



Financial Services Authority

MiFID Permissions and Notifications Guide

May 2007

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1 Overview

The Markets in Financial Instruments Directive (MiFID) comes into effect on 1 November 2007, when it will replace the existing Investment Services Directive (ISD). Following extensive consultation through 2006, our programme for transposition of MiFID in the UK is formally complete, and the necessary amendments to our Handbook have been made. However, implementation of MiFID will also have a number of important administrative consequences for us and for firms. Some changes to firms' permissions¹ and passports will be necessary. MiFID introduces a number of new notification requirements and, in relevant cases, the status of firms' tied agents, approved persons and waivers from our rules will need to be reviewed and updated. Many of these changes will be relevant to non-MiFID as well as MiFID firms.² They bear on firms' ability – post 1 November 2007 - to operate within the scope of their authorisation and in compliance with the relevant rules. These are significant matters which should be addressed as a priority by firms in their implementation plans.

What does this guide do?

This MiFID Permissions and Notifications Guide explains the nature and extent of the changes that will need to be made under these various headings, how they will be made, and the action that firms will need to take.

In line with our commitment to implement MiFID in the most cost-effective way, we plan to make full use of the transitional arrangements and administrative provisions that have been put in place, following close working with the Treasury, under the UK implementing legislation. This will significantly reduce the administrative burden on firms by enabling us to make many of the amendments to firms' permissions and passport notifications automatically. We explain where this will happen in the relevant chapters of this guide, together with the areas where action by firms may still be necessary. In these cases, we set out the dates by which firms may need to apply for a variation of permission (VOP), or to provide us with a notification or other application, ahead of 1 November 2007.

1 That is, a permission given under Part IV of the Financial Services and Markets Act (FSMA).

2 In this guide, we use the terms 'MiFID firm' and 'MiFID business' to denote, respectively, entities and investment service and activities that fall within the scope of the Directive; and 'non-MiFID firm' and 'non-MiFID business' to denote, respectively, entities and investment services and activities that fall outside, or are exempt from, the scope of the Directive.

The issues and actions firms will need to consider are summarised in the Actions Checklist at Annex 7, which is designed for use as a self-standing reference aid. Annex 1 contains the assumptions that we plan to use to assess whether firms fall within the article 3 MiFID exemption on the basis of their permission and other records. Annex 2 contains tables which show how the existing ISD investment services and instruments and the ISD passport, map to the relevant MiFID provisions. Annex 3 contains tables setting out how the MiFID investment services, activities and financial instruments³ map to the Banking Consolidation Directive (BCD) passport for credit institutions. Annexes 4 and 5 set out the standard requirement for exempt CAD firms⁴ and the new standard client money requirements, which operate as restrictions on the business for which a firm is authorised.

This guide **does not** contain any policy proposals; nor does it amend or qualify any rules and guidance in the Handbook. It is intended solely as a guide to help firms determine what MiFID-related **notifications and applications** they should make. But it does not purport to be an exhaustive statement of these, nor any other regulatory responsibilities which may apply. It is the responsibility of firms 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 1 November 2007.

We will communicate any further changes to the notification processes set out in this guide as and when they occur.

This guide also does not cover transaction reporting. As indicated in PS07/2: *Implementing the Markets in Financial Instruments Directive (MiFID)* published in January 2007, we plan to publish a Transaction Reporting User Pack (TRUP) in the summer. We will communicate separately any further developments that will affect firms' transaction reporting obligations, including the outcome of CESR's Level 3 work, in due course.

Who should read this guide?

This guide will be relevant to all MiFID firms, including firms with a BCD passport. Some chapters will be relevant also to non-MiFID firms – particularly those dealing with client categorisation, the article 3 MiFID exemption for certain firms carrying on investment advice or reception and transmission of orders, waivers and approved persons. Non-EEA firms may find that the chapters on client categorisation, commodity derivatives and credit derivatives, client money, waivers, Systematic internalisers and approved persons are of relevance.

A key factor in considering the issues in this guide is whether your firm is a MiFID firm. You can find further information on the scope of MiFID, which will help you to determine this, in chapter 13 of our Perimeter Guidance manual (PERG), which was published in March 2007. This sets out, in question-and-answer format, the investment services, activities and financial instruments that are caught by the broad scope of MiFID. Specific PERG 13 Q & As are referenced in the relevant chapters of this guide.

3 References in this guide to types of MiFID investment service, activity and financial instrument are as set out in Annex 1 to the Directive: for example, A1 refers to 'reception and transmission of orders in relation to one or more financial instruments' and C1 relates to 'transferable securities'.

4 That is, MiFID firms that are authorised to receive and transmit orders from investors and/or to give investment advice, without holding client money or securities for its MiFID scope activity and without permissions for any other MiFID scope investment service or activity.

What are the deadlines?

In each chapter we indicate the date by which firms should submit an application or notification to us and, where relevant, the forms to be used. We aim to process applications or notifications made to us in the appropriate format by the due date in good time before 1 November 2007. Generally, we ask that you submit your application or notification by 1 August 2007; in some cases, different dates apply for particular reasons. If the relevant date is missed we may not be able to process your application or notification in time, and your firm may not be MiFID-compliant on 1 November 2007.

Contacts

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):

Telephone: 0845 606 9966

E-mail: fcc@fsa.gov.uk

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

Any general questions on this guide should be addressed to:

Kim Ramsay
MiFID Implementation Office
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Planningmifid@fsa.gov.uk

Copies of this guide are available to download from our website – www.fsa.gov.uk.

Alternatively, paper copies can be obtained by calling the FSA order line:

0845 608 2372.

2 Client Categorisation

Introduction

This chapter explains the impact that implementation of the MiFID client categories may have on firms' permissions; the measures we are taking to minimise the administrative burden of the changes that will be required; and the action that firms may need to take to ensure that from 1 November 2007 their permissions properly record the categories of client with whom they wish to do business.

This chapter is relevant to all MiFID and non-MiFID firms, including UK branches of non-EEA firms, as we propose to extend with certain modifications the MiFID client categories to non-MiFID firms and business.

Overview

MiFID introduces new categories of client: retail client, professional client and, in relation to eligible counterparty business, eligible counterparty. Retail clients attract the greatest level of protections and eligible counterparties the least. These categories are broadly similar – but are not identical to – the current customer classifications used in the UK (private, intermediate and market counterparty); for example, the criteria for meeting the MiFID categories differ from those that apply under our current regime.

Firms will be aware that where they are authorised by us to carry on investment business only with specified types of customer, as set out in their permissions, these operate as 'limitations' on a firm's investment activities. These limitations will be affected by implementation of the MiFID client categories.

You can find more background information in:

Implementing MiFID's Client Categorisation requirements (August 2006)

Chapter 7, CP06/19 *Reforming Conduct of Business Regulation*

Section B, Chapter 2, PS07/2 *Implementing the Markets in Financial Instruments Directive (MIFID)*

Chapter 15, CP07/9 *Conduct of Business regime: non-MiFID deferred matters*

What is changing?

To smooth the transition in the most cost-effective way, we are working with the Treasury on proposals that would allow us automatically to map existing customer types to the new MiFID-based client categories as set out in the table below. This automatic mapping should avoid the need for a large number of firms to submit VOP applications, or for us to carry out a wholesale exercise using our own initiative VOP power⁵. We expect these proposals to be published shortly.

Current customer type applied to Activity on a firm's permission	Proposed mapping to new MiFID-based client categories
Private Customers Only	Retail Clients Only
Intermediate Customers Only	Professional Clients Only
Private and Intermediate Customers	Retail and Professional Clients
Intermediate Customers and Market Counterparties	Professional Clients and Eligible Counterparties

Firms whose permissions currently enable them to do investment business with all existing customer types will be automatically mapped by us to the new MiFID-based client categories of retail, professional and eligible counterparty at 1 November 2007. These firms should not need to take further action.

We do not plan to confirm to firms their new MiFID-based client categories, although these details will be available on the FSA Register from 1 November 2007.

What action should you take and by when?

If you are a MiFID firm

If these proposals go ahead, you will need to consider how this automatic mapping may affect your business.⁶

If you do not consider that the automatic mapping will fit your MiFID business model after 1 November 2007, you should apply for a VOP before 1 August 2007 for a different limitation. If you apply for permission to deal with clients requiring higher levels of protection, for example where a firm is dealing with retail clients for the first time, you will need to demonstrate to us that you have the necessary systems and controls in place to do so.

⁵ Given that MiFID does not provide a transitional mechanism in relation to "eligible counterparty" business, we intend to deal separately with the small number of firms whose permissions are currently limited to "market counterparty" business only.

⁶ See CP07/9 Conduct of Business regime: non-MiFID deferred matters (including proposals on Telephone Recording) for the scope of the new client categories, including draft amendments in relation to non-MiFID business.

If you do non-MiFID business⁷

We propose to run a transitional regime for a limited period between 1 November 2007 and 1 July 2008 for the new client categories in relation to non-MiFID business. Under this firms will be able to continue to use the existing tests for classifying customers (e.g. the criteria relating to ‘private customers’, and ‘intermediate customers’) until 1 July 2008 for non-MiFID business. This will be relevant to MiFID firms who carry on non-MiFID business, as well as non-MiFID firms. This transitional regime will provide firms with additional time, if necessary, to assess the impact of the proposed changes in the qualifying criteria for non-MiFID business on which we are consulting in CP07/9: *Conduct of business regime: non-MiFID deferred matters*, which was published on 3 May 2007.⁸ Firms taking advantage of the transitional regime for non-MiFID business and that wish to do business on a different basis to the automatic provisions in the mapping table above, after 1 July 2008, will need to apply for a VOP no later than 1 January 2008.

