm?

- 3.9** Firms already authorised under legislation other than FSMA, or firms whose business is not authorised at all, will have to apply for a Part 4A permission under FSMA if they want to become MiFID investment firms.
- 3.10** Chapter 2 set out the key scope changes that MiFID II will bring. The changes to the scope of foreign exchange derivatives is likely to be of relevance to firms authorised under the UK Payment Services Regulations carrying out activities in relation to foreign exchange instruments. Currently unauthorised firms might be particularly affected by the changes set out in the previous chapter relating to the categorisation of emission allowances as financial instruments and the changes to the exemptions for own account dealing and commercial firms trading commodity derivatives.

Application procedures for an initial authorisation

- 3.11** We explained in Chapter 2 the changes to the application forms for initial authorisation as a MiFID investment firm. Further information is provided in Annex 2 about the application packs that firms seeking initial authorisation as a MiFID investment firm will need to use, please see:
- Section A providing an overview of the key steps an applicant firm will take when applying for an initial authorisation through Connect
 - Table 1 detailing the individual underlying application forms, and links
 - Table 2 detailing the FCA guidance notes, and links to assist with completion.

What action is required, and by when?

- 3.12** We are planning to make the new application packs available on the FCA Connect application portal for firms on **30 January 2017**. From that point onwards, all applicants applying for a Part 4A permission that will also amount to an initial authorisation under MiFID will have to use these forms. This will be the case irrespective of the investment services and investment activities that will fall within the scope of their permissions. The Connect portal will contain instructions on how to complete the relevant forms for each application.
- 3.13** Applicants for one or more permissions covering investment services and investment activities and financial instruments covered by scope changes from MiFID II should note that we will not be able to accept formal applications for the MiFID II scope changes until the requisite domestic legislation is in force. It will not be in force before we make the new MiFID application packs available.
- 3.14** As a result, applications to carry on new regulated activities (including activities in relation to new financial instruments) must be treated as draft application until the legislation comes into force.
- 3.15** We expect some applicants may choose to make a draft application for business caught by the MiFID II scope changes at the same time as they make a formal application for permission to carry on activities we currently regulate. When we publish the new MiFID application packs, we will allow firms to make both applications using a single pack of forms for their convenience and to avoid duplication. However, even if firms use a single pack of forms, the application for MiFID II business will have no legal effect until the requisite domestic legislation comes into force. We will process an application for activities currently covered by FSMA as usual.
- 3.16** When the requisite domestic legislation comes into force we will notify firms who have made draft applications for business caught by the MiFID II scope changes that their MiFID II application is judged to have been made.
- 3.17** Firms that do not wish to undertake any regulated activities which involve the changes of scope linked to MiFID II must also submit their applications using the new forms and we will process these as usual.
- 3.18** Applicants, submitting an application for new regulated activities related to MiFID II, should also be aware that the FSMA provision that requires us to determine a complete application within six months of receiving it, will not apply, provided the application is complete before 3 July 2017. Instead, we will have until 3 January 2018 to determine them, although we will notify applicants of the progress of their applications after six months.
- 3.19** If an application made under the transitional arrangements is made together with an application under FSMA for business we currently regulate, the usual FSMA timetable will continue to apply to the application for business we currently regulate.
- 3.20** If you require authorisation by 3 January 2018 and you are also planning to apply for other FSMA permissions falling outside the scope of MiFID with the same application (eg consumer credit permissions), please be aware that our assessment of these additional permissions may require additional time.

VoP for existing authorised persons seeking to become MiFID investment firms
Which existing authorised persons will have to apply for a VoP to become a MiFID investment firm?

- 3.21** The sort of firms who are already authorised under FSMA but who may wish to become investment firms under MiFID II are firms who can currently use one or more exemption in Article 2 of MiFID. This will include ‘locals’⁹ and, possibly, certain commercial firms trading commodity derivatives or emission allowances. It would also apply to existing Article 3 MiFID exempt firms¹⁰ who want to opt into the scope of MiFID.

Application procedures for existing authorised persons to become a MiFID investment firm

- 3.22** Although firms with an existing Part 4A permission under FSMA need to vary their permission, for the purpose of MiFID they need to make a new authorisation application. As a result, these firms will have to provide the relevant information required under the authorisation RTS and use the relevant forms required under the authorisation ITS.
- 3.23** As with applications for new authorisations, these firms, in addition to the VoP application form, will use the MiFID authorisation form and a version of the FCA MiFID Annex. However, since these firms would already be known to the FCA, we would already have some of the information required under the authorisation RTS. For this reason, although the content of the FCA MiFID Annex will be substantially the same as that for new authorisations, firms will only be required to complete the relevant sections of the FCA MiFID Annex if this information has not previously been provided to the FCA or is no longer accurate or up to date. For the same reason, we would not ask for some of the supplements which are required for a new authorisation application. For example, existing controllers will not need to submit controller forms as we would already have assessed and be aware of them.
- 3.24** ‘Locals’ who as members of exchanges are currently exempt from MiFID have requirements placed on their permission to ensure they only carry out activities that fit within the MiFID exemption. With the ‘locals’ exemption not being carried forward in MiFID II, such firms will need to submit a VoP to become MiFID investment firms.
- 3.25** When ‘locals’ become MiFID investment firms they will be subject to the Capital Requirements Directive. We have introduced a new requirement they can apply for to reflect the conditions a firm must meet in order to benefit from the capital requirements applied to ‘local’ firms under Article 30 of CRD IV (Directive 2013/36/EU). We do not believe this requirement changes the type of business that ‘locals’ are able to undertake. ‘Locals’ need not apply for this requirement if they think their activities mean that they fit into a different prudential category.
- 3.26** Further information is provided in Annex 2 about the application packs that a firm with a Part 4A permission under FSMA seeking to submit a VoP to become a MiFID investment firm will need to use, please see:
- Section B providing an overview of the key steps an applicant firm will take when applying for a VoP as a non-MiFID firm through Connect
 - Table 3 detailing the individual underlying application forms, and links
 - Table 4 detailing the FCA guidance notes, and links to assist with completion

⁹ ‘locals’ are firms who can currently benefit from the exemption in Article 2(1)(l) of MiFID (which is not included in MiFID II) where, broadly put, they deal on own account on derivatives markets or deal for the accounts of other members of those markets, where their trading is guaranteed by clearing members of the markets they deal on.

¹⁰ See Chapter 5 for an explanation of the Article 3 exemption

3.27 Annex 4 provides a flowchart that will help firms understand their prudential categorisation based on the regulated activities they wish to undertake.

What action is required, and by when?

3.28 We plan to make the new forms available on Connect to firms on 30 January 2017. From that point onwards, firms submitting a VoP will have to use these forms to become a MiFID firm. The Connect portal will contain instructions on how to complete the relevant forms for each firm's application for a VoP.

3.29 As with authorisation applications, we will treat VoPs related to scope changes deriving from MiFID II as draft applications until the relevant domestic legislation is in force. The same practicalities around statutory deadlines for new authorisations are also relevant for VoPs. Firms making a VoP application for MiFID II business should therefore read the paragraphs 3.12 to 3.20 above.

VoP for existing MiFID authorised investment firm

Which existing investment firms will have to apply for a VoP to extend their Part 4A permission?

3.30 Existing investment firms need to consider whether in light of the changes to services and activities, financial instruments and the change being made by the Treasury in relation to binary options outlined in Chapter 2 they need or want to vary their existing permission. No action is needed from firms already authorised as MiFID investment firms that do not want to make any changes in their scope of permissions. Not all of the changes of scope will require authorised firms to vary their existing Part 4A permission under FSMA. For example, a MiFID firm with permission to undertake activities for contracts for difference does not need to apply for a VoP to undertake the existing activities for which they have permission for longevity swaps; the existing Part 4A permission for contracts for difference is already wide enough to cover longevity swaps.

VoP process for existing investment firms

3.31 We have updated the VoP application form to reflect the new scope of MiFID II. This will allow firms to apply for the new investment service of operating an OTF, the new financial instruments of emission allowances and binary options, or extend their permission to include any of the existing services and activities or financial instruments. The VoP application form is an online form that is compiled depending on the answers the applicant firm is providing.

3.32 Further information is provided in Section C in Annex 2 about the key steps an authorised MiFID investment firm will take when applying for a VoP.

3.33 Table 5 in Annex 2 details the additional forms and links the applicant firm may need to submit along with the VoP application and Annex 4 should help firms understand their prudential categorisation based on the regulated activities they wish to undertake.

What action is required, and by when?

3.34 We plan to make the updated form available on Connect to firms on 30 January 2017. From that point onwards, all existing MiFID firms submitting a VoP will have to use the updated form. The Connect portal will contain instructions on how to complete the relevant form.

3.35 As with authorisation applications, we will treat VoPs to add any of the new permissions as draft applications until the relevant statutory instruments have come into force. The same practicalities around statutory deadlines as those for new authorisations are also relevant for VoPs. Investment firms making a VoP application for MiFID II business should therefore read paragraphs 3.12 to 3.20 above.

Change of legal status (COLS) applications

- 3.36** MiFID investment firms applying for a change of legal status, for example from a partnership to a limited company, will also have to submit the MiFID authorisation form. This is because while the incumbent firm is already authorised, the new entity will not be and so will be making an initial authorisation under MiFID.
- 3.37** The authorisation ITS and the authorisation RTS will apply to these applications. As such, MiFID investment firms changing their legal status will have to submit a new version of the change of legal status application form that implements these requirements.
- 3.38** The revised change of legal status form will take a proportionate approach to the information a firm is required to submit, taking into account that we must be satisfied that the new firm has fully complied with its EU law requirements. For example, where it can be demonstrated that we already have the information a firm is required to provide under the authorisation RTS, we will accept a confirmation that that information is true, accurate and up-to-date where appropriate.
- 3.39** In line with current FCA practice, COLS applicants should note that they will only be able to use the change of legal status pathway if the proposed new firm will either apply for the same or for a narrower scope of permission of the existing firm.

What action is required, and by when?

- 3.40** We are planning to make the new forms available on 3 January 2018. From that point onwards, firms applying for a change of legal status will have to use the new forms. They will be able to download these forms from our website,¹¹ complete them and send them by post to Authorisations, The Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5H.
- 3.41** Further information is provided in Annex 2, please see:
- Table 6 detailing the individual underlying application forms, and links
 - Table 7 detailing the FCA guidance notes, and links to assist with completion

Notifications by MiFID investment firms

- 3.42** Investment firms are already required to provide notice to the FCA of events and information which are required for the FCA to discharge its obligations under FSMA. MiFID brings changes to the notifications that firms authorised as investment firms need to make in the following areas:
- changes to the membership of the management body
 - algorithmic trading
 - direct electronic access provision
 - intention to act as a general clearing member

¹¹ www.fca.org.uk/firms/change-legal-status

3.43 Please see Annex 1 Table 1 for further information about these notifications, including the legislative basis and key dates of application. Additionally, for:

- any notification of intention to undertake certain regulated activities in relation to structured deposits see Chapter 7
- any notifications for the activities of operating an MTF or an OTF, see Chapter 11
- transparency waiver notifications see Chapter 12
- passporting and tied agent related notifications see Chapter 8
- any notification of classification as a Systematic Internaliser see Chapter 11

References

3.44 You can find more background information on the scope of MiFID II and the FSMA perimeter in:

- Perimeter Guidance Chapter 11 in FCA CP 15/43 'Markets in Financial Instruments Directive II Implementation – Consultation Paper I'¹²
- Perimeter Guidance Chapter 17 in FCA CP 16/29 'Markets in Financial Instruments Directive II Implementation – Consultation Paper III'¹³
- Perimeter Guidance section of Miscellaneous changes to the Handbook Chapter 6 in FCA CP 16/43 'Markets in Financial Instruments Directive II Implementation – Consultation Paper IV'¹⁴
- The Treasury consultation on 'Transposition of the Markets in Financial Instruments Directive II'¹⁵

¹² www.fca.org.uk/publication/consultation/cp15-43.pdf

¹³ www.fca.org.uk/sites/default/files/cp16-29.pdf

¹⁴ www.fca.org.uk/publication/consultation/cp16-43.pdf

¹⁵ www.gov.uk/government/uploads/system/uploads/attachment_data/file/418281/PU_1750_MiFID_II_26.03.15.pdf

4. Fees

Who should read this chapter

All firms who will be applying to us to undertake new regulated activities under MiFID

Introduction

- 4.1** We do not propose to charge fees for applications for new regulated activities under MiFID II between the time when we start accepting draft applications and when the relevant domestic legislative changes are in place. The arrangements we set out below, based on proposals in Chapter 7 of CP16/43, will be only applicable to FCA solo regulated firms.

Fees process for draft applications

- 4.2** We intend to apply the following process to charging fees for draft applications.
- **Firms that want to apply for new regulated activities (including activities relating to new financial instruments) only.** These firms, who will be using applications for a VoP or new authorisation, will have to contact us before they submit their application. The Connect portal will provide the applicant with all necessary instructions. We will not charge a fee when the application is submitted as it will only be a draft at this stage. When the domestic legislative changes to implement MiFID II are in place, we will contact these firms to confirm that their applications can be treated as formal applications and charge the relevant fee.¹⁶ The statutory deadlines for determining the application will then start.
 - **Firms applying for both new and existing regulated activities.** These firms will also have to contact us before submitting an application, and the Connect portal will give them the relevant instructions. While the firm will not be charged for the fee related to the new permissions, it will be charged for the relevant fee attached to the existing activities and investment types applied for. When the domestic legislative changes to implement MiFID II are in place, the case officer will contact the firm. If the fee:
 - the firm has already paid for the application for existing regulated activities and investment types is higher than the one for the application for new regulated activities and investment types then we will not charge an additional fee for the second application, or

¹⁶ Please refer to par. 3.12 and 3.13

- due for the application for new regulated activities and investment types is higher than the one already paid for the existing activities and investment types, we will only charge the firm the difference between the two fees.
- 4.3** The approach outlined in the second bullet will ensure we charge firms only the amount that they would have paid had they submitted a single application covering both new and existing regulated activities and investment types.
- 4.4** **Firms applying for existing activities and investment types.** We will charge these firms the relevant fee when their application is submitted under the standard process.

Examples

- 4.5** We provide the following practical examples to help illustrate how the above proposals would work for firms that wish to apply for an authorisation in order to carry on the activities of:
- **Example 1:** Dealing in investments as agent, which is an existing activity (fee of £1,500) and the activity of operating an OTF which is a new permission under MiFID II (fee of £25,000). The firm will pay £1,500 when it submits its application. It will pay £23,500, instead of the whole £25,000, once the domestic legislative changes to implement MiFID II are in place.
 - **Example 2:** Operating an MTF, which is an existing activity (fee of £25,000) and the activity of dealing as agent, which is an existing activity, in relation to emission allowances, which is a new investment type (fee for the activity of dealing as agent is of £1,500). The firm will pay £25,000 when it submits its application. While the activity of dealing as agent is an existing activity, we do not charge a fee immediately because this activity involves a new permission (emission allowances) and we will not charge this additional fee of £1,500 once the domestic legislative changes to implement MiFID II are in place.

5. Article 3 MiFID exempt firms

Who should read this chapter

Existing Article 3 MiFID exempt firms, and firms that want to be authorised as Article 3 MiFID exemptions.

Introduction

- 5.1** Under Article 3 of MiFID, Member States have the option to exempt some firms from authorisation as MiFID investment firms. The relevant firms are those which:
- provide investment advice and / or receive and transmit orders
 - do not hold client funds or securities
 - only receive and transmit client orders for transferable securities and collective investment schemes (CIS) units and/or provide related investment advice, and are only be allowed to transmit such orders to identified firms or funds
 - do not do MiFID business outside of their home member state
- 5.2** MiFID requires Member States to subject Article 3 MiFID exempt firms to national regulation. The UK exercised the optional exemption in Article 3, which covers firms including financial advisers, corporate finance firms and venture capital firms. However, we allow firms who might otherwise qualify for the exemption, but want to do MiFID business outside the UK, to opt out of the exemption and therefore become a MiFID investment firm.
- 5.3** MiFID II includes the same exemption but Article 3 firms must now be subject to ‘at least analogous’ requirements.¹⁷ These include a wide range of authorisations, conduct of business and organisational requirements, but not the whole range of those that will apply to MiFID investment firms.

