

Frequently asked questions for firms about remaining on BIPRU (CRD III)

Why are you contacting my firm?

We are contacting your firm to highlight that you need to determine whether or not your firm will be subject to CRD III or CRD IV rules from 1 January 2014.

Whether or not a firm qualifies depends on which investment services and activities they carry out, as defined in the Markets in Financial Instruments Directive (MiFID).¹

To qualify, a firm's Part 4A permissions must not allow the firm to carry out these MiFID investment services and activities²:

- (3) *dealing on own account*
- (6) *underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis and/or*
- (8) *operation of Multilateral Trading Facilities*

Also, such a firm cannot:

- carry out MiFID ancillary service (1) *safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management or*
- be permitted to hold money or securities belonging to their client

However, there is another MiFID investment service and activity, which a firm may currently do, that would make it subject to CRD IV rules:

- (7) *placing of financial instruments without a firm commitment basis*³

This activity can arise where the person (i.e. firm) arranging the placing does not undertake to purchase those MiFID financial instruments he fails to place with third parties.⁴ If a firm undertakes this activity, it would bring it into scope of CRD IV. If a firm does not do this activity from 1 January 2014, it will (provided that it continues to meet the other conditions) qualify to stay on current CRD III rules.

More information can be found in Chapter 6 of CP 13/6.

I'm not sure if my firm carries out *placing of financial instruments without a firm commitment basis*?

Unfortunately we cannot help firms identify whether they carry out this activity. The responsibility to determine this rests with you. However, if you do not believe you do this activity, we strongly urge you to respond to the letter. Not doing so is likely to have

¹ Directive 2004/39/EC

² Please refer to Annex I of Directive 2004/39/EC

³ This is not an activity that maps directly across to its own unique activity within the Part 4A permissions regime.

⁴ See PERG 13.3 Q.23 of the FCA Handbook.

significant direct costs to your business, due to the more stringent regulatory standards in CRD IV.

Why don't you already have this information on my firm's activities?

We do not currently have the data to determine whether you meet the criteria to remain on CRD III rules because the activity *placing of financial instruments without a firm commitment basis* has no direct equivalent within the Part 4A permissions regime. However, to carry out this activity, a firm would need the Part 4A permission *arranging (bringing about) deals in investments* and/or *dealing as agent*.

Hence, this letter highlights that the responsibility to determine whether or not your firm carries out this activity rests with you.

What is the effect of agreeing to this requirement being put on my business?

If you agree to this requirement, your firm will not be able to carry out the activity of *placing of financial instruments without a firm commitment basis* from 1 January 2014. It does not affect any other aspect of your business. If, after 1 January 2014, you decide that you want to start doing this activity, you will have to apply for a Variation of Permission to remove the requirement. This would mean that you would no longer be subject to BIPRU, but would be subject to CRD IV rules.

What happens if I don't respond by 20 November 2013?

If we do not hear from you, we cannot be certain that you qualify to stay on CRD III rules. So, your firm will be required to comply with full CRD IV rules from 1 January 2014. This includes the requirement to submit the new regulatory returns that CRD IV introduces – COREP, and possibly also FINREP.⁵ These require significant software investment.

Where can I find out more information about CRD IV?

Please see our CRD IV pages on our website.⁶ We have also published several consultation papers on implementing CRD IV:

- FCA CP 13/6: general consultation on CRD IV implementation
- FCA CP 13/9 Chapter 16: consequential Handbook changes resulting from CRD IV implementation
- FCA CP 13/12: consultation on remuneration rules, the interaction with AIFMD and UCITS, and various other technical issues
- PRA CP 5/13: this is not directly relevant or binding to your firm. However, you may find it of interest, especially if your firm is part of a group that includes a PRA-authorised firm.

⁵ <http://www.fca.org.uk/firms/markets/international-markets/eu/crd-iv/crd-iv-harmonised-reporting>

⁶ <http://www.fca.org.uk/firms/markets/international-markets/eu/crd-iv>