In summary

- You should be considering the possible impact of client categorisation changes on your existing permissions now.
- If you are satisfied that our proposed mapping of existing client types to the MiFID client categories meets your ongoing business needs for your MiFID business you need take no further action.
- If you need to make changes to your client categorisation in relation to your MiFID business you should submit a VOP application by 1 August 2007 to ensure that it is processed in time for 1 November 2007.
- You should also consider the effect of our client categorisation proposals in relation to non-MiFID business.
- If you wish to take advantage of the transitional regime for non-MiFID business until 1 July 2008, you may still need to apply for a VOP by 1 January 2008 if you plan to do non-MiFID business with new client categories that do not map to your existing permissions.
- We will keep you informed of future developments designed to reduce the need for firms to apply for changes to their client categorisations where possible.

7 Customer limitation types in relation to non-investment insurance mediation (e.g. advising on general insurance products) are unaffected by these proposals.

8 Chapter 15 outlines our proposals in relation to client categorisation and non-MiFID business. Under the proposals, the boundary between retail and professional clients should be similar to the existing boundary between private and intermediate customers.

3 Article 3 MiFID exemption

Introduction

In this chapter we outline the UK implementation of the article 3 MiFID exemption, and how it may affect firms and the choices available to them. Firms qualifying for the article 3 MiFID exemption will be exempt from MiFID and unable to take advantage of the passporting opportunities it provides. For those firms which wish to take advantage of the MiFID passport but come within the scope of the exemption we set out the action that they need to take.

This chapter is of particular importance to those firms that undertake a limited range of investment business, including arranging and giving investment advice - typically financial advisers and some small corporate finance and venture capital boutiques - but will be of less importance to firms that carry out a broader range of investment activities. This chapter does not apply to non-EEA branches.

Overview

The article 3 MiFID exemption applies to those firms undertaking a limited range of investment activities. Guidance on whether your firm qualifies for the article 3 MiFID exemption is set out in PERG.

You can find more background information in:

PERG 13, Q48, 49, 50, 52 and 53.

What are the proposed changes?

Treasury legislation⁹ giving effect to the exemption has now been made and the key components include:

- firms meeting the qualifying conditions on 1 November 2007 (see PERG 13 Q49) will be deemed to be exempt firms and will be ‘automatically opted out’ of MiFID’s scope unless they advise us otherwise; and

⁹ The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (Amendment) Regulations 2007 (SI 2007/763), especially regulations 2 and 3.

- firms applying for authorisation after 1 November 2007 should indicate their wish to opt out of the exemption when filling in the application pack.

All firms qualifying for the article 3 MiFID exemption will have a requirement on their permission that explains their status as from 1 November 2007. Treasury legislation implementing the exemption only applies to UK authorised or applicant firms.

We will be assessing from our Register and other sources whether your existing or proposed investment services and activities meet the qualifying conditions, and therefore qualify for article 3 MiFID exemption (Annex 1 explains the planned nature of this assessment). Those firms that qualify as article 3 MiFID exempt firms will be automatically exempt from the Directive's scope and given a requirement on their permission. As from 1 November 2007, the FSA Register will identify those firms that we believe are article 3 MiFID exempt firms.

We will not be advising you whether you meet the qualifying criteria for the article 3 MiFID exemption. We therefore ask that at 1 November 2007 you check your Register entry to ensure that it is correct.¹⁰ You are asked to contact us if you believe that you have been incorrectly categorised as an article 3 MiFID exempt firm. You should also advise us if the FSA Register does not categorise your firm as article 3 MiFID exempt as from 1 November 2007 but you believe that you meet the qualifying conditions and should have been recorded as exempt.

What action should you take and by when?

If you want to rely on the exemption

- You should assess whether your existing or proposed investment services and activities meet the qualifying conditions, and therefore qualify for article 3 MiFID exemption.
- If you meet the article 3 MiFID exemption criteria (including having an existing requirement on your permission not to hold client money) and wish to fall outside of MiFID's scope, your permission should be automatically updated by us to include a new standard requirement to the effect that you meet the conditions of the article 3 MiFID exemption.
- You should check your Register entry on 1 November 2007 to ensure that your permission has been updated.
- Most financial advisers will already have the relevant requirement not to hold client money and, assuming the other qualifying conditions are met, will therefore fall outside the scope of MiFID.
- Venture capital firms and corporate finance firms have been written to as part of our CRD prudential categorisation exercise, indicating the relevant requirements

¹⁰ We will reflect the following standard requirement in the FSA Register entry for those firms that we think qualify for the article 3 MiFID exemption, as implemented in Treasury legislation: "Must comply with the requirements in regulation 4C (or any successor provision) of The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007".

not to hold client money that must be contained in the permission of those who wish to take advantage of the exemption.

- If you do not have a requirement not to hold client money on your permission, and wish to rely on the article 3 MiFID exemption to fall outside MiFID, you should apply for the appropriate standard requirement¹¹ (using a VOP application) by 1 August 2007. (You must also ensure that you satisfy the other qualifying conditions for exemption).

If you wish to opt-out of the Article 3 MiFID exemption

If you meet the conditions of the exemption but wish, for example, to obtain passporting rights under MiFID, you may opt-out of the exemption and therefore become a MiFID firm.

If you are an authorised firm that wishes to opt-out of the exemption you should submit a VOP application, requesting the addition of the new standard requirement for exempt CAD firms.¹²

Before permitting article 3 MiFID exempt firms to opt-in to MiFID, our VOP team will first need to assess whether the firm has, among other things, adequate systems and controls and financial resources in place to meet the requirements under MiFID.

- If you are an authorised firm and you want us to process your application in time for 1 November you should send us your VOP application by 1 August 2007 (subject to the third and fourth bullets below).
- You may also need to make passporting notifications (see chapter 4).
- If you wish to exercise a cross-border services passport as of 1 November 2007, you should submit your VOP application by 1 July 2007¹³ to allow sufficient time for both the VOP application and passport notification to be processed by 1 November 2007.
- In those cases where you wish to establish a branch in another Member State on or as soon as possible after 1 November 2007, you should send us your VOP application immediately.¹⁴

11 See Annex 5 of this guide.

12 See Annex 4 of this guide and PERG 13, Q52, 58 and 59.

13 MiFID sets out a maximum time period for processing a cross border services passporting notification of one month. A passport notification can only be processed once a firm possesses the correct authorisation (or Part IV permission for UK authorised firms). Any VOP application must be processed first and so the earlier suggested date for receipt of applications is 1 July 2007.

14 This is because MiFID sets out a maximum time period for both home and host regulators to process a branch passporting notification, of five months, and a passport notification can only be processed once a firm possesses the correct authorisation (or Part IV permission for UK authorised firms). Hence if any VOP application is necessary then it must be processed first, giving rise to a more urgent time-frame if a firm is looking to operate the branch from 1 November 2007 or as soon as possible thereafter.

In summary

- You should check whether you meet the conditions of the article 3 MiFID exemption (including having a requirement on your permission which prevents you from holding client money for the purposes of MiFID business). If you do then you will be automatically exempt from MiFID's scope and need take no action. You may wish to check this by reviewing your firm's details on the FSA Register from 1 November 2007.
- If you are automatically out of MiFID's scope but wish to fall within its scope in order to benefit from the right to passport investment business on a branch basis, you need to notify us by submitting both a VOP and a passport application immediately.
- If you are automatically out of MiFID's scope but wish to fall within its scope in order to exercise a cross-border services passport as of 1 November 2007, you should submit your VOP application by 1 July 2007.
- If you wish to opt into MiFID's scope in time for 1 November 2007, but do not wish to take advantage of any passporting rights as of 1 November 2007, you need to apply for a VOP by 1 August 2007.

4 Passporting

Introduction

The MiFID passporting regime will apply to a broader range of activities, services and financial instruments than the current ISD passporting regime. This chapter is of particular importance to investment firms and credit institutions that undertake investment business and that currently passport their investment services across Europe under the ISD and BCD¹⁵ respectively. It will also be of interest to those firms that, because of MiFID's broader scope, will now be given the opportunity to 'passport' their investment business for the first time and wish to do so.

This chapter need not be read by firms not caught by MiFID's scope, including branches of non-EEA firms based in the UK. This chapter focuses on the position of UK investment firms and UK credit institutions only. We propose to provide additional materials aimed at EEA firms, in due course, dealing with issues relating to passports and 'top-up' permission.

This chapter sets out the way we will process documents relating to passports. We will continue to work in Europe to encourage an efficient and effective transition from the ISD to the MiFID passport and this chapter takes account of discussions in the Committee of European Securities Regulators (CESR). However, we are unable to advise firms of the approach competent authorities in other Member States will follow.

You can find more background information in:

Chapter, 5 CP06/14 *Implementing MiFID for Firms and Markets*

Chapter 4, Section A PS07/2 *Implementing the Markets in Financial Instruments Directive (MiFID)*

Overview

MiFID gives firms 'the right' to carry on business in other EEA Member States either through the establishment of a physical presence (branch passport) or through the provision of cross-border services (services passport). In this chapter we set out the steps that firms need to take to passport their services across EEA Member States.

15 Banking Consolidation Directive (BCD).

What is changing?

The existing passporting process will generally remain the same. However, whereas under the ISD investment firms are currently required to notify both their home and host state competent authorities of any changes in the particulars previously notified under a passport, under MiFID an investment firm will no longer be required to notify the host state competent authority of any changes to their existing passported activities.

So UK investment firms will only need to notify any such changes to us as the home state competent authority. We will pass any notifications of changes¹⁶ we receive on to the relevant host state competent authority on your behalf. There is no such change in the process for notifications for credit institutions under the BCD. UK credit institutions should continue to notify both us and the relevant host state competent authority of proposed changes to their branch passport.