What is changing

- 5.4** Article 3 MiFID exempt firms must comply with analogous requirements including the authorisations requirements under Article 7 of MiFID II and the delegated acts made under it. Therefore we have taken the view that these firms will be subject to the same authorisation process which applies to MiFID investment firms.

¹⁷ We provided more detail on our proposed implementation of this in CP16/19 and CP16/29.

- 5.5** Article 3 MiFID exempt firms will also continue to be able to opt into MiFID if they wish to benefit from the EU passporting regime under MiFID II.
- 5.6** Existing Article 3 MiFID exempt firms should note that there is a transitional provision in the UK's draft MiFID II implementing legislation. This will allow for firms who are exempt investment firms under MiFID, immediately prior to the application of MiFID II, to be automatically granted the status of exempt Article 3 firms for the purposes of MiFID II.

What action is required, and by when?

- 5.7** New firms that want to be authorised as Article 3 MiFID exempt firms will be required to submit the relevant information required for new MiFID authorisation applications described in paragraphs 3.9 to 3.20 of this guide.
- 5.8** If an existing Article 3 MiFID exempt firm wishes to opt into MiFID, it will have to follow the process for existing authorised persons submitting a VoP application to become a MiFID investment firm. This process and the relevant application which must be provided to the FCA are also described in paragraphs 3.21 to 3.29 of this guide.
- 5.9** If an existing Article 3 MiFID exempt firm wishes to apply for a VoP but still remains as such, it will have to follow the process described under paragraphs 3.31 to 3.35 of this guide.

6. Approved Persons

Who should read this chapter

Prospective firms applying for authorisation under MiFID and existing UK MiFID investment firms for which the Approved Persons Regime applies

Introduction

- 6.1 In this chapter we explain the forms that FCA solo regulated firms will have to submit with their application pack for the persons applying to perform controlled functions and for the members of the management body, once the MiFID II authorisation gateway opens in January 2017.
- 6.2 We also provide an overview of the forms and notifications that existing MiFID firms will have to submit for ongoing changes to persons performing controlled functions and members of the management body.

Overview

- 6.3 Our existing approved persons regime requires firms to submit a specific application – Form A – for anyone performing a controlled function at the firm. SUP 10A of the Handbook lists these controlled functions. There is a separate version of Form A for firms which are subject to the Senior Managers Regime (SMR). We do not deal with the SMR here.
- 6.4 The current Form A requires firms to provide information to enable us to assess the fitness, propriety, knowledge and experience of the individual applying to perform a controlled function.
- 6.5 MiFID II and its implementing measures, in particular Article 4 of the authorisation RTS, set out the specific information required about members of the management body and the persons who effectively direct the business that prospective MiFID firms must provide with their application for authorisation.
- 6.6 In terms of forms:
 - the MiFID authorisations form (ie the form in Annex I of the authorisations ITS) is the form applicants must use to provide the information specified in Article 4 of the RTS

- Annex II of the authorisation ITS contains the form which firms must use to notify the competent authority of a list of the members of the management body when they apply for authorisation under MiFID
 - Annex III of the authorisation ITS contains the form which must be used by already authorised MiFID firms to notify their national competent authority of changes to the membership of the management body
 - the forms in the authorisation ITS allow applicants to provide information in the forms themselves or by annexing additional information; we proposed, in CP16/29, to introduce a new version of Form A which firms may use to provide the information referred by Annex II to the authorisation ITS above and which can be used as an annex to the ITS forms
- 6.7** MiFID II also extends the application of Article 91 of the CRD to MiFID firms. This will limit the number of directorships that members of the management body of significant MiFID firms will be able to hold.

What is changing

- 6.8** New firms applying for authorisation under MiFID for the first time will be required to submit the following forms:
- the list of members of the management body (Annex II of the authorisation ITS)
 - a new MiFID Form A for each member of the management body and person who effectively directs the business of the firm.
- 6.9** Below is an indicative list of those persons performing controlled functions who might be considered as members of the management body and/or those of persons who effectively direct the business of the firm for the purpose of the MiFID II requirements:
- CF1 Director
 - CF2 Non-Executive Director
 - CF3 Chief Executive
 - CF4 Partner
 - CF29 Significant Management
- 6.10** If a person performing a controlled function is not a member of the management body and is not effectively directing the business of the firm, then the applicant firm will not be required to provide information about that person in the MiFID authorisation form or in the form in Annex II to the authorisation ITS and will not need to use the new MiFID Form A for that person. They may continue using the existing FCA Form A or, if they prefer, use the MiFID Form A.
- 6.11** In certain cases under our current processes, firms can submit a shorter version of the Form A, for example, when the individual is already approved to cover the same controlled function for another firm. Firms will not be able to use a shorter version of the new MiFID Form A because that version of the form does not include all of the mandatory information required under

Article 4 of the authorisation RTS. However, they will still be able to use the short version of the Form A for individuals who are not members of the management body or persons who effectively direct the business.

- 6.12** The attachments to the application should be submitted as supporting documents. With regard to the certificate of conviction we are currently updating our systems so firms can also upload this document as supporting document. Until we finalise the changes in our systems if the answer to the questions 5.01.1a or 5.01.2 is 'yes', we will ask the firm to submit the official certificate of conviction or equivalent document at a later stage.
- 6.13** Firms with existing Part 4A permissions applying for a VoP which will bring them into the scope of MiFID will only have to use the new MiFID Form A for new individuals they plan to appoint. For existing approved persons at the firm who are members of the management body or persons who direct the business, the applicant firm will not need to submit Form As as we would already have assessed and be aware of them.
- 6.14** From 3 January 2018, existing firms authorised under MiFID that propose to make changes to membership of the management body will have to notify us with the form in Annex III to the authorisation ITS. We are considering whether these firms should also have to submit the new MiFID Form A for new individuals they appoint to perform any of the control functions listed above, or if, alternatively, they could simply use the existing Long or Short Form A as appropriate. If necessary we will consult on this point during 2017.
- 6.15** Article 9 (1) of MiFID II also extends the application of Articles 88 and 91 of the CRD to MiFID firms. Article 91 of the CRD sets limits to the number of directorships that members of the management body of firms that are considered to be 'significant' can hold. However, it allows us to authorise members of the management body to hold one additional non-executive directorship. We consulted in CP16/19 on our proposal to transpose the requirement above through SYSC 4.3A.6R. This will extend the requirement to all common platform firms that are significant in accordance with SYSC 4.3A.-1R. We have also consulted on changes to SYSC 1 Annex 1 which will make Article 3 exempt MiFID firms and third country firms subject to SYSC 4.3A.6R.
- 6.16** We have an existing waiver process in place under the CRD for significant firms to request the extension to the maximum number of directorships that members of the management body can hold. We propose that firms will be able to follow the existing process if they seek authorisation for members of the management body to hold one additional non-executive directorship. The relevant statutory tests for waivers will apply to these applications.

What action is required, and by when?

- 6.17** We will make the new MiFID Form A available on Connect on 30 January 2017 as part of the authorisation application pack under MiFID II. As discussed in Chapter 3 of this guide, until the domestic implementing legislation enters into force we will not be able to determine an authorisation application for the new MiFID II permissions and investment types. In such cases, we will treat the application as draft until the relevant legislative changes are finalised. The same will also apply to any Form A submitted as part of any authorisation application if the candidate named in the MiFID Form A will only be performing activities involving the new MiFID II permissions or investment types.

- 6.18** We consulted on the proposed new Form A in CP16/29 and published our feedback to the responses received during the consultation period in CP16/43.
- 6.19** Existing firms already authorised under MiFID wishing to make changes to members of the management body or persons who effectively direct the business should continue to use the existing Form A. From 3 January 2018 firms will be required to use the form in Annex III to the authorisation ITS for changes to members of the management body.
- 6.20** Significant firms – this is a term from prudential regulation and is defined in our Handbook in IFPRU 1.2.3R – will be able to request an extension of the number of directorship that a member of the management body can hold to include one additional non-executive directorship by submitting a waiver application.

References

- 6.21** You can find more background information on the proposed new Form A in:
- Supervision (SUP), authorisation and approved persons Chapter 16 in FCA CP 16/29
 - Feedback on CP16/29 proposed form A in Chapter 8 of CP16/43

7.

Structured deposits

Who should read this chapter

Firms that want to perform regulated activities involving structured deposits

Introduction

- 7.1** MiFID II applies a number of requirements to investment firms and credit institutions when they sell or advise clients on structured deposits. However, MiFID II does not treat structured deposits in the same way as the other financial instruments listed in Annex 1, Section C of MiFID II. As a result, MiFID II does not require firms dealing with structured deposits to become authorised as investment firms under Article 5.
- 7.2** To implement this aspect of MiFID II, the Treasury has proposed creating a new investment type for structured deposits. As a consequence, firms performing specific regulated activities for structured deposits will be required to add structured deposits to their relevant Part 4A permission.¹⁸
- 7.3** In this chapter we explain the steps that firms intending to perform regulated activities for the new structured deposits investment type will need to take.

What is changing?

- 7.4** A new investment type will be introduced and, as explained above, firms that want to carry out specific regulated activities for structured deposits will have to add structured deposits in the relevant Part 4A permission.¹⁹
- 7.5** The UK's implementing legislation will include a transitional provision so that firms that hold certain permissions on the date these changes come into force will not be required to submit a VoP to us if they notify us that they wish to perform these activities for structured deposits. So if a firm has a Part 4A permission to carry on one or more of these activities, it can take advantage of the transitional notification provision and simply notify us of its wish to perform the same activity for structured deposits. The relevant activities include:
- dealing in investments as agent (Article 21 RAO)

¹⁸ See the Treasury's consultation on 'Transposition of the Markets in Financial Instruments Directive II' of March 2015.

¹⁹ Structured deposits are a type of deposit and therefore accepting a structured deposit is already a regulated activity.

- arranging deals in investments (Article 25(1) RAO)
- making arrangement with a view to transactions in investments (Article 25(2) RAO)
- managing investments (Article 37 RAO)
- advising on investments (Article 53 RAO)

What action should you take and by when?

- 7.6** The transitional arrangements for the notifications described above will only run until 2 January 2018. If a firm providing services in relation to structured deposits has not made a notification by this time, it will need to submit a VoP to continue providing these services. Firms who notify us by 2 January 2018 will need to take no further action to satisfy their obligations to have the right permission for their activities in relation to structured deposits.
- 7.7** We have created a new notification form for firms to which the transitional provision applies. When the necessary legislative changes take effect this form will be available to download from the FCA website and, on completion, should be emailed to a specific inbox that we will establish for this purpose.
- 7.8** If you do not benefit from the transitional provision, you must submit a VoP or a new authorisation application, as appropriate, to continue to be able to carry out regulated activities for structured deposits. Branches of EU investment firms in the UK will need to submit a VoP to carry out activities in relation to structured deposits.

8. Passport Notifications and Tied Agents

Who should read this chapter

UK firms that want to exercise a passport right to provide cross border services, establish a branch in another EEA State or want to use one or several Tied Agents to provide services in another EEA State.

Introduction

- 8.1** The MiFID II passporting regime will apply to a broader range of activities, services and financial instruments than the current MiFID passporting regime because of the increases in scope in MiFID II covered in Chapter 2. This chapter is particularly important to existing investment firms that:
- want to operate OTFs (please also read in conjunction with the OTF section of Chapter 11)
 - perform services in relation to emission allowances
 - will need to have the permission to deal on own account (A3) as a result of the scope of that being extended to include matched principal trading
 - are currently passporting services in relation to derivatives of emissions allowances and whose passport does not include C4 instruments
 - want to passport services linked to binary options, longevity swaps or certain foreign exchange instruments and who do not currently have a passport for the appropriate category of financial instruments
- 8.2** This chapter is also relevant to:
- firms that seek authorisation for the first time under MiFID II and who wish to passport investment services into other Member States
- 8.3** This chapter sets out the changes that will be introduced in the passporting notification process when MiFID II comes into effect. It also explains the procedures in place to facilitate the transition from MiFID to MiFID II. This chapter only applies to FCA solo regulated firms and the forms and procedures for UK investment firms who want to passport to other EU member states.
- 8.4** Please see Annex 1 Table 2 for further information about the notifications, including the legislative basis and key dates for application.

Existing MiFID passports

- 8.5** Existing MiFID passports will remain valid after MiFID II comes into effect. However, MiFID II will introduce significant changes to the scope of existing investment services, financial instruments and exemptions. Given this, it will be firms' responsibility to decide whether they need to amend their existing MiFID passports to reflect these changes.
- 8.6** Firms that need to amend their existing MiFID passports or apply for MiFID II passports need to do so before MiFID II takes effect on 3 January 2018. Please see the section from paragraph 8.27 for details.

What will be changing from 3 January 2018

- 8.7** MiFID II changes the scope of the investment services, investment activities and financial instruments that will fall within the MiFID passport regime. It will also standardise the information that firms must submit when they make a notification and the templates and procedures they use.
- 8.8** These changes will be provided for in a combination of regulatory technical standards (the passporting RTS²⁰) and implementing technical standards (the passporting ITS²¹). The passporting RTS will set out the information to be included in a passport notification. The passporting ITS will contain procedures and forms. The passporting ITS has not yet been adopted by the Commission. What follows in this chapter is based on the drafts provided to the Commission by ESMA and is therefore potentially subject to change.
- 8.9** The new processes will apply equally to new investment firms who wish to passport and to existing firms who either want to passport for the first time or amend existing passports.
- 8.10** We will reproduce the notification forms in the annexes to the passporting ITS in SUP 13 in our Handbook and FCA solo regulated firms will be required to submit them through the FCA Connect system (arrangements for dual regulated firms were set out in the PRA's CP9/16 and CP15/43.)
- 8.11** We will put in place transitional arrangements to facilitate firms being able to meet the necessary conditions to passport new-scope MiFID II investment services, investment activities and financial instrument from 3 January 2018. Paragraph 8.27 onwards explains these transitional arrangements.
- 8.12** First, however, we will highlight some of the specific changes to the notification process to be brought about following the implementation of MiFID II.

Cross-Border Services Passports from 3 January 2018

- 8.13** Under MiFID, UK investment firms are allowed to submit one service passport notification for all EEA countries. This will no longer be possible under MiFID II. Instead, investment firms

²⁰ Please refer to Annex 3 for more information on the legislative basis of the Passporting RTS

²¹ Please refer to Annex 3 for more information on the legislative basis of the Passporting ITS

will be required to submit one passport notification for each country in which they intend to provide cross-border services.

- 8.14** UK investment firms that want to link UK-established tied agents to one of their service passports will have to do so through Connect. They will have to confirm, for each tied agent, the activities and financial instruments that the agent will passport across border.
- 8.15** Firms will have to submit one notification for each country in which the tied agents intend to provide cross border services. A template of the notification is at Annex I of the passporting ITS.

Cross border arrangements in relation to a MTF or an OTF from 3 January 2018

- 8.16** MiFID II adds the ‘Operation of an OTF (A9)’ to the list of investment services and activities that can be passported. UK investment firms that want to provide cross border access to the MTFs and/ or OTFs they operate will have to submit passport notifications through the FCA Connect system. A draft template of the notification can be found in Annex IV of the passporting ITS.
- 8.17** We expect that firms will have to submit passport notifications for these activities (ie MTF (A8) and OTF (A9)) separately from other activities (A1 to A7). Firms will need to submit one passport notification for each country in which they wish to provide arrangements to facilitate remote access to their MTFs and/or OTFs.
- 8.18** We expect that UK investment firms operating MTFs and OTFs will have to submit one notification for each trading platform they want to arrange cross-border access to. Investment firms will have to provide details on the business model of each trading platform, including:
- the type of financial instruments traded on this platform
 - the type of trading participants to this platform
 - details of the appropriate arrangements in place to provide remote access to the platform, and
 - the firm’s marketing strategy to target remote users, members or participants in the host Member State
- 8.19** For RIEs, they should submit their passport notifications by email to passport.notifications@fca.org.uk. An RIE wishing to passport in relation to a MTF or an OTF will have to submit one notification per trading platform in line with the above requirements. A template of the notification is available at Annex IV of the passporting ITS.