For investment firms the ISD passport will need to be replaced by a MiFID passport. There are some changes to how existing activities and services will be represented under a MiFID passport, most notably investment advice, that may require you to review your passport.

The broader scope of MiFID (compared to ISD) will mean that both UK investment firms and UK credit institutions that undertake investment business may wish to conduct the new elements under a passport. If so, they will be required to notify us accordingly.

What action should you take and by when?

Under Treasury legislation we will treat any ISD passport notification as the corresponding MiFID equivalent, as set out in Tables 1 to 4 of Annex 2. We will ‘automatically’ map existing ISD passports of UK investment firms as at 31 October 2007 across to become MiFID passports as at 1 November 2007. This will be reflected on the FSA Register. However, there may still be action for you to consider where your ISD passport includes investment advice, should you disagree with our automatic mapping, due to how this service is treated under a MiFID passport (see below).

Tables 5, 6 and 7 at Annex 3 indicate how, in our view, the existing BCD passport activities and instruments ‘map’ to the MiFID investment services, activities and financial instruments and also show what is new. For UK credit institutions conducting investment business there will be no need to renotify existing BCD passports, and the BCD breakdown of activities and instruments will continue to apply. However, we will need to record where credit institutions wish to passport the additional investment services, activities and financial instruments that are allowed under MiFID (see below).

If you are a UK investment firm or UK credit institution you should review your existing ISD or BCD passports against the relevant ‘maps’ of ISD or BCD activities, services and financial instruments across to MiFID ones as set out in the relevant tables at Annexes 2 and 3.

¹⁶ If you are a firm which is applying for a VOP to change the category of clients to whom you provide investment services (see chapter 2) and you also wish to provide such services under your passport, then this is likely to amount to a change in particulars and should be notified accordingly. We will only be able to forward any such notification to a host state authority, when and if your application for variation of permission has been approved.

If you wish to widen your existing (ISD or BCD) passport to cover new areas of MiFID's scope, you should notify us according to the table set out below. The new investment services, activities and financial instruments of the MiFID passport for investment firms are set out in the relevant tables in Annex 2,¹⁷ and include:

- operating a multilateral trading facility (A8);
- commodity derivatives, credit derivatives and other miscellaneous derivatives (C5-10); and
- ancillary service (B7) relating to commodity derivatives and other derivatives (C10).

The new activities of the BCD passport introduced through MiFID contain these same elements, as well as ancillary service B5 (investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments) and are set out in Tables 5, 6 and 7 in Annex 3.

Under Treasury legislation, UK investment firms which have made notifications under ISD in relation to the non-core service of investment advice will be treated by us as having made notifications in relation to the MiFID investment service of investment advice (A5) and ancillary service B5. If you are a UK investment firm which does not want its MiFID passport to include ancillary service B5,¹⁸ you are requested to notify us in writing by 1 August 2007 and we will ensure that this service is not 'mapped' across as at 31 October 2007.

Type of MiFID- related notification	Date of delivery of passport notice to FSA
UK firm wishing to change the scope of existing ISD or BCD services or branch passport to include new MiFID investment services and activities, ancillary services or financial instruments, to take effect from 1 November 2007.	No later than 30 September 2007.
UK firm wishing to establish a branch in another Member State (for which it does not already hold an ISD or BCD passport) to carry out MiFID investment services and activities, ancillary services or financial instruments (including by intention to appoint a tied agent established in that Member State – see chapter 5), to take effect from 1 November 2007.	By 31 May 2007 ¹⁹ (or as soon as possible thereafter).
UK firm without an ISD or BCD passport wishing to provide new MiFID investment services and activities, ancillary services or financial instruments on a cross-border services basis, to take effect from 1 November 2007.	No later than 30 September 2007.

In summary

- You should consider whether your existing passports are sufficient to meet your ongoing business needs following MiFID implementation and to make the appropriate notifications if they are not.

¹⁷ References relate to Annex I of MiFID

¹⁸ Ancillary service B5 of Annex I to MiFID: investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments.

¹⁹ This is because MiFID and BCD set out a maximum time period for both home and host regulators to process a branch passporting notification, of up to five months in total.

- If you are satisfied that the mapping of existing ISD passports across to MiFID passports (Tables 1-4 in Annex 2) or the BCD maps (Tables 5-7 in Annex 3), as appropriate, will allow you to carry on business as usual post 1 November 2007, then you need take no further action.
- UK investment firms with investment advice under an existing ISD passport who do not want ancillary service B5 included in the automatic mapping across to a MiFID passport should notify us by 1 August 2007.
- If you want to widen your passports to cover new MiFID investment services and activities, ancillary services and financial instruments as of 1 November 2007, you will need to notify us by 30 September 2007.
- If you want to establish a branch (or tied agent – see next chapter) doing MiFID business from 1 November 2007 in a Member State where you do not currently have a branch, you should notify us by 31 May 2007 (or as soon as possible thereafter).
- Details regarding MiFID passports of UK firms will be available on the FSA Register from 1 November 2007.
- We propose to provide additional materials aimed at EEA firms, in due course, dealing with issues relating to passports.

5 Tied Agents

Introduction

In the UK we currently have an appointed representative regime: MiFID introduces a broadly similar regime and in this chapter we set out the actions that firms wishing to operate under the MiFID tied agent regime need to take. This chapter is only relevant to MiFID firms that use appointed representatives, firms that are considering the use of appointed representatives and tied agents to carry on MiFID business on their behalf and to appointed representatives and tied agents that will carry on MiFID business on behalf of their principal firms.

We propose to provide additional material aimed at EEA firms in due course, dealing with the use of tied agents for MiFID business under a passport, including (where known) which EEA Member States will permit their own firms to use tied agents and so operate a register.

Overview

MiFID creates an optional regime which enables Member States to permit investment firms to appoint agents (tied agents) to act on their behalf subject to certain conditions. Tied agents include appointed representatives who carry on the activities of arranging (bringing about) deals in or advising on MiFID financial instruments in the UK on behalf of MiFID firms. Introducer appointed representatives are not tied agents.

You can find more background information in:

Chapter 6, CP06/14 *Implementing MiFID for Firms and Markets*

Section A, Chapter 5, PS07/2 *Implementing the Markets in Financial Instrument Directive*

Chapter 12 of the Supervision Manual (SUP12) (as at 1 November 2007)

PERG 13 Q11

What is changing?

The UK will operate the MiFID tied agent regime alongside the existing, and broadly similar, appointed representative regime. An appointed representative carrying out MiFID business in the UK will also be a tied agent. As is the case with appointed representatives now, a tied agent based in the UK will not be able to hold client money in connection with their MiFID business; and a firm that wishes to appoint a tied agent in the UK will be required to notify us.

Under MiFID, a firm may use tied agents when it exercises its right to passport²⁰ into other EEA Member States. So a UK firm that proposes to use a tied agent to provide investment services on a cross-border services or branch basis is required to notify us. MiFID treats a tied agent as a branch where that tied agent is established in a Member State other than that where its principal firm is authorised. So, where a UK firm appoints a tied agent established in another EEA Member State, the firm will need to make a branch passport notification where it does not already have a branch established in that state or a change in branch details notification where it does already have a branch (or tied agent).

These changes, which are contained in Treasury implementing legislation²¹ and chapters 12 and 13 of the Supervision sourcebook, will affect any UK investment firm or credit institution that wishes to use tied agents to operate in the UK or to provide investment services in other Member States. EEA firms and other non-UK firms which appoint UK or other tied agents which operate from an establishment in the UK should also refer to SUP 12.

What action should you take and by when?

If you have an appointed representative who is registered with us at 31 October 2007 (and will be a tied agent), they will be deemed to be registered for the purposes of MiFID. We will be recording all appointed representatives of MiFID firms as tied agents on the FSA Register as from 1 November 2007. If you are a MiFID firm and any of your appointed representatives will only conduct non-MiFID business on your behalf, you should notify us of this fact, including the names of those appointed representatives, before 31 October 2007.

UK firms using UK tied agents

- If you are using appointed representatives who all conduct ISD investment business in the UK and are all tied agents for MiFID business in the UK then you need take no action.
- If you are appointing a UK tied agent to act on your behalf from 1 November 2007 onwards you need to notify us on the appointed representative and tied agents notification form.²² Firms are asked to submit this from 1 October 2007.

20 You may also find it helpful to read the previous chapter on Passporting.

21 See, in particular, The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007, Schedules 4 and 5; and The Financial Services and Markets Act 2000 (EEA Passport Rights) (Amendment) Regulations 2006.

22 An updated appointed representative notification form will be available from us from 1 October 2007.

- If you are appointing a UK tied agent who is not included on the FSA Register, you will need to submit an appointed representative notification to us prior to the tied agent taking up its functions.

UK firms using tied agents established in other EEA Member States where they do not currently have a branch

- Tied agents established in other Member States are treated as branches for the purposes of MiFID.
- If you are appointing a tied agent established in another Member State you will need to notify us by completing the tied agent annex to the relevant passport notification form.
- If you want your tied agents to be able to carry on business immediately as of 1 November 2007, you will also need to ensure that a branch notification is with us no later than 31 May 2007.²³
- If you want your tied agent to be able to carry on business immediately as of 1 November 2007, you will also need to ensure that the tied agent is registered as of 1 November 2007 either in its home Member State, if that Member State permits appointment of tied agents, or if it does not, on our Register.
- You may need to contact the relevant host Member State competent authority if you have queries regarding the time required for processing applications for registration of tied agents and implementation of the Directive in that jurisdiction, including whether that Member State permits registration of tied agents. However, we aim to provide further material in due course on which Member States will register tied agents.

UK firms using EEA tied agents from Member States where they currently have a branch

- See the section above (but excluding the third bullet point above).
- If you want your tied agent to be able to carry on business immediately as of 1 November 2007, you are requested to ensure that you have made the relevant change in branch details notification to us no later than 30 September 2007.