Establishment Passports from 3 January 2018

- 8.20** UK investment firms that want to establish a branch in another EEA Member State will have to submit an establishment notification through Connect. The notification process remains generally unchanged. However, investment firms will also have to:
- set out the organisational structure of the branch, showing the functional, geographical and legal reporting lines

- attach a forecast statement for profit and loss and cash flow, both over an initial period of thirty six months
- 8.21** It is likely that UK firms that want to use tied agents established in other EEA Member States will have to submit two notifications:
- one notification to be granted a right of establishment passport to this EEA country (template of the notification is at Annex VI of the passporting ITS), and
 - one notification to be granted the right to appoint a tied agent established in this Member state (template of the notification is at Annex VII of the passporting ITS)
- 8.22** The UK firm will have to submit a complete Add Tied Agent notification for each tied agent established in this EEA country.
- 8.23** If a UK firm already holds an establishment passport to an EEA Member State and wants to add tied agents established in this Member State, they will have to complete and send us an Add Tied Agent notification for each tied agent established in this Member State.
- 8.24** MiFID II will now require all Member States to register Tied Agents established in their country. Where an investment firm currently engages a tied agent established in one of the Member States that did not maintain a tied agent regime under MiFID (Bulgaria, Denmark, Finland, Iceland, Lithuania), the firm is responsible for re-registering this tied agent with the relevant host competent authority.
- 8.25** After 3 January 2018 if a firm decides to terminate the operation of its branch in another EEA Country or stop using a tied agent established in that country, it will have to provide the following information:
- description of the schedule for the planned termination
 - information on the process of winding down the business operations, including details of how client interests will be protected, complaints resolved and any outstanding liabilities discharged
- 8.26** The template of the notifications can be found in Annex X of the passporting ITS.

Transitional arrangements: what action is required, and by when?

- 8.27** This section explains our transitional arrangements.
- 8.28** Existing UK investment firms can apply to amend their existing passports to take account of the changes of scope in MiFID II and new applicants will be able to make passport notifications for new scope MiFID II business from 31 July 2017. This will help firms to provide the full range of MiFID II services and activities in other Member States from 3 January 2018.
- 8.29** During the transition period between 31 July 2017 and 2 January 2018 we will ask UK investment firms to submit the new MiFID II passport notifications to the following email inbox: MiFID.Passport@fca.org.uk. Firms will be able to access the relevant notification forms from in the Handbook.

8.30 Firms will have to consider whether they need to amend their existing MiFID passports between 31 July 2017 and 2 January 2018, especially in the following cases:

- matched principal brokers will have to consider adding the activity of dealing on own account (A3) to their existing MiFID passports
- firms providing services and activities related to the new financial instrument (C11) of emission allowances
- firms providing services and activities related to longevity swaps whose existing passport does not include C10 financial instruments (ie options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables etc.)
- firms providing services and activities related to derivatives on C11 emission allowances whose passport does not currently include services and activities related to C4 financial instruments (options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities)
- firms trading in binary options will have to consider amending their existing MiFID passports to add to their passports one or more of the following instruments if they are not already within their passport:
 - C4 – options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities
 - C5 – options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash
 - C6 – options, futures, swaps, and any other derivative contracts relating to commodities that can be physically settled
 - C7 – options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in C6 and not being for commercial purposes
 - C10 – options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables etc.

8.31 Please note that these transitional arrangements only apply to new-scope MiFID II passports. Passporting notifications in respect of cross-border business currently within the scope of MiFID made between 31 July 2017 and 02 January 2018 should be submitted as usual through Connect.

8.32 So, if authorised UK firms want to apply for passports for activities within the scope of the existing MiFID and also for activities that are being introduced by MiFID II (for example, OTF, emission allowances), they should:

- submit passport notifications through Connect for all business that they wish to passport before 3 January 2018 (ie existing MiFID business)
- send email notifications for business to be passported following the implementation of MiFID II in accordance with the transitional process

- 8.33** UK firms applying for passports under the MiFID II procedures between 31 July 2017 and 03 January 2018 must submit one passport notification per country, for both service and branch passports. Similarly, UK firms applying to arrange cross-border access to a MTF or an OTF during the transition period will have to submit one passport notification per trading platform, although it may submit one notification for several countries. This will become one of the requirements of the passporting ITS and so firms need to be able to meet this to satisfy the passporting conditions under MiFID II. Similarly, firms submitting notifications for MiFID II investment services and investment activities must ensure they have provided us with all of the information required by the authorisation RTS.
- 8.34** For firms listed in section 8.1 and 8.30 above, we will process all cross-border service passport notifications submitted before 2 December 2017 and send the required notifications to the relevant EEA regulators on or before 3 January 2018.
- 8.35** Please note that we will have one month to process cross-border service passport notifications submitted after 2 December 2017.
- 8.36** An RIE wishing to passport under MiFID II during the transition period will have to follow a similar process.
- 8.37** We recommend that firms listed in section 8.1 above submit their MiFID II establishment passport notifications as early as possible. Under Article 35 MiFID II, the home competent authority has three months to review MiFID II establishment passport notifications and the host competent authority has two months to then prepare for supervision before the firm can start passporting its activities through a branch. Whenever possible we will aim to process MiFID II establishment notifications before 3 November 2017 or, where the notification was received too late to meet the 3 November deadline, before 3 January 2018.
- 8.38** We will send firms emails to confirm that we have issued notifications to the relevant regulators. We strongly recommend that firms that want to passport under a MiFID II establishment passport should contact the relevant host competent authorities to confirm the status of their notifications in the host member state.
- 8.39** All other investment firms will be allowed to start making passporting notifications under MiFID II from 3 January 2018.

References

- 8.40** The relevant provisions dealing with passporting are Article 34 and 35 MiFID II.
- 8.41** Please see Annex 3 for further information the passporting RTS and passporting ITS, and their the legislative basis.

9. Data Reporting Services Providers (DRSPs)

Who should read this chapter

Data Reporting Services Providers (DRSPs) seeking authorisation or verification as Approved Publication Arrangements (APAs), Consolidated Tape Providers (CTPs) and Approved Reporting Mechanisms (ARMs)

Introduction

- 9.1** MiFID II introduces a requirement that the provision of data reporting services (DRSs) must have prior authorisation (or verification, in the case of operators of trading venues providing data reporting services) by the home Member State competent authority. DRSs include the operation of Approved Publication Arrangements (APAs), Approved Reporting Mechanisms (ARMs) and Consolidated Tape Providers (CTPs). The CTP regime only applies to equity and equity-like financial instruments as of 3 January 2018. It is due to be extended to non-equity instruments from 3 September 2019.
- 9.2** In this chapter we provide an overview of the application forms that DRSPs must submit to us to become authorised under this requirement. Prospective DRSPs will be required to start using the new forms²² when the MiFID II authorisation gateway opens for draft applications on 30 January 2017.

What is changing

- 9.3** The concept of DRSPs is not completely new to the UK. There are ARMAs that are currently approved and Trade Data Monitors (TDMs) that carry out functions similar to those of the APAs.
- 9.4** Existing ARMAs, TDMs and any other entity wishing to become a DRSP in the UK will need to submit a new application to be authorised (including prior verification, in the case of operators of trading venues) as DRSPs under MiFID II.
- 9.5** MiFID introduces two forms for DRSPs:
- application form to provide service of ARM and/or APA and/or CTP
 - notification form for list of members of a management body

²² www.fca.org.uk/publication/forms/mifid-data-reporting-services-form.docx

- 9.6** Please see Annex 1 Table 4 for further information about these, including the legislative basis and key dates of application.

What action is required, and by when?

- 9.7** From 30 January 2017 we will accept draft applications (see Chapter 3). The DRSP Application for Authorisation forms (ITS 3 Annex I and II) and the accompanying FCA Guidance Note will be available on our website. A DRSP applicant should submit the completed forms and any supporting documents by email to MiFiDII.Applications@fca.org.uk or post to the FCA FAO The Authorisations Support Team.
- 9.8** A DRSP should consider its market data provision obligations, Chapter 10 of this guide deals with MDP on-boarding and market data reporting and all the steps required.
- 9.9** To fulfil its market data provision obligations when the new regime takes effect on 3 January 2018, a prospective ARM must be able to demonstrate it meets our technical Market Interface Specification (MIS), as a condition of authorisation.
- 9.10** An APA and CTP do not have to demonstrate they meet our MIS as a condition of authorisation. However, an APA and a CTP will have market data provision obligations under Article 22 of MiFIR, and will be required to provide data to us. CP15/43 proposed in MAR 9 requirements around applicable timescales for MDP on-boarding for APAs and CTPs. In CP16/43 we are currently consulting on some refinements to these requirements.
- 9.11** APAs and CTPs will also have to establish technical links to our systems to meet their market data provision obligations under Article 22 of MiFIR. So they may find it helpful to begin this process of establishing technical links at the same time as their application to become an authorised APA or CTP. We are proposing, through the draft MAR 9 referenced above, that they must begin the connectivity process within 2 weeks of being authorised as an APA or a CTP by sending us the executed Market Interface Specifications confidentiality agreement.
- 9.12** We also propose that the same process will apply for a MiFID investment firm operating a trading venue or a market operator seeking verification to provide DRSPs.

External references

- 9.13** The key elements of the MiFID II implementing measures that are relevant to the authorisation of DRSPs are (other implementing measures relevant to market data are listed at the end of the next chapter):
- RTS 13 and ITS 3 (see Annex 3 for a description of the technical standards and more information on the legislative basis)

10.

Market Data Processor (MDP) on-boarding and market data reporting

Who should read this chapter

Operators of trading venues, investment firms and DRSPs who seek to comply with the various regulatory reporting obligations of MiFID II by becoming submitting entities to the FCA's MDP.

The market data types which are in scope for MiFID II reporting are: transaction reports, financial instrument reference data, transparency reports, double volume cap reports, and commodity derivative position reports.

Introduction

- 10.1** MiFID II introduces large changes in the volumes and range of data that firms and individuals with an obligation to report any of the market data types need to submit to us. We are implementing the MDP to strengthen the systems that will help them comply with these reporting regimes.
- 10.2** The entity types that are likely to have market data provision obligations under MiFID II are:
- APAs
 - ARMs
 - CTPs
 - RMs
 - MTFs
 - OTFs
 - SIs
 - Other UK MiFID Investment Firms (IFs)
 - UK branches of third country investment firms

- EEA DRSPs / trading venues / investment firms

- 10.3** This chapter sets out changes to the way these firms should submit market data to us when MiFID II comes into force and the technical ‘on-boarding’ procedures we will put in place to help them do so.
- 10.4** For more information on new trading venue notifications, please see Chapter 11.

What is changing

- 10.5** We are replacing the ZEN system which MiFID investment firms currently use to submit their transaction reporting data with the MDP. MiFID reporting is expected to carry on until it is replaced by the new MiFID II regulatory reporting regime.
- 10.6** The MDP will receive and process MiFID II market data from the UK financial industry as well as relevant market data from non-UK European Economic Area (EEA) participants. The MDP will also provide access to ESMA’s new Financial Instrument Reference Data System (FIRDS) via the existing Transaction Reporting Exchange Mechanism (TREM).
- 10.7** By following our on-boarding process and timetable, prospective submitting firms will be able to meet their market data provision obligations when the new regime comes into effect.
- 10.8** MiFID II introduces new market data reporting obligations. Please see Annex 1 Table 3 for more information about these, including the legislative basis and key dates that apply.
- 10.9** For market data reporting obligations for the commodity derivative position limit regime, see Chapter 13, and Annex 1 Table 10.

What action is required, and by when?

- 10.10** We will support industry testing with a dedicated Industry Test Environment (ITE) from the third quarter of 2017 onwards. In this period all prospective submitting firms that intend to be MiFID II compliant from 3 January 2018 will be able to seek to demonstrate they conform to our technical specification.
- 10.11** Firms that want to become submitting entities need to sign and return a confidentiality agreement to request a copy of the Market Interface Specification (MIS). This agreement can be downloaded from our website.²³ The MIS gives the applicant the technical details they need to format and submit MiFID II market data to us.
- 10.12** Firms should email the signed confidentiality agreement to mdp.onboarding@fca.org.uk. When we have assessed and executed the confidentiality agreement we will issue the firm with the MIS.
- 10.13** The technical on-boarding process begins when the firms submits the MDP on-boarding application form that will be made available on our website.²⁴ In CP16/19 we consulted on

²³ www.fca.org.uk/markets/market-data-regimes/market-data-reporting-mdp#confidentiality

²⁴ www.fca.org.uk/markets/market-data-regimes/market-data-reporting-mdp

the on-boarding fees for conforming to the technical standards for the MDP. We will make a Handbook instrument to cover the relevant fee arrangements in 2017.

- 10.14** When we have reviewed and accepted a complete MDP on-boarding application we will issue an MDP on-boarding pack which outlines the on-boarding process and test conditions, before industry testing.
- 10.15** Firms who have completed all the relevant testing should then submit the completed test pack to us. We will review the test results to decide whether entities have successfully passed the tests.

Implications for firms

- 10.16** The ITE will continue to be available beyond the MiFID II application date of 3 January 2018 to help new entrants connect to our MDP and other change projects.

External references

- 10.17** Detail of the relevant EU market data obligations is contained in the following MiFID II implementing measures:
- RTS 1, 2, 3, 13, 21, 22 and 23 (see Annex 3 for a description of the RTS and more information on the legislative basis)

11. Trading Venues and Systematic Internalisers

Who should read this chapter

Current and prospective operators of UK RMs such as Recognised Investment Exchanges (RIEs) and authorised firms that operate, or may seek to operate, Multilateral Trading Facilities (MTFs) or Organised Trading Facilities (OTFs). Investment firms that are, or are likely to become, Systematic Internalisers (SIs).

11.1 Please read this chapter in conjunction with:

- Chapter 3 – Investment firms
- Chapter 8 – Passport notifications and tied agents
- Chapter 10 – Market data processor (MDP) on-boarding and market data reporting
- Chapter 12 – Transparency waivers and deferrals
- Chapter 13 – Commodity regime
- Chapter 14 – Non-discriminatory clearing access

Recognised Investment Exchanges (RIEs)

Introduction

- 11.2** To improve the transparency and resilience of markets, MiFID II makes important changes to the regulatory regime for trading venues in general and to RMs in particular. However MiFID II does not change the current recognition process for RIEs, which is the relevant regime for operators of RMs in the UK, and their status as exempt persons under FSMA.
- 11.3** Under MiFID II, an applicant for recognition must continue to demonstrate to us that it is able to meet the FSMA (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (RRRs) before we can make a recognition order. We have a statutory duty to determine an application within 6 months from receiving a complete application. Existing RIEs will have to implement the necessary changes before MiFID II comes into effect to demonstrate they comply with the revisions being made to the RRRs to implement MiFID II.

What is changing

- 11.4** The Treasury has already consulted on changes to the RRRs required to implement MiFID II, in March 2015. We consulted on the consequential change to the section REC²⁵ of the Handbook in CP15/43.
- 11.5** The MiFID II changes mainly involve:
- the management body of an RIE
 - the systems and controls for algorithmic trading
 - suspending and removing financial instruments
 - position limits and position management controls on commodity derivatives
 - position reporting of commodity derivatives and emission allowances
- 11.6** Additionally, MiFIR, will apply directly in all Member States, brings harmonised transparency requirements to financial instruments, including shares which are already subject to transparency under MiFID. It also introduces new obligations for post-trade activity, including a clearing obligation for derivatives traded on a RM. Finally, MiFID II extends the range of activities that can be carried out by RIEs to include the operation of an organised trading facility and of the data reporting service of an APA, CTP or ARM.
- 11.7** For RIEs, the application process set in REC 5 will not change. It does not provide for any specified application form, and the process and method for making notifications to the usual supervisory contact is set out in REC 3.2.
- 11.8** RIEs are already required to provide notice to us of events and information which we need to meet our obligations under FSMA and the RRRs. The notification rules are contained in section REC 3 of the Handbook. MiFID II expands and specifies, through formats, the existing notification rules for RIEs.
- 11.9** MiFID II introduces various forms for RIEs. Please see Annex 1 Table 5 for further information about these, including the legislative basis and key dates of application.
- 11.10** For requirements for RMs acting as an operator of an MTF or OTF, see the relevant sections further on in this chapter. The requirements in MiFID II on RMs operating MTFs and OTFs are the same as for investment firms operating MTFs and OTFs. However, our supervisory relationship with RMs is distinct from that for investment firms, which could involve different supervisory procedures.
- What action is required, and by when?**
- 11.11** Firms must provide the appropriate notifications to their FCA supervisory contact by the dates shown in Annex 1 Table 5.