In summary

- If you will not be a MiFID firm and currently use appointed representatives only for non-ISD investment business you need take no action.
- If you will be a MiFID firm but currently use an appointed representative that will not conduct MiFID business then you should notify us before 31 October 2007.

23 This is because MiFID sets out a maximum time period for both home and host regulators to process a branch passporting notification, of five months in total.

- If you are using appointed representatives to carry on ISD investment business in the UK on your behalf you do not need to notify us of those appointed representatives, if (as should be the case) they are already registered on the FSA Register. We will record them as tied agents under MiFID on our Register from 1 November 2007.
- If you are appointing new tied agents to act on your behalf from 1 November 2007 you need to notify us of these appointments, as only registered tied agents can act for you.
- If you are appointing new tied agents established in other EEA Member States you need to ensure that the tied agent is registered in its home Member State (or on the FSA Register where that Member State does not permit the appointment of tied agents), prior to the tied agent commencing business on your behalf.
- If you are appointing tied agents established in other EEA Member States you will also need to make a branch passport notification (where you do not already have a branch in that Member State) or a notification of change in branch details (where you do already have a branch in that Member State).

6 Systematic Internalisers

Introduction

MiFID requires firms that act as systematic internalisers (SIs) in respect of shares admitted to trading on a regulated market (RM) to notify us of their activities. We, in turn, are required to notify CESR of firms within the UK that undertake this activity to meet our own MiFID reporting obligations. This chapter explains what action firms need to take if they are acting, or propose to act, as a SI. This includes the UK branches of EEA and non-EEA firms.

Overview

SIs are defined by MiFID as those investment firms which, on an organised, frequent and systematic basis, deal on own account by executing client orders outside a RM or a Multilateral Trading Facility (MTF). Trading outside a RM or MTF is commonly known in the UK as over-the-counter (OTC) trading.

To be able to act as a SI firms will need a permission enabling them to ‘deal on own account’, as explained in PERG.

You can find more background information in:

Chapter 16, CP06/14 *Implementing MiFID For Firms And Markets*

Section A, Chapter 12, PS07/2 *Implementing The Markets In Financial Instruments Directive (MiFID)*

PERG 13, Q16

What is changing?

We require firms with the appropriate permissions to notify us in writing when they become, or cease to act as a SI in respect of shares admitted to trading on a RM. We are required to maintain a list of SIs which will be published by CESR.

Firms do not need to notify us of the specific shares admitted to trading on a RM in relation to which they act as a SI, nor do they need to notify us if they are acting as a SI in financial instruments that are not shares admitted to trading on a RM. The reporting requirements for SIs are set out in the Market Conduct sourcebook (MAR) 6.4.1.

What action should you take and by when?

If you are already authorised by us, you should:

- Check that you have the appropriate permission to act as a SI; if you do not, you will need to submit a VOP application by 1 August 2007.
- Submit a notification by 1 December 2007 if, from 1 November 2007, you will be acting as a SI in respect of shares admitted to trading on a regulated market.

Firms seeking authorisation that wish to act as a SI will need to request this status at the time of application.

In summary

- If you intend to act as a SI, you need to ensure that you have the appropriate permission to do so and, if not, make a VOP application by 1 August 2007.
- If you are acting as a SI in respect of shares admitted to trading on a RM, you should notify us that you are acting in that capacity by 1 December 2007.

7 Multilateral Trading Facilities

Introduction

This chapter explains the new MiFID activity of operating a multilateral trading facility (MTF) and the implications for firms that currently operate an alternative trading system (ATS). We also set out the steps that firms need to take if they are not currently operating an ATS but wish to operate a MTF from 1 November 2007.

This chapter does not apply to firms that do not operate as an ATS or do not plan to operate a MTF in the near future.

Overview

MiFID introduces a number of requirements for the operators of MTFs which formalise and expand upon the current regime for alternative trading system (ATS) operators.

A MTF refers to a multilateral system operated by an investment firm or market operator which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in the forming of a contract.

This applies to firms who are currently ATS operators and firms that wish to operate a MTF in the future. A firm may be a MTF operator irrespective of whether it performs any other MiFID investment service or activity.

You can find more background information in:

Chapter 15, CP06/14 *Implementing MiFID For Firms And Markets*

Section A, Chapter 11, PS07/2 *Implementing The Markets In Financial Instruments Directive (MiFID)*

Chapter 5 of the Market Conduct Sourcebook (MAR)

PERG 13 Q24

What is changing?

Transitional provisions made by the Treasury and included in the UK implementing legislation,²⁴ allow us to grant automatically to all firms authorised to operate an ATS before 1 November 2007 the permission to carry on the new regulated activity of operating a MTF. This has removed the need for firms to apply for a VOP to carry on the new activity.

We propose to remove any existing ATS requirements on firms' permission relating to the operation of secondary markets from 1 November 2007. However, we will retain existing requirements regarding the operation of primary markets in shares for those ATS operators that provide such markets.

What action should you take and by when?

If you are currently authorised to operate an ATS and wish to undertake the new MTF activity you need take no further action.

If you currently operate an ATS but plan to cease ATS activities, and therefore do not wish to become a MTF operator after 1 November 2007, you should notify us by 1 October 2007 that you do not wish for the activity of operating a multilateral trading facility to be added to your permission. You should do so by submitting a VOP application requesting the removal of your existing ATS requirements and indicating the change in business model. If you have no other authorised activities, you should also submit an application to cancel your Part IV Permission.

If you are an authorised firm which is not currently an ATS operator but wish to be given permission to operate a MTF after 1 November 2007, you should submit a VOP application by 1 August 2007 to enable us to process your application by 1 November 2007.

In summary

- If you are currently authorised to operate an ATS and plan to operate a MTF as from 1 November 2007 you need take no action.
- If you are currently operating an ATS but do not plan to operate a MTF from 1 November 2007 you should submit a VOP application as soon as possible and no later than 1 October 2007, and consider your ongoing business model.
- If you are an authorised firm which does not currently act as an ATS operator but wish to operate a MTF as from 1 November 2007 you need to submit a VOP application by 1 August 2007.

24 The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (Amendment) Regulations 2007 (SI 2007/763), regulation 4.

8 Commodity Derivatives and Credit Derivatives

Introduction

This chapter explains how Treasury legislation will automatically update some firms' permissions to take account of the increased scope of domestic regulation in relation to commodity derivatives and credit derivatives, and the action that firms may need to take as a result. It is relevant only to those MiFID firms that undertake, or propose to undertake, investment business in derivatives.

Overview

The scope of MiFID includes a range of commodity derivatives not previously covered by the ISD. MiFID also recognises derivative instruments for the transfer of credit risk as a category of financial instrument in its own right. Details of which commodity and credit derivatives are caught by MiFID's scope are set out in PERG 13, Q30 to Q34.

Implementation of MiFID will widen the scope of commodity derivatives and credit derivatives falling within domestic regulation. This will include some physically settled options on non-precious metals,²⁵ some increases at the margins in relation to commodity futures,²⁶ and the category of miscellaneous derivatives falling within MiFID Annex 1 Section C paragraph 10 (C10 derivatives).

This extension in scope will affect a wide range of firms that engage in activities relating to commodity derivatives or credit derivatives, from large investment banks to small brokers, dealers and investment managers, and some specialist commodities firms insofar as they do not fall within one or more MiFID exemptions.

You can find more background information in:

PERG 13 Q30 to Q34

²⁵ See PERG 2.6.20A G (as set out in Perimeter Guidance (MiFID Scope) Instrument 2007).

²⁶ See PERG 2.6.22B G (as set out in the same instrument above).

What is changing?

Many of the derivatives mentioned above already fall within the scope of firms' permissions but not all. However, as a result of Treasury regulations,²⁷ MiFID firms' permissions comprising activities relating to the investment categories in the left-hand column of the table below will be widened automatically to include the corresponding MiFID financial instruments in the right-hand column. If you are a UK firm to which MiFID does not apply, the increases in scope will not affect your permission. The increases in scope are only relevant to the permissions of MiFID firms.

Table showing expansion of firms' permissions from 1 November 2007

[References in the right hand column are to financial instruments in Annex 1 Section C MiFID (2004/39/EC)]

Investment in relation to which person has Part IV permission before 1 November 2007	Additional investments to which a person's Part IV permission is extended from 1 November 2007
Option (excluding commodity options and options on a commodity future)	Options within C10
Commodity option	Commodity options within C4-7
Option on a commodity future	Options on a commodity future within C4-7
Future (excluding commodity futures and rolling spot forex contracts)	Futures within C10
Commodity futures	Commodity futures within C5-7
Contracts for differences (excluding spread bets and rolling spot forex contracts)	Contracts for differences within C8 (i.e. credit derivatives)

What action should you take and by when?

- If you agree that your permission should be automatically widened as set out in the table above, no action is required.
- If you are a MiFID firm but you do not want your permission widened you should make a VOP application by 1 August 2007.

In summary

- The broader scope of MiFID means that some financial instruments will fall under UK regulation for the first time.
- Permissions of MiFID firms are being widened automatically to reflect MiFID-related increases in domestic scope in relation to commodity derivatives and certain other derivatives (including credit derivatives).
- You only need to apply for a VOP if, for any reason, you do not agree that your permission should be widened as provided for in Treasury legislation.

²⁷ See The Financial Services and Markets Act 2007 (Markets in Financial Instruments) (Amendment) Regulations 2007, regulation 4.

9 Client Money

Introduction

One of the most significant impacts of MiFID implementation on our existing client money regime is that MiFID firms will lose the ‘professional opt-out’ exclusion for MiFID business. This chapter explains the action that firms may need to take if, as a result, they will be holding client money for professional clients after 1 November 2007.

Overview

Firms should carefully consider the outcome of our proposals relating to the loss of the professional ‘opt out’ as part of the client money regime in respect of MiFID business.²⁸ This does not necessarily mean the firm will be holding client money in the future,²⁹ although it may have this effect in some cases.

You can find more background information in:

Chapter 10, CP06/14 *Implementing MiFID for Firms and Markets*

Section A, Chapter 8, PS07/2 *Implementing the Markets in Financial Instruments Directive (MiFID)*

What is changing?

The ability for these ‘professional’ clients to agree to ‘opt out’ of client money protections is not compatible with MiFID segregation requirements and will not be available from 1 November 2007. This means that MiFID firms need to consider their position and their regulatory obligations in respect of money received from professional clients and eligible counterparties (ECP).

²⁸ See Policy Statement PS07/2, chapter 8 and the Client Assets Sourcebook (MiFID Business) Instrument [FSA 2007/4].

²⁹ See for example CP06/14, chapter 10.

What action should you take and by when?

If you currently take advantage of the 'professional opt-out', you will need to consider how you propose to treat the money of your professional clients and eligible counterparties after 1 November 2007. If you wish to treat that money as client money going forward, in relation to MiFID business, you will need to remove from your permission any requirement that prevents you from doing so. Otherwise you will not be able to continue holding that money in the way you currently do.

You should note that by removing the requirement, an otherwise exempt firm may fall under the scope of MiFID.

You should submit a VOP application by 1 August 2007 to give us enough time to process your request by 1 November 2007.

In summary

- If you rely on the opt-out and intend to hold client money in relation to MiFID business after 1 November 2007, you need to apply for a VOP to remove any existing client money requirements on your permission that prevent you from doing so.
- You are requested to submit a VOP application by 1 August 2007.

10 Outsourcing retail portfolio management to non-EEA service providers

Introduction

This chapter explains the circumstances in which a MiFID firm may need to notify us of its intention to outsource retail portfolio management services to a non-EEA service provider. It does not apply to non-MiFID firms.

Overview

If you outsource retail portfolio management services to a non-EEA service provider, you must ensure that the following conditions are met:

- the service provider is authorised or registered in its home country to provide that service and is subject to prudential supervision; and
- that there is an appropriate cooperation agreement between us and the supervisor of the service provider.³⁰

Where one or both of the above conditions is not satisfied, you may still outsource retail portfolio management services to a non-EEA service provider if you give prior notification of the outsourcing arrangement to us, and we do not object to the arrangement within one month following receipt of the notification. We will assess your notification against the guidance set out in SYSC 8.3 of the Handbook and decide whether we wish to object to the proposal.

These requirements apply to all MiFID firms that have, or propose to have, from 1 November 2007, outsourcing arrangements for their retail portfolio management services where the service provider is located in a non-EEA country. While we expect this prior notification requirement to apply only in a limited number of cases, all MiFID firms that intend to outsource this service should check that the proposed outsourcing meets the conditions in SYSC 8.2.1.

30 See SYSC 8.2.1(1) You should check our website for information on appropriate cooperation agreements.

You can find more background information in:

Chapter 8, Senior Management Arrangements, Systems and Controls (SYSC 8)

Section B, Chapter 12, PS07/2 *Implementing the Markets in Financial Instruments Directive (MiFID)*

Chapter 29, CP06/19 *Reforming Conduct of Business Regulation*

A list of the relevant cooperation agreements will be published on our website imminently.

What action should you take and by when?

If you have an existing outsourcing agreement you need to check that the conditions in SYSC 8.2.1 will be satisfied as at 1 November 2007. If one or both are not, you should notify us in writing of your proposal to outsource a retail portfolio management service to a non-EEA provider. SYSC 8.2 and 8.3 set out the content of the required prior notification and guidance.

From 1 November 2007, you may only outsource this service if you have submitted a prior notification to us and have not received a notice of objection from us within one month of our receiving the notification. In practice if we have concerns, we would expect to discuss them with you first, before issuing a notice of objection. Where we require further information from you, this will effectively ‘stop the clock’ on the one month notice period and we will communicate to you any effect this may have on our response time.

Where we do object to a prior notification, we will issue a supervisory notice to place a limitation on your permission preventing you from outsourcing the portfolio management service to the named non-EEA service provider. If you are unhappy with any decision we take to object to a notification you may make representations to us or refer the matter to the Financial Services and Markets Tribunal under FSMA.

We will accept written notifications from firms with existing arrangements from 1 July 2007 where this is required. Although we will not be able to object formally until 1 November 2007, we will aim to communicate with you ahead of that date whether we are likely to object to your arrangements.

In summary

- MiFID introduces a prior notification requirement for MiFID firms outsourcing retail portfolio management services to a non-EEA service provider where the conditions in SYSC 8.2.1 (1) are not met.
- You need to consider the impact of these changes and whether you need to submit a prior notification to us, either for any existing arrangements or any proposed after 1 November 2007.
- You can submit notifications for existing arrangements from 1 July 2007 using a notification form.

11 Waivers

Introduction

This chapter explains the circumstances in which firms will need to review waivers or modifications (waivers) of our rules³¹ that currently apply in relation to their conduct of designated investment business. It outlines the action that firms should take if they believe that it is important for their business that the effect of those waivers is maintained beyond 1 November 2007.

This chapter applies to all MiFID and non-MiFID firms – including branches of non-EEA firms.

Overview: what is changing?

Significant changes to our Handbook are being made to implement MiFID and to reflect our move towards principles-based regulation. Many rules are either being replaced by ‘intelligent copy-out’ of the MiFID requirements, or removed in favour of reliance on higher-level requirements, or recast in a slightly different form. These changes will come into effect on 1 November 2007. This has two principal consequences for firms’ existing waivers.

Firstly, we will have no general ability to waive rules that implement MiFID requirements (whether by copy-out or otherwise), for MiFID firms and business, unless the Directive expressly provides a waiver power. Waivers of existing rules that are being replaced by MiFID-implementing rules are therefore likely to fall away at 1 November 2007.

Secondly, although we will continue to be able to waive rules that do not implement MiFID requirements or that apply MiFID requirements to non-MiFID firms and business, the removal or recasting of many existing rules means that waivers attached to them are likely to cease to apply after 1 November 2007.

31 The power to grant waivers or modifications of FSA rules is set out in Section 148 FSMA. A ‘waiver’ from a rule means that a firm does not have to comply with that requirement. A ‘modification’ to a rule enables a firm to comply with an amended rule that better fits the firm’s own circumstances.

This will be particularly the case with waivers of conduct of business rules. All existing COB waivers will fall away on 1 November 2007 – including waivers granted before 1 December 2001. However, significant changes have also been made elsewhere in our Handbook, particularly affecting the SYSC, CASS, MAR and Training and Competence sourcebooks.

You can find more background information in:

Chapter 26, CP06/19 *Reforming Conduct of Business Regulation*

PS07/2 *Implementing the Markets in financial Instruments Directive (MiFID)*

CP07/9 *Conduct of Business regime: non-MiFID deferred matters*

What action should you take and by when?

You should review the waivers that you currently have against the changes to the rules in the sourcebooks mentioned above, and consider the impact on your business that the loss of those waivers may have. You can assume for this purpose that, as indicated, all existing waivers of COB rules will expire at 1 November 2007 and likewise any waivers in respect of rules in CASS, SYSC and MAR which will be replaced by new rules on the same date as part of MiFID implementation. Where final rules have not yet been made and published, you can make an initial assessment against draft rules in the relevant consultation paper. If you conclude that you will need a waiver of the new Handbook provisions that come into effect at 1 November 2007, you will need to make a fresh waiver application. If you are a MiFID firm, however, you should bear in mind that an application for waiver of a rule that implements a Directive requirement is unlikely to be successful. These rules are clearly identified in the Handbook text.

To help with this process, we wrote in March 2007 to those firms identified from our central records as holding waivers of existing COB rules, alerting them to the need for them to consider their position. If you decide that you require a waiver of a new COBS rule, you should apply as soon as possible and no later than 1 September 2007, so that your application can be considered and a decision made by 1 November 2007.

If you believe that you will require a waiver of a new or amended rule in another sourcebook after 1 November 2007, you should submit a completed waiver application form as soon as possible and by no later than 1 September 2007, to ensure that the application can be considered and a decision made by 1 November 2007.

You should send your application to the Waivers Team. If you have questions in relation to a waiver application you are considering, you should also direct them to the Waivers Team.

In summary

- Where existing rules have been changed either to implement MiFID or the move to principles-based regulation, you should re-assess any waivers attached to those rules - in particular, COB waivers as they will expire on 1 November 2007.

- You should apply for any waiver of a new COBS rule as early as possible, and no later than 1 September 2007, to give us sufficient time to consider the application.
- You should apply for a waiver of the new rules in other sourcebooks by 1 September 2007.
- Where new rules implement Directive provisions, it will generally not be legally possible to waive or modify them in respect of MiFID firms and MiFID business.
- You should contact the Waivers Team if you have questions about your waiver application before you submit your request.

12 Approved Persons

Introduction

This chapter explains the limited practical impact of MiFID implementation on the Approved Persons regime. Issues arise principally for incoming EEA firms that will operate either under a MiFID passport, or a different directive passport, or with a top-up permission after 1 November 2007.

Firms will be aware that other changes to the Approved Persons regime, not related to MiFID, also come into effect on 1 November 2007 and are likely to affect all firms. Information on any action that firms will need to take as a result of these changes will be published later this year, together with revised versions of the Approved Persons forms.

Overview

An approved person is one who has been approved by us to perform one or more 'controlled functions' on behalf of an authorised firm. Approval must be obtained before a person can perform a controlled function.