²⁵ <https://www.handbook.fca.org.uk/handbook/REC.pdf>

Multilateral Trading Facilities (MTFs)

Introduction

- 11.12** MiFID II introduces changes to the requirements for MTFs to align them with those of RMs. The new regime will require MTFs to have equivalent organisational requirements and similar regulatory oversight.
- 11.13** This section will provide an overview of the notifications required for an MTF as part of the new regulatory regime.
- 11.14** For MTFs already authorised under MiFID, the investment firm or market operator operating the MTF must provide the relevant notifications to demonstrate they comply with new obligations under MiFID II that did not previously apply to the MTF.

What is changing

- 11.15** In CP15/43 we consulted on changes to the Market Conduct sourcebook (MAR), Chapter 5 to incorporate the new MiFID II regulatory framework. The main changes brought by MiFID II aim to ensure fair and orderly trading, efficient execution of orders and require published and non-discriminatory rules. MiFID II also expands the scope of pre- and post- trade transparency to equity-like instruments, as well as bonds, structured finance products, emissions allowances and derivatives.
- 11.16** The process for making notifications for MTFs will not change, and firms should provide the new notifications required by MiFID II to their usual supervisory contact, who will then take the appropriate action.
- 11.17** MiFID II introduces new forms for MTFs. Please see Annex 1 Table 6 for further information about these, including the legislative basis and key dates of application.

What action is required, and by when?

- 11.18** Firms must provide the appropriate notifications to their usual supervisory contact by the dates shown in Annex 1 Table 6. We would encourage existing operators of MTFs, including RIEs, to provide us with the information required on the operation of their MTF under ITS 19, and any application to register an MTF as an SME growth market, by 31 October 2017.

Organised Trading Facilities (OTFs)

Introduction

- 11.19** In CP15/43 we consulted on a new type of trading venue which MiFID II introduces, called an OTF. The key difference between an OTF and an MTF is that an OTF operator is required to use discretion when placing and retracting an order on to the OTF, and/or when deciding not to match a specific order with other orders available in the systems at a given time. The majority of rules and obligations for OTFs and OTF operators are identical to those for MTFs and MTF operators.
- 11.20** Where a firm has determined that it is operating a trading system that will be an OTF under MiFID II, or intends to establish one, the firm will need to apply for authorisation to operate an OTF. Chapter 3 describes the procedures for VoPs and applications for authorisation, and we would stress again that if a firm that wishes to operate an OTF from 3 January 2018 we would welcome early applications after we start accepting draft applications on 30 January 2017.

What is changing

- 11.21** The rules specific to OTFs and OTF operators are outlined in Article 20 of MiFID II. In particular, article 20(6) describes the circumstances in which an OTF operator uses discretion.
- 11.22** In CP 15/43 we proposed to implement these rules in MAR 5A. The proposals in MAR 5A include rules around systems and controls, compliance monitoring and trading process requirements, amongst others. OTFs and OTF operators are also subject to rules that apply to trading venues more broadly.
- 11.23** Schedule 2.2 of MAR outlines the notification requirements applicable to an OTF operator.
- 11.24** MiFID II introduces new forms for OTFs. Please see Annex 1 Table 7 for further information about these, including the legislative basis and key dates of application.

What action is required, and by when?

- 11.25** The process for making notifications which MiFID II requires should be provided to the usual supervisory contact, who will then action as appropriate.

Small and Medium Sized Enterprise (SME) Growth Markets**Introduction**

- 11.26** MiFID II introduces a new sub-category of MTF called Small and Medium Sized Enterprise (SME) Growth Markets. This is intended to raise the visibility and profile of growth markets or junior markets across Europe.

What is new

- 11.27** Please read this section in conjunction with the above MTF section for notifications to be made by existing MTFs.
- 11.28** MiFID II introduces new forms for SME Growth Markets. Please see Annex 1 Table 8 for further information about these, including the legislative basis and key dates of application.

What action is required, and by when?

- 11.29** An MTF that intends to apply for registration as an SME Growth Market may wish to contact their usual supervisory contact at the FCA for further advice on the preparation, timing and practical aspects of an application to register. There is no prescribed format for the notification but it should cover the matters in the draft MAR 5.10.4G (1 and 2).

Systematic internalisers (SI)**Introduction**

- 11.30** MiFID II expands the SI regime significantly. While under MiFID the relevant obligations applied only to shares, MiFID II expands this to other equity instruments and bonds, derivatives, structured finance products and emission allowances traded on a trading venue. We consulted on the implementation of the SI regime with revisions to MAR 6 in CP15/43. As the large majority of rules for SIs are contained within directly binding EU regulation, either through MiFIR or delegated acts and technical standards, we have not proposed to duplicate them in the Handbook. This also applies to the relevant notification requirements, which are located within those regulations.

11.31 Authorised firms which have the permission required to deal on own account and execute client orders do not have to seek prior permission from us to operate as an SI. Rather, they must notify us when their trading levels exceed pre-defined thresholds, which result in them becoming SIs. They can also opt to be an SI if they do not exceed the pre-defined thresholds.

What is new

11.32 Notification of classification as SI

- This arises from:
 - Art 15(1) MiFIR
 - Art 18(4) MiFIR
 - Art 20(4) MiFIR
- See MAR 6.4.1 R – 6.4.2 G, as consulted on in CP 15/43. MAR 6.4.2 G, which states that notifications can be addressed to the firm’s usual supervisory contact at the FCA.

What action is required, and by when?

11.33 Firms must monitor their trading levels and calculate whether they trade at levels that would bring them into the SI regime in the various instruments they trade. Where they do so, and so are brought in to the SI regime, they must comply with the relevant notification requirements. In particular, firms must notify us both when they become an SI and when they cease to be an SI.

11.34 The process for making notifications which MiFID II requires should be provided to the usual supervisory contact, who will then action as appropriate.

11.35 More information on the process and content of notifications will be provided in due course.

12.

Transparency waivers and deferrals

Who should read this chapter

Market operators and investment firms operating a trading venue wanting to use a pre-trade transparency waiver

Market operators and investment firms operating a trading venue that want to defer publication of post-trade data

Systematic internalisers (SIs) wanting to use a pre-trade transparency waiver for non-equity instruments

Introduction

12.1 In this chapter we give an overview of the application process for:

- market operators and investment firms operating a trading venue who want to use a pre-trade transparency waiver or deferred publication of post-trade data, and
- SIs wanting to use a pre-trade transparency waiver for non-equity instruments

Applications can be made together with relevant applications for authorisation, or separately. However, applicants must submit all the necessary information to us with sufficient notice before they intend to use the exemption to allow us time to consider the application. Further information is provided below.

12.2 Please read this chapter in conjunction with:

- Chapter 11 – trading venues and systematic internalisers
- Chapter 10 – Market Data Processor (MDP) on-boarding and market data reporting

What is changing

12.3 MiFID II extends the scope of pre and post trade transparency requirements for market operators and investment firms operating trading venues. It brings in a broader range of instruments beyond shares; namely equity-like instruments (such as depository receipts, exchange-traded funds and certificates) and non-equity instruments (bonds, structured finance products,

emission allowances and derivatives). MiFID II²⁶ allows certain exemptions from these pre and post trade transparency requirements.²⁷

- 12.4** MiFID II also extends the obligation for SIs to make firm quotes for shares public to also include the above range of instruments for trading venues.

Pre-trade transparency waiver applications for trading venues in respect of equity and non-equity instruments

- 12.5** Market operators and investment firms operating a trading venue that would like to benefit from the use of a pre-trade transparency waiver must apply to their competent authority to get prior approval. Competent authorities must notify ESMA and other competent authorities of how each individual waiver is intended to be used and provide an explanation of how it will function at least four months before the waiver is intended to take effect. Once ESMA has received a waiver notification it has 2 months to issue a non-binding opinion on how compatible each waiver is with the requirements in MiFIR and relevant regulatory technical standards.

- 12.6 Applications for waivers received after 3 January 2018:** We will require waiver applicants to submit their applications to us at least 5 months before the waiver is intended to take effect. This will give us sufficient time to make an assessment before the notification is to be sent to ESMA and other competent authorities.

- 12.7 Applications for waivers received before 3 January 2018:** ESMA expects to receive a larger number of notifications during 2017. To avoid a bottleneck at the end of 2017 they have decided to apply a phased implementation process.²⁸

- **For equity and equity-like instruments**, waiver applicants will be asked to send us their applications **by 1 February 2017 at the latest**. Competent authorities will send notifications to ESMA by 28 February 2017, which ESMA will aim to process by the end of May.
- **For bonds and derivatives**, waiver applicants will be asked to send us their applications **by 1 June 2017 at the latest**. Competent authorities will send notifications to ESMA by 31 July 2017, which ESMA will aim to process by the end of November.

- 12.8** The requirement for ESMA to issue an opinion within 2 months of receiving a notification will apply once MiFIR is in force. As a result, ESMA has allowed itself more than 2 months to process the larger number of waiver notifications it expects to receive pre 3 January 2018. We are happy to receive waiver applications as soon as possible, but ESMA will begin their reviews as above. Both ESMA and the FCA will do their best to process applications submitted after the dates given as quickly as possible, but cannot guarantee this will be done by 3 January 2018.

- 12.9** The form that waiver applicants should use to submit their applications to us is available on our website: <https://www.fca.org.uk/markets/mifid-ii>.

²⁶ See Articles 4, 6-7 and 8-11 of MiFIR and RTS 1 and 2

²⁷ ESMA is currently working on advice to the Commission for pre-trade transparency waivers in respect of package transactions. It will send draft RTS on this issue to the Commission by the end of February 2017.

²⁸ Details of what ESMA is proposing can be found at: <https://www.esma.europa.eu/press-news/esma-news/esma-sets-timetable-mifid-ii-waiver-applications>

Post-trade transparency deferral applications for trading venues in respect of equity and non-equity instruments

- 12.10** Competent authorities are also able to authorise applications from market operators and investment firms operating a trading venue to allow for deferred publication of post-trade data. Although ESMA is required to monitor the application of deferred trade publication arrangements, unlike pre-trade transparency waivers, there are no requirements for them to issue an opinion. The necessary requirements to be able to defer post-trade publication are also simpler than those for pre-trade waivers. We have therefore decided not to develop a specific form for applications for deferred trade publication at this time.
- 12.11** We will require operators of trading venues to send us requests to defer post-trade publication in writing, together with appropriate supplementary information (please see details under the section ‘What action is required, and by when?’) to allow us to make an assessment. Applications should be sent to the trading venue’s usual supervisory contact at the FCA with sufficient notice before the deferred publication arrangements are intended to take effect.

Pre-trade transparency waiver applications for SIs for of non-equity instruments

- 12.12** The obligation on SIs to disclose quotes to their clients on request if they agree to provide a quote can be waived if the relevant requirements in Article 18(2) of MiFIR are met. We will advise on the practicalities of this in due course.

Summary

- 12.13** MiFID II introduces new forms for transparency waivers and deferrals. Please see Annex 1 Table 9 for further information about these, including the legislative basis and key dates of application.

What action is required, and by when?

Pre-trade transparency waiver applications for trading venues:

- 12.14** UK legislation to enable us to receive waiver applications under MiFIR is not yet in place. This means currently we will only accept waiver applications in draft form. We have made a draft of the application form for market operators and investment firms operating a trading venue who want a pre-trade transparency waiver available on our website: <https://www.fca.org.uk/markets/mifid-ii>. Although applications will be in draft form for a short period all information provided must be complete. We will need an application for each type of waiver required. However, the application can specify more than one class of financial instruments to which the waiver would apply, as long as all of the information about the relevant system and functioning of the waiver are the same for each class. Where a market operator and investment firm operates more than one trading venue, we will require an application for each trading venue concerned.
- 12.15** Applications should be submitted to us at least 5 months before the pre-trade transparency waiver is intended to take effect. For market operators and investment firms operating a trading venue that intend to use a pre-trade transparency waiver from 3 Jan 2018, applications should be submitted to us, at the latest, by **1 February 2017** for equity and equity-like instruments and by **1 June 2017** for bonds and derivatives. We encourage completed waiver applications to be submitted to us as soon as possible.
- 12.16** The FCA’s online gateway will be able to accept draft waiver applications from 30 January 2017 so before then we ask applications to be submitted to the trading venue’s usual supervisory contact at the FCA via email attaching the completed application form.

Post-trade transparency deferral applications for trading venues:

- 12.17** Trading venues do not have to use a specific form when applying to us to defer publication of post-trade data. All applications to us should be in writing and specify that the application is for deferred publication of post-trade data. The application should include all relevant material to allow us to make an assessment. This includes the specific arrangements for deferral, reasons for deferral and how the relevant requirements in MiFIR and the regulatory technical standards have been met. The application should also include the date it is being submitted to us, the date on which the exemption is intended to take effect, the classes of financial instruments the exemption would apply to and the name and contact details of the applicant.
- 12.18** Where a market operator and investment firm operates more than one trading venue, we will require an application for each trading venue concerned.
- 12.19** Applications should be sent to the trading venue's usual supervisory contact at the FCA with sufficient notice before the deferred publication arrangements are intended to take effect. This will allow us adequate time to assess the application. Where deferred publication of post-trade data is expected to begin from 3 Jan 2018, applications should be submitted to us sufficiently in advance of that date to allow us time to make a decision before MiFIR applies.

References

- 12.20** The transparency regime is dealt with in Articles 3, 4, 6, 7, 8, 9, 10, 11, 18 and 21 of MiFIR and RTS 1 and RTS 2 (see Annex 3 for a description of the RTS).

13.

Commodity regime

Who should read this chapter

Commodity firms including firms exempt under the Article 2 ancillary exemption.

Introduction

- 13.1** MiFID II strengthens the regulation of the trading of commodity derivatives and emission allowances. This requires certain applications and notifications to be made by investment firms, RIEs and certain unauthorised firms trading commodity derivatives or emission allowances who are not authorised by us. The processes related to these applications and notifications are not linked directly to the submission of applications for authorisation or VoP. Additionally, the relevant implementing legislation has only relatively recently been adopted by the Commission. Therefore we have not finalised our work on the notification processes and will need to provide subsequent updates on our plans in due course.

What is changing

- 13.2** MiFID II requires commercial firms trading commodity derivatives or emission allowances benefiting from the exemption from the requirement for authorisation in Article 2(1)(j) to make an annual notification that they make use of the exemption. National competent authorities are also entitled on an ad-hoc basis to request further information from such firms as to how they meet the terms of the exemption.
- 13.3** MiFID II also introduces a comprehensive regime of position limits for commodity derivatives. Unauthorised firms trading commodity derivatives can apply for an exemption from the position limit regime. The position limit regime is supported by a reporting regime. Trading venues, and investment firms who trade in economically equivalent OTC (EOTC) commodity derivatives, will need to make daily reports to us concerning the positions held by persons trading commodity derivatives. Trading venues will also need to submit weekly reports to us and to ESMA, which will be published by ESMA, of aggregated information about positions held in the commodity derivatives or emission allowances traded on their venues.
- 13.4** Please see Annex 1 Table 10 for further information about these, including the legislative basis and key dates of application.

What action is required, and by when?

- 13.5** We are aiming to make a form available online from July 2017 for firms who need to notify us that they are exempt from authorisation under the ancillary exemption. The first annual notification will be required to be made by 3 January 2018.
- 13.6** For commercial firms who wish to apply for an exemption from the position limits regime for their hedging activity we are aiming to make an application form available online from July 2017. Applications need to be made at least 21 days before 3 January 2018 in order to be in place on that date.
- 13.7** Trading venues and investment firms who need to provide us with weekly and daily information on positions will need to on-board to our Market Data Processor, as described in Chapter 10. Testing for firms providing us with reports on commodity derivative or emission allowances positions will take place in the third quarter of 2017.

External references

- 13.8** The relevant provisions for the ancillary exemption are Article 2(1)(j) and 2(4) of MiFID II and RTS 20 (see Annex 3 for a description of the RTS).
- 13.9** The relevant provisions for position limits and position reporting are Articles 57 and 58 of MiFID II, Article 83 of the MiFID II delegated regulation, RTS 21 and ITS 4 (see Annex 3 for a description of the RTS and ITS).

14.

Non-discriminatory clearing access for financial instruments

Who should read this chapter

Central Counterparties (CCPs), RIEs, MTFs and OTFs requesting non-discriminatory access in accordance with Articles 35 or 36 of MiFIR

Trading venues wanting to use a transitional exemption from Article 36 of MiFIR for exchange traded derivatives (ETDs)

Introduction and what is changing

- 14.1** Articles 35 and 36 of MiFIR provide for access between CCPs and trading venues in a way that does not discriminate and is transparent.
- 14.2** In accordance with Article 35(2) and Article 36(2) of MiFIR, those requesting access to a CCP or trading venue should formally submit a request to:
- the CCP/trading venue from which access is being requested
 - the competent authority of that CCP/trading venue, and
 - the competent authority of the trading venue/CCP making the request
- 14.3** Transitional exemptions are available for CCPs that meet the requirements in Article 35(5) of MiFIR and trading venues meeting the requirements in Article 36(5) of MiFIR and relevant requirements in RTS 15. Relevant trading venues that want to benefit from the transitional exemption must apply to their competent authority and ESMA before 3 Jan 2018 to get prior approval. The competent authority and ESMA may decide that Article 36 of MiFIR does not apply to the trading venue for a thirty month period. Relevant trading venues may also make a request to extend the transitional exemption for a further thirty month period if they meet the relevant requirements in Article 36(5) of MiFIR and RTS 15.
- 14.4** A transitional exemption is also available for CCPs and trading venues under Article 54(2) of MiFIR in respect of ETDs. The competent authority must take into account the risks resulting from the application of the access rights under Article 35 or 36 of MiFIR as regards to ETDs to the orderly functioning of the relevant CCP or trading venue to assess whether the transitional should be approved. We are currently discussing the process and what information we will require for this purpose and will advise further in due course.

What action is required, and by when?

Non-discriminatory access requests:

- 14.5** A trading venue or CCP that intends to make a request for non-discriminatory access should send us a formal request in writing. They should include any relevant supplementary information that will enable us to assess whether to grant or deny access in line with MiFIR and the relevant technical standards. Both the formal submission in Articles 35(2) and 36(2) of MiFIR to the relevant competent authorities and the CCP or trading venue to which access is being requested should be made at the same time. If a competent authority denies access Article 35(4) and 36(4) of MiFIR requires the decision to be issued within two months after the request is received.
- 14.6** If a trading venue or CCP has decided to deny access in accordance with MiFIR and the relevant technical standards, it should give the relevant competent authorities full reasons as soon as is practically possible.
- 14.7** We are currently discussing the process and the types of information we will require in relation to the above, once we have concluded our discussions we will provide further details on what a formal request should entail.

Application for trading venues to benefit from a transitional exemption from Article 36 of MiFIR in respect of ETDs

- 14.8** In line with Article 20 of RTS 15, a trading venue that wants to use a transitional exemption from Article 36 of MiFIR for ETDs from 3 January 2018 should submit its application and all relevant information needed to verify the trading venues notional amount calculations to the FCA and ESMA at least three months before this date to ensure they can make a decision before MiFIR applies. The venue should complete forms 3.1 and 3.2 contained in the Annex to RTS 15 for this purpose.
- 14.9** If a trading venue wants a further thirty month transitional exemption from Article 36 of MiFIR for ETDs, it should submit its application using Forms 4.1 and 4.2 contained in the Annex to RTS 15 and all relevant information needed to verify the trading venues notional amount calculations to us and ESMA at least three months before the end of the previous thirty month exemption period. This will ensure we and ESMA can reach a decision before that exemption period ends.

References

- 14.10** Article 35 and 36 of MiFIR and RTS 15 and the Annex to RTS 15 (see Annex 3 for a description of the RTS).

Annex 1:

Notification Table^{29 30}

Table 1: Investment Firm notifications³¹

Description	Legislative Basis	Key Dates
<p>Notification of information on changes to the membership of the management body.</p> <p>The requirement to notify on such changes already exists but new forms and processes will apply. Please refer to Chapter 3 for further information</p>	<ul style="list-style-type: none"> • Art 7(5) MiFID II • Authorisation ITS 2, Annex iii • Authorisation RTS 	Applicable from 3 January 2018
<p>Notifications relating to algorithmic trading.</p> <p>Authorised firms, and certain firms exempt from MiFID who are members or participants of a trading venue, will have to notify us (and the competent authorities of trading venues at which as a member or participant they engage in algorithmic trading) if they engage in algorithmic trading.</p> <p>We are still defining our process to enable firms to notify us and we will communicate further on this notification process in due course.</p>	<ul style="list-style-type: none"> • Art 17(2) MiFID II • RTS 6, Annex to RTS 6 (in respect of provision of order records) 	Applicable from 3 January 2018
<p>Notification of provision of DEA arrangements.</p> <p>Authorised firms, and certain firms exempt from MiFID who are members or participants of a trading venue, will have to notify us (and the competent authorities of trading venues at which as a member or participant they provide DEA) of the DEA arrangements they provide.</p> <p>We are still defining our process to enable firms to notify us and we will communicate further on this notification process in due course.</p>	<ul style="list-style-type: none"> • Art 17(5) MiFID II • RTS 6 	Applicable from 3 January 2018
<p>Notification of classification as an SI.</p> <p>MiFID II expands the existing SI regime to a number of additional asset classes other than shares.</p> <p>Firms should notify their usual supervisory contact of their intention to become or cease to be an SI.</p> <p>We are still defining our process to enable firms to notify us and we will communicate further on this notification process in due course.</p>	<ul style="list-style-type: none"> • Art 15(1) MiFIR • Art 18(4) MiFIR • Art 20(4) MiFIR 	Applicable from 3 January 2018
<p>Notification of intention to act as a general clearing member.</p> <p>Authorised firms, and certain firms exempt from MiFID who are members or participants of a trading venue, are required to notify us if they act as a general clearing member.</p> <p>We are still defining our process to enable firms to notify us and we will communicate further on this notification process in due course.</p>	<ul style="list-style-type: none"> • Art 17(6) MiFID II • RTS 6 	Applicable from 3 January 2018

²⁹ Please also refer to the proposed rule GEN TP1.3 as consulted in our CP 16/43 enabling firms to make notifications ahead of 3 January 2018

³⁰ Annex 3 provides a description of the various RTS and ITS referred to in this annex

³¹ For the investment authorisation, VoP and COLS application forms please refer to Annex 2

Table 2: Passport Notifications

Description	Legislative Basis	Key Dates
Notice of intention to establish a branch or change branch particulars in another EEA State (branch passport notification)	<ul style="list-style-type: none"> • Art 35(12) MiFID II • ITS 4A, Annex 4 	From 3 January 2018 (see chapter 8 for a description of the transitional arrangements prior to 3 January 2018)
Notice of intention to use a tied agent established in another EEA State or to amend the details of a tied agent established in another EEA State (tied agent passport notification)	<ul style="list-style-type: none"> • Art 35(12) MiFID II • ITS 4A, Annex vii 	From 3 January 2018 (see chapter 8 for a description of the transitional arrangements prior to 3 January 2018)
Notice of the termination of the operation of a branch or cessation of the use of a tied agent established in another EEA State or to amend an investment services and activities passport notification, with or without UK tied agent	<ul style="list-style-type: none"> • Art 35(12) MiFID II • ITS 4A, Annex x 	From 3 January 2018
Notice of intention to provide cross border services and activities in another EEA State (investment services and activities passport notification) or to amend an investment services and activities passport notification, with or without UK tied agent	<ul style="list-style-type: none"> • Art 34(9) MiFID II • ITS 4A, Annex i 	From 3 January 2018 (see chapter 8 for a description of the transitional arrangements prior to 3 January 2018)
Notice of intention to provide arrangements to facilitate the access to an MTF or an OTF from another EEA State or to amend the particulars of the arrangements	<ul style="list-style-type: none"> • Art 34(9) MiFID II • ITS 4A, Annex iv 	3 January 2018 (see chapter 11 for a description of the transitional arrangements prior to 3 January 2018)
Notice of cancellation of a cross border services and activities passport or cessation of the use of a tied agent providing cross border services in another EEA State	<ul style="list-style-type: none"> • Variation of ITS 4A, Annex i 	From 3 January 2018
Notice of intention to cancel arrangements to facilitate the access to a MTF or an OTF from another EEA State	<ul style="list-style-type: none"> • Variation of ITS 4A, Annex iv 	From 3 January 2018

Table 3: Market Data Processor

Description	Legislative Basis	Key Dates
Volume cap data reporting	<ul style="list-style-type: none"> • Art 4(1) MiFIR • Article 5 MiFIR and Article 6 RTS 3 • REC 2.6.10 EU and REC 2.6.11 EU, in CP 15/43, for RMs 	Testing date 3 July 2017 Implementation date 3 Jan 2018
Reporting for the purposes of transparency calculations	<ul style="list-style-type: none"> • Article 22 and RTS 3 • RTS 1 Annex iii (equity pre-trade transparency) • RTS 2 Annex iv (non-equity post-trade transparency) 	Testing date 3 July 2017 Implementation date 3 Jan 2018
Transaction reporting by investment firms, trading venues and ARMs on behalf of investment firms.	<ul style="list-style-type: none"> • Article 26(1) MiFIR • RTS 22 Annex i, Table 1 and 2 • The format is prescribed by ESMA RTS 22. • Data standards and formats for transaction reporting – Article 1. 	Testing date 3 July 2017 Implementation date 3 Jan 2018
Transaction reporting by trading venues	<ul style="list-style-type: none"> • Article 26(5) MiFIR • RTS 22 Annex i, Table 2 • The format is prescribed by ESMA RTS 22. • Data standards and formats for transaction reporting – Article 1. • Annex I Table 1 and Table 2 	Testing date 3 July 2017 Implementation date 3 Jan 2018
Reference data reporting by trading venues	<ul style="list-style-type: none"> • Article 27 MiFIR • RTS 23 Annex Table 3 • The format is prescribed by ESMA RTS 23 • Content, standards, form and format of reference data – Article 1 	Testing date 3 July 2017 Implementation date 3 Jan 2018

Description	Legislative Basis	Key Dates
Synchronisation of business clocks by trading venues and members/participants	<ul style="list-style-type: none"> • Article 50 MiFID II • RTS 25 • The format is prescribed by ESMA RTS 25 • Reference time – Article 1 • Level of accuracy for operators of trading venues – Article 2 • Level of accuracy for members or participants of a trading venue – Article 3 • Compliance with maximum divergence requirements – Article 4 	<p>Testing date 3 July 2017</p> <p>Implementation date 3 Jan 2018</p>

Table 4: DRSP Notifications

Description	Legislative Basis	Key Dates
<p>Application form to provide service of ARM and/or APA and/or CTP</p> <p>Planned for inclusion in an annex to MAR 9 (MAR 9 Annex 1D). Approach consulted on as part of CP 15/43 and CP 16/43.</p> <p>Applicant entities will need to complete and submit Annex I of ITS 3. FCA guidance notes will be available on the FCA website www.fca.org.uk/publication/forms/mifid-data-reporting-services-notes.docx to assist with completion.</p> <p>See</p> <p>MAR 9.2.1 D – 9.2.2 G for further detail on scope and application of the form.</p> <p>MAR 9.5.2 G regarding the process for prior verification for operators of trading venues</p>	<ul style="list-style-type: none"> • Articles 61 MiFID II • RTS 13 • ITS 3, Annex i 	<p>Required as part of a complete application by 3 July 2017 for firms wanting to operate a DRSP from 3 January 2018</p> <p>Firms wanting to operate a non-equity CTP will need to have a complete application by 3 March 2019 to operate a non-equity CTP from 3 September 2019.</p>
<p>Notification form for list of members of a management body www.fca.org.uk/publication/forms/mifid-management-body-members-form.docx</p> <p>Form planned for inclusion in an annex to MAR 9 (MAR 9 Annex 2D). Approach consulted on as part of CP 15/43 and CP 16/43.</p> <p>Applicant entities will need to complete and submit Annex II of ITS 3. FCA guidance notes will be available on the FCA website www.fca.org.uk/publication/forms/mifid-data-reporting-services-notes.docx to assist with completion.</p> <p>See</p> <p>MAR 9.2.1 D – 9.2.2 G for further detail on scope and application of the form.</p> <p>MAR 9.5.3 G is relevant for a recognised investment exchange seeking prior verification</p>	<ul style="list-style-type: none"> • Articles 61 and 63 MiFID II • ITS 3, Annex ii • RTS 13, Article 4 	<p>Required as part of a complete application by 3 July 2017 for firms wanting to operate a DRSP from 3 January 2018</p> <p>Firms wanting to operate a non-equity CTP will need to have a complete application by 3 March 2019 to operate a non-equity CTP from 3 September 2019.</p>

Table 5: RIE Notifications (including prior verification of the operation of an MTF or OTF)

Description	Legislative Basis	Key Dates
Notification of the members of the management body of an RIE. The notification obligation is not new but its content has been expanded as a consequence of the changes in REC 2.4A.	<ul style="list-style-type: none"> • Art 45(8) MiFID II • REC 3.4.4A R in CP15/43 	Applicable from 3 January 2018
Notification of decision to suspend or remove a financial instrument from trading. The notification obligation is not new but its scope is expended to related derivatives. In addition a new format is provided for communication by the RIE to the competent authority.	<ul style="list-style-type: none"> • Art 52(2) MiFID II • RTS 18 • ITS 2 • Art 80 MiFID Org Regulation • REC 3.14.2A R in CP15/43 	Applicable from 3 January 2018
Prior verification of the operation of an MTF and OTF. The prior verification is not new but its scope is expanded to include the operation of an OTF. In addition ITS 19 specifies the content and format of the required information about the functioning of MTFs and OTFs. These notifications must be provided in writing.	<ul style="list-style-type: none"> • Art 18(10) and 18(11) MiFID II • ITS 19 • REC 3.14A.4 R and REC 3.14A.5 R in CP15/43 	By 3 January 2018
Notification of parameters for halting of trading. These notifications must be provided in writing. Work is underway with ESMA to define the process to enable firms to notify, we will communicate further on this notification process in due course.	<ul style="list-style-type: none"> • Art 48(5) MiFID II • REC 2.5.2R in CP15/43 • See template in draft ESMA guidelines 	Applicable from 3 January 2018
Notification in relation to messages exceeding the historical peak. An RIE shall assess whether the trading system capacity remains adequate when the number of messages has exceeded the historical peak. After each assessment, the RIE shall inform the FCA about any measures planned to expand capacity or add new capabilities together with the implementation timeframe of such measures.	<ul style="list-style-type: none"> • Art 11(5) RTS 7 • REC 2.5.1(2)(G) in CP15/43 	Applicable from 3 January 2018
Notification of written agreements with investment firms pursuing a market making strategy. Notification can include a single agreement for all firms.	<ul style="list-style-type: none"> • Art 48(3) MiFID II • REC 2.5.1(4)(d) in CP15/43 	By 3 January 2018
Notification of the arrangements established in other Member States to facilitate access by remote members, including DEA. The notification is not new but a new format for notification by the RIE to the FCA is provided.	<ul style="list-style-type: none"> • Art 53(6) MiFID II • ITS 4 	Venue must notify FCA prior to providing the arrangements The FCA must communicate within 1 month that information to the member states where the RM intends to provide those arrangements Applicable from 3 January 2018

Description	Legislative Basis	Key Dates
Notification of significant rule infringements, disorderly trading, market abuse or system disruptions.	<ul style="list-style-type: none"> • Art 54(2) • Art 81-82 MiFID Org Regulation REC 3.25.1 	Applicable from 3 January 2018