MiFID requires us to ensure that persons who effectively direct the business of the firm are of good enough repute or experienced enough to ensure its sound and careful management. We believe this fits with our existing regime, and so we are not proposing any changes as a result of MiFID implementation to the way the regime operates for UK firms.

MiFID does place some additional responsibilities on individuals performing the compliance, internal audit and risk assessment roles within UK firms. We have copied out these extra responsibilities into the new SYSC 6 and 7.

MiFID also limits the number of controlled functions we can apply to MiFID business, and the type of assessment that we are able to perform for EEA firms passporting into the UK.

You can find more background information in:

CP06/15 Reforming the Approved Persons Regime

PS07/3 Reforming the Approved Persons Regime – Feedback on Section IV of CP06/15

What action do you need to take and by when

UK firms carrying on MiFID business

As a result of MiFID implementation there will be some changes to the CF8 Apportionment and Oversight controlled function and we shall be consulting on its impact on UK firms carrying on MiFID business in the summer. Otherwise, there are minimal changes for UK firms carrying on MiFID business as the Approved Persons regime will continue to apply. You will need, though, to consider the more detailed responsibilities, in SYSC 6 and 7, for controlled functions CF10 (Compliance oversight), CF14 (risk assessment) and CF15 (internal audit).³²

EEA incoming firms only doing MiFID business

If you are an EEA investment firm you will no longer need to apply for approval for those individuals performing an activity in relation to controlled functions CF9 (EEA business oversight) and CF10 (Compliance oversight) as from 1 November 2007.

As an EEA investment firm you will no longer need to confirm to us the competence of an individual applying for approved person status as the skills and competence of staff will be a matter for your home state regulator. We will amend our application forms accordingly.

EEA incoming firms doing non-MiFID business

EEA investment firms that do non-MiFID business may need to continue to apply for controlled functions CF9 (EEA business oversight) and CF10 (Compliance oversight) for individuals undertaking these roles and you will need to confirm to us the competence of any individual applying for approved person status.

We will be writing to all existing EEA incoming firms, regardless of their current passport in the third quarter of 2007 to confirm what they need to do before 1 November 2007. This will enable firms to ensure their individuals have the correct controlled functions. Further information on any other action that firms may need to take as a result of the non-MiFID related Approved Persons changes will be published later this year.

In summary

- The implementation of MiFID introduces some changes to our Approved Person Regime, but these are minimal for UK firms.
- You are asked to consider the extra responsibilities on individuals under MiFID as set out above and to notify us of any changes that you may need to make to your existing controlled functions via the normal approved persons process by 12 October 2007.

32 CF14 and CF15 will become part of the newly merged Systems and Controls function (CF28) on 1 November 2007.

Assessment of which firms fall within article 3 MiFID exemption

In assessing which firms fall within article 3 MiFID and updating the FSA Register, broadly we intend to make the following general assumptions. We will assume that you are exempt if you meet the following conditions:¹

- You are a UK firm with a Part IV permission which does not permit you to (i) deal in investments as principal or agent in relation to MiFID instruments and (ii) manage MiFID instruments;
- Your permission enables you to advise on and/or arrange (bring about) deals in investments which include securities but not derivatives;
- Your permission contains a requirement preventing you from holding client money for the purposes of MiFID (see Annex 5 Table 9); and
- You do not have permission to safeguard and administer (without arranging) MiFID instruments.

Firms will need to satisfy themselves separately that they meet the third condition of the article 3 MiFID exemption² (not referred to above), if they receive and transmit orders as part of their business. If they do not and the FSA Register indicates (as at 1 November 2007) that they fall within the article 3 exemption, they are asked to inform us in writing that they fall outside the exemption.

As part of updating the FSA Register, we plan also to take into account as far as practicable, responses of those firms we have written to as part of the CRD firm categorisation exercise, where they have confirmed that they meet the terms of the article 3 exemption.

1 For the purposes of this exercise, we do not propose to assess whether firms whose permission indicates that they could fall within an article 2 MiFID exemption (e.g. authorised professional firms with a standard requirement of the type referred to in PERG 13, Q39) may also fall within the terms of the article 3 MiFID exemption.

2 Firms which receive and transmit orders can only rely on the exemption, if they transmit orders to one or more prescribed persons (see PERG 13, Q49 & 50).

ISD to MiFID maps

Table 1 – Map of ISD cores services to MiFID investment services and activities

Investment service in Section A of the Annex to the investment services directive	Corresponding investment service or activity in Section A of Annex I to the markets in financial instruments directive
1(a) (reception and transmission, on behalf of investors, of orders in relation to one or more of the instruments listed in Section B)	1 (reception and transmission of orders in relation to one or more financial instruments)
1(b) (execution of such orders other than for own account)	2 (execution of orders on behalf of clients)
2 (dealing in any of the instruments listed in Section B for own account)	3 (dealing on own account)
3 (managing portfolios of investments in accordance with mandates given by investors on a discretionary, client-by-client basis where such portfolios include one or more of the instruments listed in Section B)	4 (portfolio management)
4 (underwriting in respect of issues of any of the instruments listed in Section B and/or the placing of such issues)	6 (underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis); and 7 (placing of financial instruments without a firm commitment basis)

Table 2 – Map of ISD non-core services to MiFID ancillary services

Non-core service in Section C of the Annex to the investment services directive	Corresponding ancillary service in Section B of Annex I to the markets in financial instruments directive
1 (safekeeping and administration in relation to one or more of the instruments listed in Section B)	1 (safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management)
2 (safe custody services)	1
3 (granting credits or loans to an investor to allow him to carry out a transaction in one or more of the instruments listed in Section B, where the firm granting the credit or loan is involved in the transaction)	2 (granting credits or loans to an investor to allow him to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction)
4 (advice to undertakings on capital structure, industrial strategy and related matters and advice and service relating to mergers and the purchase of undertakings)	3 (advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings)
5 (services related to underwriting)	6 (services related to underwriting)
6 (investment advice concerning one or more of the instruments listed in Section B)	5 (investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments); and the investment service of investment advice (A4)
7 (foreign-exchange services where these are connected with the provision of investment services)	4 (foreign exchange services where these are connected to the provision of investment services)

Table 3 – Map of ISD investments to MiFID financial instruments

Investment in Section B of the Annex to the investment services directive	Corresponding financial instrument in Section C of Annex I to the markets in financial instruments directive
1(a) (transferable securities)	1 (transferable securities)
1(b) (units in collective investment undertakings)	3 (units in collective investment undertakings)
2 (money-market instruments)	2 (money-market instruments)
3 (financial-futures contracts, including equivalent cash-settled instruments)	4 (options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash)
4 (forward interest-rate agreements)	4
5 (interest-rate, currency and equity swaps)	4
6 (options to acquire or dispose of any instruments falling within this section of the Annex, including equivalent cash-settled instruments. This category includes in particular options on currency and on interest rates)	4

**Table 4 – Comparison of MiFID passport for investment firms to
ISD passport**

Financial Instruments	Investment services and activities								Ancillary services						
	A1	A2	A3	A4	A5	A6	A7	A8	B1	B2	B3	B4	B5	B6	B7
C1															
C2															
C3															
C4															
C5															
C6															
C7															
C8															
C9															
C10															

Note

Abbreviations in the table are to the relevant provisions in MiFID (e.g. A1 refers to Annex 1 Section A paragraph 1 MiFID).

The shaded boxes indicate the elements of the MiFID passport corresponding to the existing ISD passport; the unshaded boxes relate to elements which will require notification if you wish to extend your passport to comprise these elements.

MiFID to BCD maps

Table 5 –Map of MiFID investment services, activities and financial instruments to BCD passport

Abbreviations in the table are to the relevant provisions in MIFID and BCD: for example A1 refers to Annex 1 Section A paragraph 1 MIFID; BCD 7 refers to Annex 1 BCD paragraph 7.

MiFID Services and Activities	Corresponding BCD Activities Subject to Mutual Recognition
<i>Investment services and activities</i>	<i>Annex 1 BCD</i>
Reception and transmission of orders in relation to one or more financial instruments (A1)	Trading for own account or for account of customers in: (a) money market instruments (cheques, bills, certificates of deposit, etc.); (b) foreign exchange; (c) financial futures and options; (d) exchange and interest-rate instruments; (e) transferable securities (BCD 7)
Execution of orders on behalf of clients (A2)	Trading for own account or for account of customers in: (a) money market instruments (cheques, bills, certificates of deposit, etc.); (b) foreign exchange; (c) financial futures and options; (d) exchange and interest-rate instruments; (e) transferable securities (BCD 7)

MiFID Services and Activities	Corresponding BCD Activities Subject to Mutual Recognition
<i>Investment services and activities</i>	<i>Annex 1 BCD</i>
Dealing on own account (A3)	Trading for own account or for account of customers in: (a) money market instruments (cheques, bills, certificates of deposit, etc.); (b) foreign exchange; (c) financial futures and options; (d) exchange and interest-rate instruments; (e) transferable securities (BCD 7)
Portfolio management (A4)	Portfolio management and advice (BCD 11)
Investment advice (A5)	Portfolio management and advice (BCD 11)
Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis (A6)	Participation in securities issues and the provision of services related to such issues (BCD 8)
Placing of financial instruments without a firm commitment basis (A7)	Participation in securities issues and provision of services related to such issues (BCD 8)
Operation of Multilateral Trading Facilities (A8)	
<i>Ancillary services</i>	
Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management (B1)	Safekeeping and administration of securities (BCD 12)
Granting credits or loans to an investor to allow him to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction (B2)	Lending including, inter alia: consumer credit, mortgage credit, factoring, with or without recourse, financing of commercial transactions (including forfeiting) (BCD 2)
Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings (B3)	Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings (BCD 9)
Foreign exchange services where these are connected to the provision of investment services (B4)	Trading for own account or for account of customers in: (b) foreign exchange (BCD 7)

MiFID Services and Activities	Corresponding BCD Activities Subject to Mutual Recognition
Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments (B5)	
Services related to underwriting (B6)	Participation in securities issues and the provision of services related to such issues (BCD 8)
Investment services and activities as well as ancillary services of the type included under Section A or B of Annex 1 related to the underlying of the derivatives included under Section C – 5, 6, 7 and 10 – where these are connected to the provision of investment or ancillary services (B7)	

Note

Where there is a blank entry in the right hand column, firms which want their passport to extend to the corresponding MiFID investment service and activity, should notify us accordingly.