Table 6: MTF Notifications

Description	Legislative Basis	Key Dates
Information on the operation of MTFs	<ul style="list-style-type: none"> • Art 18(10) MiFID II • ITS 19 • MAR 5.3.1A R(6), in CP 15/43. 	By 3 January 2018 for existing venue operators. Applicable from 3 January 2018
Notification by MTFs of significant rule infringements disorderly trading conduct market abuse or system disruptions	<ul style="list-style-type: none"> • Art 31(2)-(3) MiFID II • Art 81-82 MiFID Org Regulation • MAR 5.6.1 R, in CP 15/43. 	Applicable from 3 January 2018
Notification by MTF of decision to suspend or remove a financial instrument from trading	<ul style="list-style-type: none"> • Art 32(2) MiFID II • ITS 2 • RTS 18 • Art 80 MiFID Org Regulation • MAR 5.6A.1 R(3), in CP 15/43. 	Applicable from 3 January 2018
Notification of written agreements with investment firms pursuing a market making strategy	<ul style="list-style-type: none"> • Art 18(5) MiFID II • Art 48(3) MiFID II • MAR 5.3A.3R(4) 	Applicable from 3 January 2018
Notification in relation to parameters for halting of trading These notifications must be provided in writing. Work is underway with ESMA to define the process to enable firms to notify, we will communicate further on this notification process in due course.	<ul style="list-style-type: none"> • Art 18(5) MiFID II • Art 48(5) MiFID II • MAR 5.3A.7 R, in CP 15/43. • See template in draft ESMA guidelines 	Applicable from 3 January 2018

Table 7: OTF Notifications

Description	Legislative Basis	Key Dates
Information on the operation of OTFs	<ul style="list-style-type: none"> • Art 18(10) MiFID II • ITS 19 • MAR 5A.4.2A R(2), in CP 15/43. 	To be submitted as part of complete applications to set up an investment firm operating an OTF or a VoP by an existing investment firm to operate an OTF by 3 July 2017 for firms wanting to operate OTFs from 3 January 2018.
Notification by OTFs of significant rule infringements, disorderly trading conduct market abuse or system disruptions	<ul style="list-style-type: none"> • Art 31(2)-(3) MiFID II • Art 81-82 MiFID Org Regulation • MAR 5A.8.1 R, in CP 15/43. 	Applicable from 3 January 2018
Notification by OTF of decision to suspend or remove a financial instrument from trading	<ul style="list-style-type: none"> • Art 32(2) MiFID II • ITS 2 • RTS 18 • Art 80 MiFID Org Regulation • MAR 5A.9.1 R(3), in CP15/43. 	Applicable from 3 January 2018
Notification in relation to written agreements with investment firms and schemes to ensure sufficient number of investment firms participate in those agreements	<ul style="list-style-type: none"> • Art 18(5) MiFID II • Art 48(3) MiFID II • Mar 5A.5.3R(4) 	Applicable from 3 January 2018
Notification in relation to parameters for halting of trading	<ul style="list-style-type: none"> • Art 18(5) MiFID II • Art 48(5) MiFID II • MAR 5A.5.7 R, as consulted on in CP 15/43. 	Applicable from 3 January 2018
Further notification by OTFs These notifications must be provided in writing. Work is underway with ESMA to define the process to enable firms to notify, we will communicate further on this notification process in due course.	<ul style="list-style-type: none"> • Art 20(7) MiFID II • MAR 5A.3.9 R, in CP15/43 • See template in draft ESMA guidelines 	Applicable from 3 January 2018

Table 8: SME Growth Markets

Description	Legislative Basis	Key Dates
Application for registration as a SME Growth Market	<ul style="list-style-type: none"> • Art 33 MiFID II • Art 78 MiFID delegated regulation • MAR 5.10 [CP 4] 	Applicable from 3 January 2018
Application for de-registration as a SME Growth Market	<ul style="list-style-type: none"> • Art 33(5) MiFID II • MAR 5.10.7 [CP 4] 	Applicable from 3 January 2018

Table 9: Waivers and Deferrals

Description	Legislative Basis	Key Dates
Transparency waiver application for trading venues for equity and non-equity instruments (pre-trade waivers)	<ul style="list-style-type: none"> • Art 4(1) MiFIR • Art 9(1) MiFIR • RTS 1 • RTS 2 • MAR 5.7.1A D, in CP 15/43, for MTFs. • MAR 5A.10.1 D, in CP 15/43, for OTFs. (non-equity instruments only) • REC 2.6.10 EU and REC 2.6.11C EU, in CP 15/43, for RMs. 	Pre 3 Jan 2018 see paragraph 12.7. Post 3 Jan 2018 see paragraph 12.6.
Notification by trading venues of attempts to use waivers to circumvent MiFID obligations	<ul style="list-style-type: none"> • Art 4(3)(c) MiFIR 	Applicable from 3 January 2018
Transparency deferrals for trading venues for equity and non-equity instruments (post-trade deferrals)	<ul style="list-style-type: none"> • Art 7(1) MiFIR • Art 11(1) MiFIR • RTS 1 • RTS 2 • MAR 5.7.1C D, in CP 15/43, for MTFs. • MAR 5A.11.1 D, in CP 15/43, for OTFs. (non-equity instruments only) • REC 2.6.18 EU and REC 2.6.18C EU, in CP 15/43, for RMs 	See paragraph 12.20

Table 10: Commodity Regime

Description	Legislative Basis	Key Dates
Yearly notification by holders of ancillary exemption	<ul style="list-style-type: none"> • Art 2(1)(j) MiFID II • RTS 20 	We currently expect to make a form available, to be completed online, for these notifications from July 2017.
Report on request from FCA by holders of ancillary exemption as to basis of compliance with exemption	<ul style="list-style-type: none"> • Art 2(1)(j) MiFID II • RTS 20 	This will involve a bespoke request at our discretion.
Application form for a non-financial entity for an exemption from compliance with position limits	<ul style="list-style-type: none"> • Art 57(1) MiFID II • Art 8 RTS 21 • These provisions have been consulted on in CP16/19 	We currently expect to make a form available, to be completed online, for these applications from July 2017. Applications need to be made at least 21 days before 3 January 2018 to be in place when the position limit regime takes effect.
Weekly report of aggregate commodity derivative or emission allowances positions by trading venues	<ul style="list-style-type: none"> • Art 58(1)(a) MiFID II • ITS 4 Annex i • ITS 5 • MAR 10.4.3 R(2) and (4), as in CP 16/19 • MAR 10.4.4 R, MAR 10.4.5 D (1)-(2)(a), and MAR 10.4.6 G 	Testing date Q3 2017. First report, 10 January 2018.
Daily commodity derivative position or emission allowance reports by trading venues We are still defining our process to enable firms to notify us and we will communicate further on this notification process in due course.	<ul style="list-style-type: none"> • Art 58(1)(b) MiFID II • MAR 10.4.3 R(3) and MAR 10 Annex 2D, as consulted on in CP 16/19. Due to an absence of an EU level reporting template for this obligation, we have consulted on the basis that we will have to prescribe a form for these purposes in MAR 10 Annex 2D. 	Testing date Q3 2017 Implementation date 3 January 2018
Daily commodity derivative or emission allowance position reports by investment firms trading EOTC contracts. We are still defining our process to enable firms to notify us and we will communicate further on this notification process in due course.	<ul style="list-style-type: none"> • Art 58(2) MiFID II • ITS 4 Annex ii • MAR 10.4.8 D – MAR 10.4.9 D, in CP 16/19 	Testing date Q3 2017 Implementation date 3 January 2018

Annex 2: Authorisation application process and forms

A. Initial authorisation application screenshots

Step 1: The firm logs in to Connect and is asked to answer the following questions (this is not a complete list) that will determine the final application pack:

The first question asks the firm what it intends to sell. The firm can only select either retail or wholesale, however other permutations are applicable.

What products does the Applicant intend to sell?

- Consumer Credit
- Retail
- Wholesale
- Home Finance Provider/Administrator

If the firm selects 'Retail' it is asked to select which type(s) of the following business the firm will undertake:

What business does the applicant intend to undertake?

- Investments
- Non-investment insurance contracts
- Home Finance Broker
- Personal pension schemes (inc. SIPPs)

If the firm selects 'Wholesale' it is asked to select only one of the following four types of business:

What business does the applicant intend to undertake? 

- Securities and Futures (Non Complex)
- Securities and Futures (Complex)
- Investment manager
- Advisors and arrangers of Wholesale funds

Step 1a: When selecting either retail or wholesale the firm is asked whether it requires authorisation under MiFID:

Does the applicant require authorisation under MiFID? (If you wish to be authorised as an Article 3 exempt MiFID firm you must still answer yes to this question.)

Yes No

Step 1b: The firm is asked whether it has previously traded. If the firm answers yes to this question the 'disclosure of significant events appendix' will be included in the application forms pack (see step 2a):

Has the applicant previously traded?

Yes No

Step 1c: The following questions drive whether the firm is required to submit any controller forms. If the firm answers that it is solely owned by its Directors or Partners it will not be required to submit any controller forms.

If the applicant states that the firm is not solely owned by its Directors or Partners then it will be asked if the owners meet the relevant threshold to act as a controller. If the answer to this is yes then the applicant will be required to submit the relevant controller forms (see step 3b):

Will the firm be solely owned by its Directors or Partners?

Yes No

Do the owners meet the relevant threshold to act as a controller?

Yes No

Step 2: The firm is taken to the new authorisation application page and will be presented with the relevant pack of forms to complete that was created based on the answers provided under Step 1; the status of each form is updated as the user progresses:

New Authorisation Application	
Form	Form Status
Application Contact Details	Complete
Application Documents	In Progress
Application Fee	Not Started
Declaration	Not Started
<i>Firm Declaration only becomes editable once related applications are completed</i>	

Step 2a: The ‘Application Documents’ section sets out the different appendices that are required. If the firm has answered yes in step 1b question then the ‘disclosure of significant events appendix’ will be included in the list of appendices required.

Application Forms

You will need to complete the following form(s). The form(s) need to be downloaded, saved and completed

- [MiFID Authorisation Form](#) *
- [MiFID List of members of the management body](#) *
- [MiFID annex form](#) *
- [MiFID IT self assessment form](#) *
- [Disclosure of significant events appendix](#) *
- [Fees and Levies supplement wholesale firms form](#) *
- [MiFID checklist wholesale form](#) *

* - Required documents

Step 3: The firm will have to upload the relevant documents. The firm will not be able to submit the application unless they have uploaded each of the required appendices which can be selected from the dropdown list under ‘Document Type’. Further documents can be added by selecting the ‘Add Document’ option:

Documents

Document Title

Document Type --None--

Attachment Choose File

Remove Document

Add Document

Step 3a: After the firm has completed the relevant forms they can add a related application.

Related Applications

Now that your application is almost complete, you will need to attach and submit applications for the people who will be responsible for running the firm, who own the firm or will be conducting the activities you are seeking authorisation/registration for. These are known as related applications. The number of related applications you need to submit will depend upon the number of people who run the firm or work for the firm. You will need to submit at least one related application

Add Related Application

Application Type	Application Outcome	Last Updated	Application Status

Step 3b: When adding a related application the firm will be presented with the relevant options. If it has been determined from step 1c that a controller form is not required then they will not be presented with the controllers' forms option, the page will simply provide the option to add an Approved Person:

Approved Person
Add Approved Person
Controllers
Add Legal Persons & Partnerships Controller
Add Trust Controller
Add Natural Persons Controller

Step 3c: The Approved Person form provides the option of adding a MiFID long form A, a short form A and a standard long form A depending on the control functions the individuals are applying for, guidance is provided to the firms to determine which type of Form(s) should be completed:

Application Forms
<p>You will need to complete the following form(s). The form(s) need to be downloaded, saved and completed</p> <p>Applicant must submit one related application per individual</p> <p>Please only use the Short Form A if the candidate currently holds, or has held one of the following Controlled Functions within another authorised firm in the last six months: CF1-12B (Excluding CF2) CF28 CF29 CF30 CF40 CF50</p> <p>Full information can be found in the Guidance notes for the Form A</p> <p>Long form A - UK and overseas (not EEA) for MiFID firms ⓘ Short Form A - UK and overseas firms (Not EEA) ⓘ Long Form A - UK and Overseas Firms (not EEA) ⓘ</p> <p style="text-align: right;">* - Required documents</p>

Annex 2 Table 1 – Individual underlying application forms

Ref	Form Name	Location	Explanation
	The MiFID authorisation form	https://www.fca.org.uk/publication/forms/mifid-authorisation-form.docx	This transposes Annex I of the authorisation ITS
	The FCA MiFID Annex	https://www.fca.org.uk/publication/forms/mifid-annex-form.docx	<ul style="list-style-type: none"> • This can be used to provide information: • required by the authorisation RTS • to enable us to assess whether the applicant firm satisfies the threshold conditions • to process the application and prepare for the ongoing supervision of the firm (such as information relating to fees and prudential categories) and covers: <ul style="list-style-type: none"> • general information • information on capital • information on shareholders • information on the members of the management and persons who direct the business • financial information • information on the organisation of the business
	The list of the members of the management body	https://www.fca.org.uk/publication/forms/mifid-members-management-body.docx	This transposes Annex II of the authorisation ITS. With regard to the forms that the applicant firm needs to submit for the assessment of the individuals applying to perform control functions, please refer to Chapter 6
	The MiFID (IT) assessment form and, depending on the answers provided, either the Maturity Assessment or the IT Controls Form and additional IT self-certification forms	https://www.fca.org.uk/publication/forms/mifid-it-self-assessment-form.xls https://www.fca.org.uk/publication/forms/mifid-maturity-assessment-form.xlsx https://www.fca.org.uk/publication/forms/mifid-it-controls-form.docx https://www.fca.org.uk/publication/forms/mifid-self-certification-6-form.docx https://www.fca.org.uk/publication/forms/mifid-self-certification-7-form.docx	Please see Chapter 3 for further information
	<ul style="list-style-type: none"> • fee and levies supplement – retail firms form • fee and levies supplement – wholesale firms form • MiFID checklist – retail form • MiFID checklist • wholesale form 	https://www.fca.org.uk/publication/forms/fees-and-levies-retail-supplement-form.docx https://www.fca.org.uk/publication/forms/fees-and-levies-wholesale-supplement-form.docx https://www.fca.org.uk/publication/forms/mifid-retail-checklist-form.docx https://www.fca.org.uk/publication/forms/mifid-wholesale-checklist-form.docx	The relevant fees and levies supplement and checklist as applicable

Ref	Form Name	Location	Explanation
	<ul style="list-style-type: none"> Supplements 		In addition to the above, the applicant may have to submit each of the following supplements (when and why these supplements are needed will be clearly explained and signposted either [in the notes to the FCA MiFID Annex and/or/ in our online CONNECT system)
	<ul style="list-style-type: none"> supplement for firms selling investments supplement for firms selling investments and home finance supplement for firms selling investments and non- investment insurance contracts supplement for firms selling investments, home finance and non-investment insurance contracts supplement for Small Authorised UK AIFM (Alternative Investment Fund Manager) 	https://www.fca.org.uk/publication/forms/mifid-investments-supplement-form.docx https://www.fca.org.uk/publication/forms/mifid-investments-home-finance-supplement-form.docx https://www.fca.org.uk/publication/forms/mifid-investments-non-investment-insurance-supplement-form.docx https://www.fca.org.uk/publication/forms/mifid-investments-home-finance-non-investment-insurance-supplement-form.docx https://www.fca.org.uk/publication/forms/mifid-small-aifm-supplement-form.docx	If the applicant firm wishes to apply for additional non-MiFID activities we have created the following supplements depending on the type of activities the applicant firm wishes to carry out
	<ul style="list-style-type: none"> controller form – natural person controller form – legal person and Partnership controller form – trust 	https://www.fca.org.uk/publications/forms/mifid-controllers-natural-persons-form.docx https://www.fca.org.uk/publications/forms/mifid-controllers-legal-persons-form.docx https://www.fca.org.uk/publications/forms/mifid-controllers-trust-form.docx	For the assessment of the controllers we have created three controller appendixes depending on the status of the controller which will replace, in respect of an application for an initial authorisation under MiFID, the five existing ones and will capture the information required under article 3 of the authorisation RTS. ³²
	<ul style="list-style-type: none"> Form A 	https://www.fca.org.uk/publications/forms/mifid-long-form-a-uk-overseas-not-eea-form.docx	Please see Chapter 6 for more information
	<ul style="list-style-type: none"> Disclosure of significant appendix 	https://www.fca.org.uk/publication/forms/disclosure-of-significant-events-appendix.doc	If the applicant firm has traded previously, then they will have to fill in a disclosure of significant events appendix. This appendix is similar to the one prospective MiFID investment firms are currently using
	If the applicant firm wishes to operate an MTF or an OTF, then they have to submit the MTF/OTF table mandated by the Annex, table 1, of the Commission Implementing Regulation (EU) 2016/824 ³³	https://www.fca.org.uk/publication/forms/mifid-mtf-table-form.docx	Please see Chapter 11 for further information

Ref	Form Name	Location	Explanation
	An applicant firm seeking to operate an MTF/OTF may also need to submit a transparency waivers form where they are seeking to operate waivers from pre-trade transparency obligations	https://www.fca.org.uk/publication/forms/mifid-transparency-waiver-form.docx	Please refer to Chapter 12 for more information
	The firm may need to Connect and report through our MDP system		Please refer to Chapter 10 for further information on the process and forms needed

³² Please note that article 3 of the authorisation RTS refers to articles 3, 4 and 5 of the RTS under article 12(8) of MiFID II. This has not yet been adopted by the European Commission but ESMA has published its Final report on “Draft technical standards under Article 10a(8) of MiFID on the assessment of acquisitions and increases in qualifying holdings in investment firms” on 17 December 2013 – ESMA/2013/1940: https://www.esma.europa.eu/sites/default/files/library/2015/11/2013-1940_final_report_and_assessment_rts_its_0.pdf.

³³ Annex 2 Notifications 23, 24. The European Commission’s Implementing Regulation (EU) 2016/824 is available here: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0824&from=EN>

Annex 2 Table 2 – FCA Guidance notes

Ref	Guidance Notes Name	Location
	MiFID Annex Notes	www.fca.org.uk/publication/forms/mifid-annex-notes.docx
	Fees and levies supplement – retail notes	www.fca.org.uk/publication/forms/fees-and-levies-retail-supplement-notes.docx
	Fees and levies supplement – wholesale notes	https://www.fca.org.uk/publication/forms/fees-and-levies-wholesale-supplement-notes.docx
	Supplement for firms selling investments – notes	www.fca.org.uk/publication/forms/mifid-investments-supplement-notes.docx
	Supplement for firms selling investments and home finance – notes	www.fca.org.uk/publication/forms/mifid-investments-home-finance-supplement-notes.docx
	Supplement for firms selling investments and non-investment insurance contracts – notes	www.fca.org.uk/publication/forms/mifid-investments-non-investment-insurance-supplement-notes.docx
	Supplement for firms selling investment, home finance and non-investment insurance contracts – notes	www.fca.org.uk/publication/forms/mifid-investments-home-finance-non-investment-insurance-supplement-notes.docx
	Supplement for Small Authorised UK AIFM – notes	www.fca.org.uk/publication/forms/mifid-small-aifm-supplement-notes.docx
	Form A – notes	https://www.fca.org.uk/publications/forms/mifid-long-form-a-notes.docx

B. Vop for existing authorised person seeking to become MiFID investment firm screenshots

Step 1: The firm logs in to Connect and selects the option Variation of Permission:

Select the application type you would like to create

- Approved Person (including CFs/SMFs/SIMFs)
- Changes to Notified Persons
- Variation of Permission

Back
Back to My Applications
Continue

Step 2: The firm is asked to complete the following suite of forms; the status of each form is updated as the user progresses:

New Variation of Permission Application	
Form	Form Status
<u>Application Contact Details</u>	Complete
<u>Permissions</u>	Complete
<u>Additional Details</u>	In Progress
<u>Supporting documentation</u>	Not Started
Firm Declaration	Not Started

Step 3: In the 'Additional Details' form the firm will have to confirm its current non-MiFID status and its expected MiFID status once the VoP is approved. In this scenario the firm will be asked to attach the MiFID Authorisation Form, the MiFID Annex the 'list of members of the management body' form (to be added in the list) and the IT self-assessment form.

MiFID, CRR and the CRD

Please confirm whether the proposed variation will affect your firm's categorisation under the Markets in Financial Instruments Directive (MiFID), Capital Requirements Regulation (CRR) and the Capital Requirements Directive (CRD)

Please confirm your current MiFID status: Non-MiFID ▼

Please confirm your expected MiFID status once this variation is approved: MiFID ▼

Please note that you may need to add a requirement to your scope of permissions in order to change your MiFID and CRD categorisation. Please see the help text for more details

As you are becoming a MiFID firm, you must download, complete and attach the MiFID Authorisation Form <https://www.fca.org.uk/publication/forms/mifid-authorisation-form.docx> ⓘ

Document Title

Attachment Choose File

Send later ⓘ

As you are becoming a MiFID firm, you must download, complete and attach the MiFID Annex form <https://www.fca.org.uk/publication/forms/mifid-vop-annex-form.docx> ⓘ

Document Title

Attachment Choose File

Send later ⓘ

As you are becoming a MiFID firm, you must download, complete and attach the IT Self-Assessment form <https://www.fca.org.uk/publication/forms/mifid-it-self-assessment-form.xlsx> ⓘ

Document Title

Attachment Choose File

Send later ⓘ

Please select MiFID categorisation: N/A ▼ ⓘ

Please confirm your expected base capital requirement once this variation is approved: --None-- ▼ ⓘ

Step 4: If the firm is applying for the activities of operating an MTF or operating an OTF then the firm will have to complete the MTF and OTF table and the transparency waiver form if needed to:

You are adding OTF and/ or MTF activities and/or investment types as part of your application. You must complete and attach the MTFs and OTFs table, see www.fca.org.uk/publication/forms/mifid-mtf-table-form.docx

Document Title

Attachment

Send later

Is the applicant firm seeking to submit a transparency waiver form?

Yes

You must complete and attach the transparency waiver form, see www.fca.org.uk/publication/forms/mifid-transparency-waiver-form.docx

Document Title

Attachment

Annex 2 Table 3 – forms an authorised firm may need to consider when applying for a VoP as a non-MiFID firm

Ref	Form Name	Location	Explanation
	The MiFID authorisation form	https://www.fca.org.uk/publication/forms/mifid-authorisation-form.docx	This transposes Annex I of the authorisation ITS
	The FCA MiFID Annex,	https://www.fca.org.uk/publication/forms/mifid-annex-form.docx	<p>This can be used to provide information:</p> <ul style="list-style-type: none"> • required by the authorisation RTS • to enable us to assess whether the applicant firm satisfies the threshold conditions • to process the application and prepare for the ongoing supervision of the firm (such as information relating to fees and prudential categories) <p>and covers:</p> <ul style="list-style-type: none"> • general information • information on capital • information on shareholders • information on the members of the management and persons who direct the business • financial information • information on the organisation of the business
	The list of the members of the management body	https://www.fca.org.uk/publication/forms/mifid-members-management-body.docx	This transposes Annex II of the authorisation ITS. With regard to the forms that the applicant firm needs to submit for the assessment of the individuals applying to hold control functions, please refer to Chapter 6.
	The MiFID (IT) assessment form and, depending on the answers provided, either the Maturity Assessment or the IT Controls Form and additional IT self-certification forms	https://www.fca.org.uk/publication/forms/mifid-it-self-assessment-form.xls https://www.fca.org.uk/publication/forms/mifid-maturity-assessment-form.xlsx https://www.fca.org.uk/publication/forms/mifid-it-controls-form.xlsx https://www.fca.org.uk/publication/forms/mifid-self-certification-6-form.docx https://www.fca.org.uk/publication/forms/mifid-self-certification-7-form.docx	Please refer to Chapter 3 for more information
	If the applicant firm wishes to operate an MTF or an OTF, then they have to submit the MTF/OTF table mandated by the Annex, table 1, of the Commission Implementing Regulation (EU) 2016/824 ²⁶	https://www.fca.org.uk/publication/forms/mifid-mtf-table-form.docx	Please see Chapter 11 for further information

²⁶ Annex 2 Notifications 23, 24. The European Commission's Implementing Regulation (EU) 2016/824 is available here: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0824&from=EN>

Ref	Form Name	Location	Explanation
	An applicant firm seeking to operate an MTF/OTF may also need to submit a transparency waivers form where they are seeking to operate waivers from pre-trade transparency obligations	https://www.fca.org.uk/publication/forms/mifid-transparency-waiver-form.docx	Please refer to Chapter 12 for more information
	The firm may need to Connect and report through our MDP system		please refer to Chapter 10 for further information on the process and forms needed

Annex 2 Table 4 – FCA Guidance notes for an authorised firm applying for a VoP as a non-MiFID firm

Ref	Guidance Notes Name	Location
	FCA guidance notes will be available on the FCA website to assist with completion	www.fca.org.uk/publication/forms/mifid-annex-notes.docx

C. VoP for existing MiFID authorised investment firms screenshots

Step 1: The firm logs in to Connect and selects the option Variation of Permission:

Select the application type you would like to create

- Approved Person (including CFs/SMFs/SIMFs)
- Changes to Notified Persons
- Variation of Permission

Back Back to My Applications Continue

Step 2: The firm is asked to complete the following suite of forms; the status of each form is updated as the user progresses:

New Variation of Permission Application	
Form	Form Status
Application Contact Details	Complete
Permissions	Complete
Additional Details	In Progress
Supporting documentation	Not Started
Firm Declaration	Not Started

Step 3: In the 'Additional Details' form the firm will have to confirm its current MiFID status as MiFID firm and its expected MiFID status once the VoP is approved. In this scenario the firm will be asked to fill in the IT self-assessment form:

MiFID, CRR and the CRD

Please confirm whether the proposed variation will affect your firm's categorisation under the Markets in Financial Instruments Directive (MiFID), Capital Requirements Regulation (CRR) and the Capital Requirements Directive (CRD)

Please confirm your current MiFID status:

Please confirm your expected MiFID status once this variation is approved:

Please note that you may need to add a requirement to your scope of permissions in order to change your MiFID and CRD categorisation. Please see the help text for more details

As you are becoming a MiFID firm, you must download, complete and attach the IT Self-Assessment form <https://www.fca.org.uk/publication/forms/mifid-it-self-assessment-form.xlsx>

Document Title:

Attachment:

Send later:

Please select MiFID categorisation:

Please confirm your expected base capital requirement once this variation is approved:

Step 4: If the firm is applying for the activities of operating an MTF or operating an OTF then the firm will have to complete the MTF and OTF table and the transparency waiver form if needed to:

You are adding OTF and/ or MTF activities and/or investment types as part of your application. You must complete and attach the MTFs and OTFs table, see www.fca.org.uk/publication/forms/mifid-mtf-table-form.docx

Document Title

Attachment

Send later

Is the applicant firm seeking to submit a transparency waiver form?

Yes

You must complete and attach the transparency waiver form, see www.fca.org.uk/publication/forms/mifid-transparency-waiver-form.docx

Document Title

Attachment

Annex 2 Table 5 – VoP for existing MiFID authorised investment firm

Ref	Form Name	Location	Explanation
	The MiFID (IT) assessment form and, depending on the answers provided, either the Maturity Assessment or the IT Controls Form and additional IT self-certification forms	https://www.fca.org.uk/publication/forms/mifid-it-self-assessment-form.xls https://www.fca.org.uk/publication/forms/mifid-maturity-assessment-form.xlsx https://www.fca.org.uk/publication/forms/mifid-it-controls-form.xlsx https://www.fca.org.uk/publication/forms/mifid-self-certification-6-form.docx https://www.fca.org.uk/publication/forms/mifid-self-certification-7-form.docx	Please refer to Chapter 3 for more information
	If the applicant firm wishes to operate an MTF or an OTF, then they have to submit the MTF/OTF table mandated by the Annex, table 1, of the Commission Implementing Regulation (EU) 2016/824	https://www.fca.org.uk/publication/forms/mifid-mtf-table-form.docx	Please see Chapter 11 for further information
	An applicant firm seeking to operate an MTF/OTF may also need to submit a transparency waivers form where they are seeking to operate waivers from pre-trade transparency obligations,	https://www.fca.org.uk/publication/forms/mifid-transparency-waiver-form.docx	Please refer to Chapter 12 for more information
	The firm may need to Connect and report through our MDP system		Please refer to Chapter 10 for further information on the process and forms needed

Annex 2 Table 6 – COLS forms for existing MiFID authorised investment firm

Ref	Form Name	Location	Explanation
	The MiFID authorisation form	https://www.fca.org.uk/publication/forms/mifid-authorisation-form.docx	This transposes Annex I of the authorisation ITS
	The Application and Cancellation Annex	https://www.fca.org.uk/publication/forms/mifid-change-legal-status-form.docx	<ul style="list-style-type: none"> • This can be used to provide information: • required by the authorisation RTS • to enable us to assess whether the applicant firm satisfies the threshold conditions • to process the application and prepare for the ongoing supervision of the firm (such as information relating to fees and prudential categories) and covers: <ul style="list-style-type: none"> • general information • information on capital • information on shareholders • information on the members of the management and persons who direct the business • financial information • information on the organisation of the business
	The list of the members of the management body	https://www.fca.org.uk/publication/forms/mifid-members-management-body.docx	This transposes Annex II of the authorisation ITS and the associated Form As. With regard to the forms that the applicant firm needs to submit for the assessment of the individuals applying to hold control functions, please refer to Chapter 6
	The MiFID (IT) assessment form and, depending on the answers provided, either the Maturity Assessment or the IT Controls Form and additional IT self-certification forms	https://www.fca.org.uk/publication/forms/mifid-it-self-assessment-form.xlsx https://www.fca.org.uk/publication/forms/mifid-maturity-assessment-form.xlsx https://www.fca.org.uk/publication/forms/mifid-it-controls-form.docx https://www.fca.org.uk/publication/forms/mifid-self-certification-6-form.docx https://www.fca.org.uk/publication/forms/mifid-self-certification-7-form.docx	Please refer to Chapter 3 for more information
	If the firm has previously traded, the Disclosure of significant events Appendix	https://www.fca.org.uk/publication/forms/disclosure-of-significant-events-appendix.doc	Please refer to Chapter 3 for more information

Ref	Form Name	Location	Explanation
	If there are changes to the firm's trading names, principal place of business, registered office, complaints contact, compliance address, locum and auditor, the Changes to contact or standing data details Appendix	https://www.fca.org.uk/publication/forms/cols-appendix-1a.doc	Please refer to Chapter 3 for more information
	For appointed representatives involved with the existing or the proposed new firm, the Appointed Representatives Appendix	https://www.fca.org.uk/publication/forms/cols-appendix-5a.doc	Please refer to Chapter 3 for more information

Annex 2 Table 7 – FCA Guidance notes for an existing MiFID authorised investment firm applying for a COLS

Ref	Guidance Notes Name	Location
	COLS Notes	https://www.fca.org.uk/publication/forms/mifid-change-legal-status-notes.docx

Annex 3: Technical standards under MiFID II and MiFIR

Source: http://ec.europa.eu/finance/securities/docs/isd/mifid/its-rts-overview-table_en.pdf Updated: 6 December 2016