Table 6 – Map of MiFID financial instruments to BCD passport

MiFID Financial Instruments	Corresponding BCD Instruments
Transferable securities (C1)	Transferable securities (BCD 7(e))
Money-market instruments (C2)	Money market instruments (cheques, bills, certificates of deposit, etc) (BCD 7(a))
Units in collective investment undertakings (C3)	Transferable securities (BCD 7(e))
Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash (C4)	Financial futures and options (BCD 7(c)) Exchange and interest rate instruments (BCD 7(d)) Transferable securities (BCD 7(e))
Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event) (C5)	
Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market and/or an MTF (C6)	

MiFID Financial Instruments	Corresponding BCD Instruments
Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in C.6 and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls (C7)	
Derivative instruments for the transfer of credit risk (C8)	
Financial contracts for differences (C9)	
Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market or an MTF, are cleared and settled through recognised clearing houses or are subject to regular margin calls (C10)	

Note to Table 6

Where there is a blank entry in the right hand column, firms which want their passport to be extended to the corresponding MiFID investment service and activity or ancillary service, should notify us accordingly.

How UK credit institution would notify extensions to passport in relation to new areas of MiFID scope

Bank A has an existing BCD passport which covers BCD activities 1-14. It wishes to:

- (i) begin passporting the activity of operating a multilateral trading facility in relation to all possible financial instruments; and
- (ii) extend its portfolio management and advice activities (BCD activity 11) to benefit from the new MiFID financial instruments.

When filling in its notification, the Bank would indicate that it wishes to carry on additional MiFID investment services and activities subject to mutual recognition.³

³ See the final paragraph of Annex 1 to the BCD (inserted by article 68 MiFID).

In relation to (i), Bank A would then tick boxes A8:C1, A8:C2, A8:C3, A8:C4, A8:C5, A8:C6, A8:C7, A8:C8, A8:C9 and A8:C10 on Table 7 below.

In relation to (ii), Bank A would tick boxes A4:C5, A4:C6, A4:C7, A4:C8, A4:C9, A4:C10, A5:C5, A5:C6, A5:C7, A5:C8, A5:C9 and A5:C10 on Table 7 below.

The shaded boxes in Table 7 indicate, in our view, the elements of the MiFID passport corresponding to the existing BCD passport; the unshaded boxes relate to elements which may require notification.

Table 7 – Additional MiFID investment services and activities subject to mutual recognition under the BCD

Financial Instruments	Investment services and activities								Ancillary services						
	A1	A2	A3	A4	A5	A6	A7	A8	B1	B2	B3	B4	B5	B6	B7
C1															
C2															
C3															
C4															
C5															
C6															
C7															
C8															
C9															
C10															

Note:

Abbreviations in the table are to the relevant provisions in MiFID (e.g. A1 refers to Annex 1 Section A paragraph 1 MiFID)

The shaded boxes indicate the elements of the MiFID passport corresponding to the existing BCD passport; the unshaded boxes relate to elements which will require notification if you wish to extend your passport to comprise these elements.

Unlike in Table 4 (ISD – MiFID), the boxes B5:C1 to B5:C4 have not been shaded above. This is because we are asking credit institutions to notify us if they carry on the ancillary service of ‘investment research and financial analysis or other forms of general recommendation’ in relation to these instruments, in order to avoid any possible uncertainty about the BCD-MiFID map in this area.

New standard requirement for exempt CAD firms

Table 8 New standard requirement for exempt CAD firms

<p>Exempt CAD firms</p> <p><i>New Standard Requirement</i></p> <p>“Unable to carry on any investment services and activities (to which MiFID applies) on a regular basis except reception and transmission of orders in relation to one or more financial instruments or investment advice.”</p>	<p>A firm wishing to be an exempt CAD firm should apply for this requirement if it has both an arranging (bringing about) deals in investments and advising on investments permission in relation to MiFID financial instruments.</p> <p>If it has permission to advise on investments but not arranging (bringing about) deals in investments in relation to MiFID financial instruments, it should apply for this requirement omitting the words “reception and transmission of orders in relation to one or more financial instruments or”.</p> <p>If it has permission to arrange (bringing about) deals in investments but not advising on investments in relation to MiFID financial instruments, it should apply for this requirement omitting the words “or investment advice”.</p>
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Standard client money requirements

Table 9 Standard client money requirements

Present status of firm	Effect
1. Firm has a requirement not to hold client money.	Firm will not be authorised to hold client money for purposes of MiFID/CRD.
2. Firm has a requirement allowing it to control but not hold client money	Firm will not be authorised to hold client money for purposes of MiFID/CRD.
3. Firm has a requirement as follows: "The general requirement not to hold or control client money does not restrict the firm from controlling client money if it arises from an agreement under which the firm effects settlement through a mandate or otherwise."	Firm will not be authorised to hold client money for purposes of MiFID/CRD.
4. The firm receives money from clients under the 'opt-out' from the client money rules for intermediate customers and market counterparties (see CASS 4.1.8 to 14).	<p>Even if its permission contains a limitation of the type in 1, 2 or 3 above (or 6 and 7 below), in a limited number of cases a firm's prudential status, in particular, may still be affected. This is because MiFID will prevent us from maintaining the opt-out for MiFID related business after 31 October 2007.</p> <p>This does not necessarily mean the firm will be holding client money in the future, although it may have this effect in some cases.</p> <p>Firms should carefully consider the outcome of our proposals relating to the loss of the professional "opt-out" as part of the client money regime.⁴ From this, they should ascertain whether the proposals will affect their base capital and capital resources requirements.</p>

4 See Policy Statement PS07/2, 'Implementing the Markets in Financial Instruments Directive (MiFID) – Feedback on CP06/14, CP06/19 and CP06/20', Chapter 8: http://www.fsa.gov.uk/Pages/Library/Policy/Policy/2007/07_02.shtml, and the Client Assets Sourcebook (MiFID Business) Instrument 2007 [FSA 2007/4]: http://fsahandbook.info/FSA/handbook/LI/2007/2007_4.pdf

Present status of firm	Effect
	<p>This issue will be of particular relevance to a firm whose permission:</p> <ul style="list-style-type: none"> • does not allow it to hold client money or safeguard and administer financial instruments; • enables it to carry on business with professional customers; and • which makes use of the opt-out from our client money rules for intermediate customers and market counterparties. <p>If the above applies to your firm and having reviewed our proposals your firm plans to hold client money after 31 October 2007, you should apply before 1 November 2007 for a variation of permission by 1 August 2007. This application would be to remove the existing client money requirement from your permission so as to take effect as of 1 November 2007.</p> <p>You will be able to benefit from the client money 'opt out' regime until then, assuming you comply with the relevant Handbook provisions and FSMA requirements.</p>
<p>5. Firm has a requirement as follows:</p> <p>The general requirement not to hold or control client money does not apply if the client money arises from an agreement under which commission is rebated to the client.</p>	<p>Firm will be authorised to hold client money for purposes of MiFID/CRD. Business. See, also, guidance relating to this issue in CASS 7.2.12 G – 7.2.13 G: http://fsahandbook.info/FSA/handbook/LI/2007/2007_4.pdf</p>
<p>6. Firm has a requirement to hold and control client money in respect of non-investment insurance contracts (insurance mediation activities only)</p>	<p>Firm will <u>not</u> be authorised to hold client money for the purposes of MiFID/CRD.</p>
<p>7. Firm has a requirement to hold and control client money in respect of regulated mortgage contracts (regulated mortgage activities only)</p>	<p>Firm will <u>not</u> be authorised to hold client money for the purposes of MiFID/CRD.</p>
<p>8. Firm has a requirement as follows:</p> <p>“Unable to hold client money or <i>safeguard and administer assets (without arranging)</i> in relation to any investment services and activities (to which MiFID applies).”</p>	<p>The firm will not be authorised to hold client money for the purposes of MiFID/CRD.</p> <p>A firm subject to this requirement can still hold client money and <i>safeguard and administer assets (without arranging)</i> in relation to investment services and activities which fall within a MiFID exemption, for example client money or assets it may hold in its capacity as a CIS operator.</p>

Links to relevant FSA documents and forms

Category 1: Consultation Papers & Policy Statements	
CP06/14: Implementing MiFID for Firms and Markets	http://www.fsa.gov.uk/pubs/cp/cp06_14.pdf
CP06/9: Organisational systems and controls – Common platform for firms	http://www.fsa.gov.uk/pages/Library/Policy/CP/2006/06_09.shtml
PS06/13: Organisational systems and controls – common platform for firms – Feedback on CP06/9	http://www.fsa.gov.uk/Pages/Library/Policy/policy/2006/06_13.shtml
CP06/19: Reforming Conduct of Business Regulation	http://www.fsa.gov.uk/pages/Library/Policy/CP/2006/06_19.shtml
FSA Implementing MiFID's Client Categorisation requirements	http://www.fsa.gov.uk/pubs/other/mifid_classification.pdf
CP07/9 Conduct of Business regime; non-MiFID deferred matters	http://www.fsa.gov.uk/pages/Library/Policy/CP/2007/07_09.shtml
PS07/5 Perimeter guidance relating to MiFID – covering the scope of MiFID and CRD	http://www.fsa.gov.uk/pubs/policy/ps07_05.pdf
CP07/4 The Training and Competence Sourcebook Review	http://www.fsa.gov.uk/Pages/Library/Policy/CP/2007/07_04.shtml
PS07/4 Reforming the Approved Persons regime – Feedback on CP06/15 (Merging the Customer Functions) and final rules	http://www.fsa.gov.uk/Pages/Library/Policy/Policy/2007/07_04.shtml