RTS/ITS	Description	Legislative Basis
RTS 1	Transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments	MiFIR Articles 4(6), 7(2), 14(7), 20(3), 22(4) and 23(3)
RTS 2	Transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives	MiFIR Articles 1(8), 9(5), 11(4), 21(5) and 22(4)
RTS 3	The volume cap mechanism and the provision of information for the purposes of transparency and other calculations	MiFIR Articles 5(9) and 22(4)
RTS 4	Criteria for determining whether derivatives subject to the clearing obligation should be subject to the trading obligation	MiFIR Article n32(6)
RTS 5	Direct, substantial and foreseeable effect of derivative contracts within the Union	MiFIR Article 28(5)
RTS 6	Specifying the organisational requirements of investment firms engaged in algorithmic trading	MiFID II Article 17(7)(a) and (d)
RTS 7	Specifying organisational requirements of facilities trading venues allowances and derivatives	MiFID II Article 48(12)(a),(c) and (g)
RTS 8	Specifying the requirements on market making agreements and schemes	MiFID II Article 17(7)(a), (b) and (c) and Article 48(12)(a) and (f)
RTS 9	The ratio of unexecuted orders to transactions	MiFID II Article 48(12)(b)
RTS 10	Requirements to ensure fair and non-discriminatory co-location services and fee structures	MiFID II Article 48(12)(d)
RTS 11	Tick size regime for shares, depositary receipts and, exchange traded funds	MiFID II Article 49(3) and (4)
RTS 12	Determination of a material market in terms of liquidity relating to halt notifications	MiFID II Article 48(12)(e)
RTS 13	Authorization, organisational requirements and the publication of transactions for data reporting services providers	MiFID II Articles 61(4), 64(6),(8), 65(6), (8), and 66(5)
RTS 14	Specification of the offering of pre-and post-trade data and the level of disaggregation of data	MiFIR Article 12(2)
RTS 15	Clearing access in respect of trading venues and central counterparties	MiFIR Articles 35(6) and 36(6)
RTS 16	Access in respect of benchmarks	MiFIR Article 37(4) (a), (b), and (c)
RTS 17	Admission of financial instruments to trading on regulated markets	MiFIR 3rd subpara Article 51(6)
RTS 18	Suspension and removal of financial instruments from trading reporting services providers	MiFID II 10th subpara of Article 32(2) and the 10th subpara of Article 52(2)
RTS 19	Description of the functioning of MTFs and OTFs	MiFID li 3rd subpara of Article 18(11)
RTS 20	Criteria to establish when an activity is considered to be ancillary to the main business	MiFID II Article 2(4)

RTS/ITS	Description	Legislative Basis
RTS 21	Application of position limits to commodity derivatives	MiFID II Article 57(3) and (12)
RTS 22	Reporting of transactions to competent authorities	MiFIR 3rd subpara of Article 26(9)
RTS 23	Supply of financial instruments reference data	MiFIR the 3rd subpara of Article 27(3)
RTS 24	Maintenance of relevant data relating to orders in financial instruments	MiFIR 4th subpara of Article 25(3)
RTS 25	Level of accuracy of business clocks	MiFID II 3rd subpara of Article 50(2)
RTS 26	Specifying the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing (STP)	MiFIR Article 29(3)
RTS 27	Data to be provided by execution venues on the quality of execution of transactions	MiFID II point (a) of the 1st subpara of Article 27(10)
RTS 28	Annual publication by investment firms of information on the identity of execution venues and on the quality of execution	MiFID II point (b) of the 1st subpara of Article 27(10)
RTS	Authorisation	MiFID II Article 7(4)
ITS	Authorisation	MiFID II 3rd subpara of Article 7(5)
RTS	Passporting	MiFID II 3rd subpara of Articles 34(8) and the 3rd subpara of Article 35(11)
ITS	Passporting	MiFID II Articles 34(9) and 35(12)
RTS	Cooperation between authorities	MiFIR Article 46(7)
RTS	Registration of third country firms	MiFID II Article 80(3)
RTS	An exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm	MiFID Article 10(a)(8)
ITS	Standard forms, templates and procedures for the consultation process between relevant competent authorities in relation to the notification of a proposed acquisition of a qualifying holding in an investment firm	MiFID I Article
ITS 1	Standard forms, templates and procedures for cooperation arrangements	MiFID II Article 79(9)
ITS 2	Suspension and removal of financial instruments from trading on RM, a MTF or OTF	MiFID II Articles 32(3) and 52(3)
ITS 3	Standard forms, templates and procedures for the authorisation of data reporting services providers	MiFID II Article 61(5)
ITS 4	Position reporting	MiFID II Article 58(5)
ITS 5	Format and timing of weekly position reports	MiFID II Article 58(7)
ITS 6	Standard forms, templates and procedures for competent authorities to cooperate in supervisory activities, on-site verifications, and investigations and for the exchange of information	MiFID II Articles 80(4) and 81(4)
ITS 7	Standard forms, templates and procedures for the consultation of other competent authorities prior to granting an autorisation	MiFID II Article 84(4)
ITS 8	Procedures and forms for submitting information on sanctions and measures	MiFID II Article 71(7)

Annex 4: Prudential Categorisations

Regulated Activities

The Prudential Tree Diagram is aimed at UK firms only and presents an overview, designed to take account of the most common business models and limitations/requirements anticipated as a result of MIFID II. Please be advised that this is not a substitute for studying the Handbook or any other relevant regulatory material.

FSMA Regulated Activities

1. Advising (excluding pension transfers/opt outs)
2. Arranging (bringing about) deals in investments
3. Making arrangements with the view to transactions in investments
4. Dealing in investments as agent
5. Dealing in investments as principal
6. Managing investments
7. Safeguarding and administration of assets
8. Arranging safeguarding and administration of assets
9. Operating an MTF
10. Operating an OTF
11. Bidding in emissions auctions

Other FSMA Activities

12. Managing an AIF
13. Managing a UCITS
14. Establishing operating and winding up an a CIS

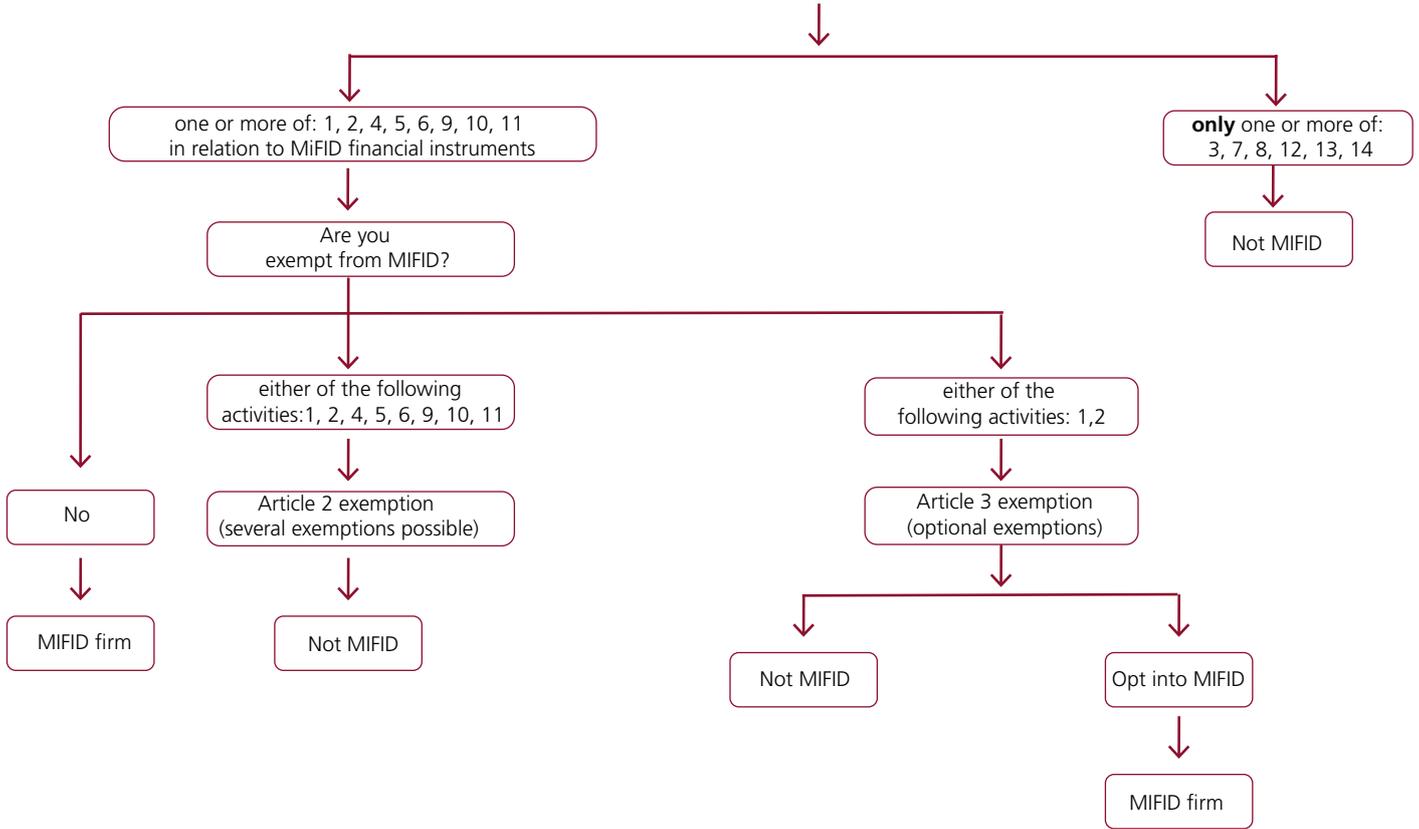
Requirements

- 15. Able to hold client money in relation to MiFID business
- 16. Local firm requirement

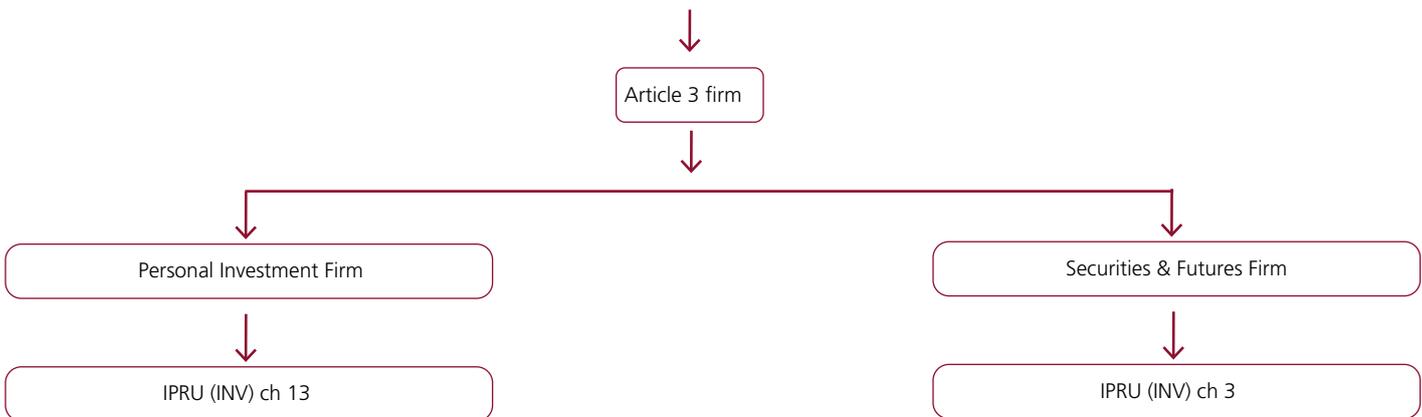
Limitations

- 17. BIPRU firm MiFID activity restriction
- 18. Dealing as principal limitations
 - a. Unable on a regular basis to:
 - i. deal on own account in relation to MiFID financial instruments; and
 - ii. underwrite MiFID financial instruments and/or place MiFID financial instruments on a firm commitment basis
 - b. Unable to:
 - i. hold investors' financial instruments for own account unless it meets the 'matched principal exemption conditions'; and
 - ii. underwrite MiFID financial instruments and/or place MiFID financial instruments on a firm commitment basis
 - c. May only deal on own account in MiFID financial instruments for the purpose of:
 - i. fulfilling or executing a client order; or
 - ii. gaining entrance to a clearing and settlement system or a recognised exchange when acting in an agency capacity or executing a client order
- 19. OTF Limitations
 - a. Dealing on own account – OTF
 - b. Dealing on own account in sovereign debt – OTF
 - c. Matched principal trading – OTF
 - d. Limited activity – OTF (as per 18(c) above)

Regulated activities

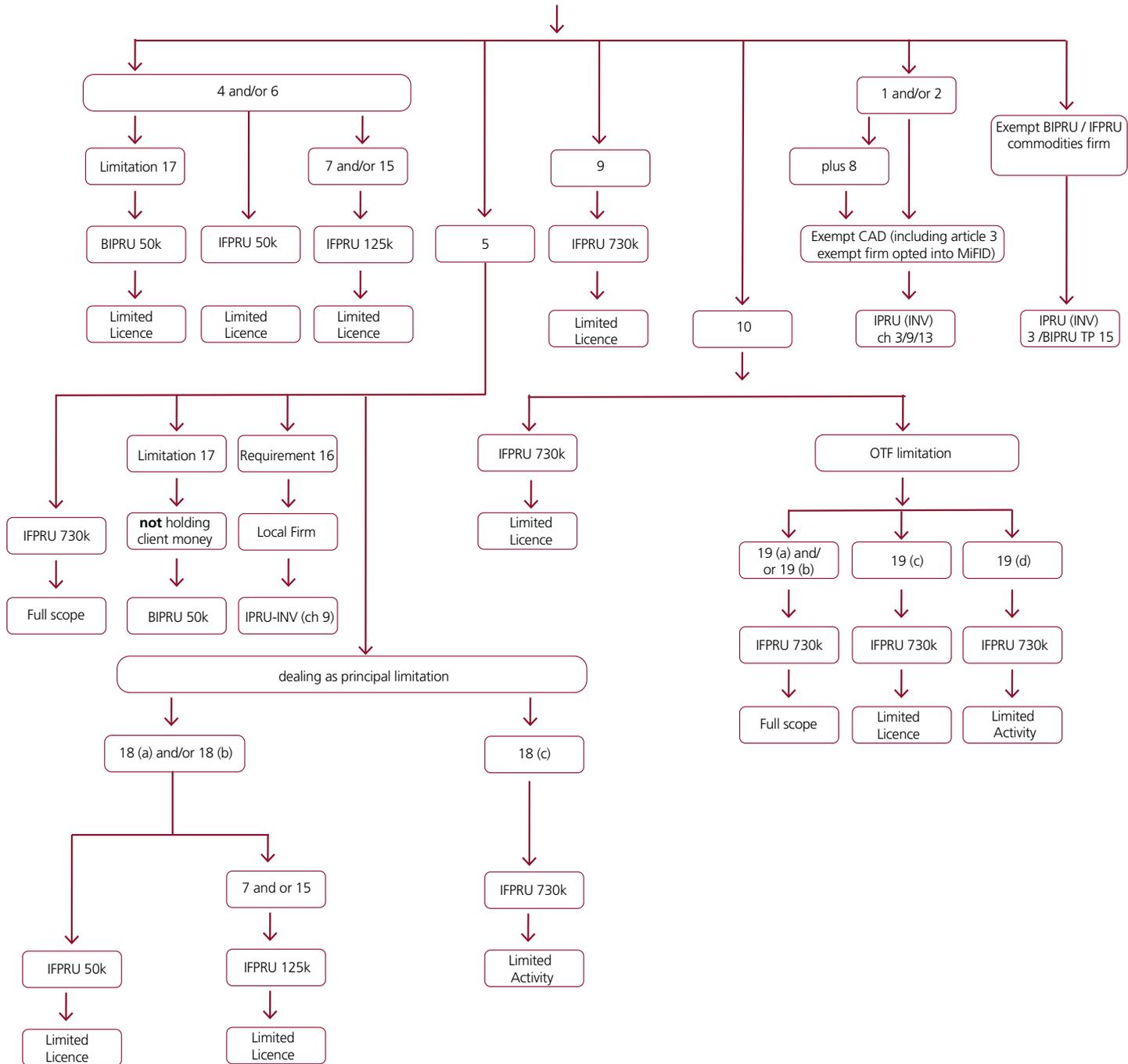


Non-MiFID firm



In the FCA’s view, a firm that relies on the article 2(1)(i) MiFID II exemption (for managers of collective investment undertakings) can combine this with article 3 in relation to business falling outside the article 2(1)(i) exemption (see draft PERG 13 Q46A guidance in CP 16/29). Such a firm may also be subject to IPRU (INV) 5 in relation to its non-MiFID investment management activity’

MiFID firm performing one or more of the regulated activities 1 – 11



The diagram provides an overview of a firm’s prudential categorisation for its MiFID business only. Other prudential requirements may apply in relation to a firm’s non-MiFID business, for example an exempt CAD firm which carries on the permitted activity of establishing, operating or winding up a collective investment scheme may also be subject to chapter 5 of IPRU-INV in relation to that activity.



PUB REF: 005277

© Financial Conduct Authority 2017
25 The North Colonnade Canary Wharf
London E14 5HS
Telephone: +44 (0)20 7066 1000
Website: www.fca.org.uk
All rights reserved