Category 2: Forms & Packs	
Variation of Permission Application Form	http://www.fsa.gov.uk/Pages/doing/regulated/notify/Permissions/index.shtml
Authorisation Application Pack	http://www.fsa.gov.uk/Pages/Doing/how/index.shtml
Firms OnLine	http://tncrinet01.fsa.gov.uk/FSARRADMIN
Passporting 'Notice of intention' forms and FAQs	http://www.fsa.gov.uk/Pages/Doing/Regulated/Notify/apply/index.shtml
Appointed Representatives notification forms	http://www.fsa.gov.uk/Pages/Doing/Regulated/Notify/Reps/index.shtml
Notice of Intention Forms: Passport Branch	http://www.fsa.gov.uk/pubs/forms/passport_branch.doc
Notice of Intention Forms: Passport EEA	http://www.fsa.gov.uk/pubs/forms/passport_eea.doc
Waivers application form	http://www.fsa.gov.uk/Pages/doing/regulated/notify/waiver/index.shtml

Category 3: Other relevant links	
Implementation Plan for MiFID Update	http://www.fsa.gov.uk/pubs/international/mifidplan_update.pdf

Actions checklist

Actions checklist

The following table provides an overview of the matters contained in this guide and firms should consult the relevant chapters, as appropriate.

Actions checklist

Chapter Number	Subject	PERG 13 Ref	What firms may need to do	How firms may notify us
2	Client Categorisation	n/a	<ul style="list-style-type: none"> You should be considering the possible impact of client categorisation changes on your existing permissions now. If you are satisfied that our proposed mapping of existing client types to the MiFID client categories meets your ongoing business needs for your MiFID business you need take no further action. If you need to make changes to your client categorisation in relation to your MiFID business you should submit a VOP application by 1 August 2007 to ensure that it is processed in time for 1 November 2007. You should also consider the effect of our client categorisation proposals in relation to non-MiFID business. If you wish to take advantage of the transitional regime for non-MiFID business until 1 July 2008, you may still need to apply for a VOP by 1 January 2008 if you plan to do non-MiFID business with new client categories that do not map to your existing permissions. We will keep you informed of future developments designed to reduce the need for firms to apply for changes to their client categorisations where possible. 	VOP
3	Article 3 MiFID exemption	Q48 - 53	<ul style="list-style-type: none"> You should check whether you meet the conditions of the article 3 MiFID exemption (including having a requirement on your permission which prevents you from holding client money for the purposes of MiFID business). If you do then you will be automatically exempt from MiFID's scope and need take no action. You may wish to check this by reviewing your firm's details on the FSA Register from 1 November 2007. If you are automatically out of MiFID's scope but wish to fall within its scope in order to benefit from the right to passport investment business on a branch basis, you need to notify us by submitting both a VOP and a passport application immediately⁵. If you are automatically out of MiFID's scope but wish to fall within its scope in order to exercise a cross-border services passport as of 1 November 2007, you should submit your VOP application by 1 July 2007⁶. If you wish to opt into MiFID's scope in time for 1 November 2007, but do not wish to take advantage of any passporting rights as of 1 November 2007, you need to apply for a VOP by 1 August 2007. 	VOP & Passport notification

⁵ This is because MiFID sets out a maximum time period for both home and host regulators to process a branch passporting notification, of five months, and a passport notification can only be processed once a firm possesses the correct authorisation (or Part IV permission for UK authorised firms). Hence if any VOP application is necessary then it must be processed first, giving rise to a more urgent time-frame if a firm is looking to operate the branch from 1 November 2007 or as soon as possible thereafter.

⁶ MiFID sets out a maximum time period for processing a cross border services passporting notification of one month. A passport notification can only be processed once a firm possesses the correct authorisation (or Part IV permission for UK authorised firms). Hence any VOP application must be processed first and so the earlier suggested date for receipt of applications of 1 July 2007.

Chapter Number	Subject	PERG 13 Ref	What firms may need to do	How firms may notify us
4	Passporting		<ul style="list-style-type: none"> • You should consider whether your existing passports are sufficient to meet your ongoing business needs following MiFID implementation and to make the appropriate notifications if they are not. • If you are satisfied that the mapping of existing ISD passports across to MiFID passports (Tables 1-4 in Annex 2) or the BCD maps (Tables 5-7 in Annex 3), as appropriate, will allow you to carry on business as usual post 1 November 2007, then you need take no further action. • UK investment firms with investment advice under an existing ISD passport who do not want ancillary service B5 included in the automatic mapping across to a MiFID passport should notify us by 1 August 2007. • If you want to widen your passports to cover new MiFID investment services and activities, ancillary services and financial instruments as of 1 November 2007, you will need to notify us by 30 September 2007. • If you want to establish a branch (or tied agent) doing MiFID business from 1 November 2007 in a Member State where you do not currently have a branch, you should notify us by 31 May 2007. • Details regarding MiFID passports of UK firms will be available on the FSA Register from 1 November 2007. • We propose to provide additional materials aimed at EEA firms, in due course, dealing with issues relating to passports. 	Passport notification
5	Tied Agents	Q11	<ul style="list-style-type: none"> • If you will not be a MiFID firm and currently use appointed representatives only for non-ISD investment business you need take no action. • If you will be a MiFID firm but currently use an appointed representative that will not conduct MiFID business then you should notify us by 31 October 2007. • If you are using appointed representatives to carry on ISD investment business in the UK on your behalf you do not need to notify us of those appointed representatives, if (as should be the case) they are already registered on the FSA Register. We will record them as tied agents under MiFID on our Register from 1 November 2007. • If you are appointing new tied agents to act on your behalf from 1 November 2007 you need to notify us of these appointments, as only registered tied agents can act for you. 	Passport notification form Tied agent notification form (from 1 October 2007)

Chapter Number	Subject	PERG 13 Ref	What firms may need to do	How firms may notify us
			<ul style="list-style-type: none"> If you are appointing new tied agents established in other EEA Member States you need to ensure that the tied agent is registered in its home Member State (or on the FSA Register where that Member State does not permit the appointment of tied agents), prior to the tied agent commencing business on your behalf. If you are appointing tied agents established in other EEA Member States you will also need to make a branch passport notification (where you do not already have a branch in that Member State) or a notification of change in branch details (where you do already have a branch in that Member State). 	
6	Systematic Internalisations	Q16	<ul style="list-style-type: none"> If you intend to act as a SI, you need to ensure that you have the appropriate permission to do so and, if not, make a VOP application by 1 August 2007. If you are acting as a SI in respect of shares admitted to trading on a RM, you should notify us that you are acting in that capacity by 1 December 2007. 	VOP Notification form
7	Multilateral Trading Facilities	Q24	<ul style="list-style-type: none"> If you are currently authorised to operate an ATS and plan to operate a MTF as from 1 November 2007 you need take no action. If you are currently operating an ATS but do not plan to operate a MTF from 1 November 2007 you should submit a VOP application as soon as possible and no later than 1 October 2007, and consider your ongoing business model. If you are an authorised firm which does not currently act as an ATS operator but wish to operate a MTF as from 1 November 2007 you need to submit a VOP application by 1 August 2007. 	VOP only if you do not want to operate an MTF
8	Commodity and Credit Derivatives	Q30 - 34	<ul style="list-style-type: none"> The broader scope of MiFID means that some financial instruments will fall under UK regulation for the first time. Permissions of MiFID firms are being widened automatically to reflect MiFID-related increases in domestic scope in relation to commodity derivatives and certain other derivatives (including credit derivatives). You only need to apply for a VOP if, for any reason, you do not agree that your permission should be widened as provided for in Treasury legislation. 	VOP only if you disagree with the automatic "mapping" in the Treasury legislation.

Chapter Number	Subject	PERG 13 Ref	What firms may need to do	How firms may notify us
9	Client Money		<ul style="list-style-type: none"> If you rely on the opt-out and intend to hold client money in relation to MiFID business after 1 November 2007, you need to apply for a VOP to remove any existing client money requirements on your permission that prevent you from doing so. You are requested to submit a VOP application by 1 August 2007. 	VOP
10	Outsourcing Retail Portfolio management to non-service providers		<ul style="list-style-type: none"> MiFID introduces a prior notification requirement for MiFID firms outsourcing retail portfolio management services to a non-EEA service provider where the conditions in SYSC 8.2.1 (1) are not met. You need to consider the impact of these changes and whether you need to submit a prior notification to us, either for any existing arrangements or any proposed after 1 November 2007. You can submit notifications for existing arrangements from 1 July 2007. 	In writing – notification form – Annex to SYSC chapter 8
11	Waivers		<ul style="list-style-type: none"> Where existing rules have been changed either to implement MiFID or the move to principles-based regulation, you should re-assess any waivers attached to those rules – in particular, COB waivers as they will expire on 1 November 2007. You should apply for any waiver of a new COBS rule as early as possible, and no later than 1 September 2007, to give us sufficient time to consider the application. You should apply for a waiver of the new rules in other sourcebooks by <u>1 September 2007</u>. Where new rules implement Directive provisions, it will generally not be legally possible to waive or modify them in respect of MiFID firms and MiFID business. You should contact the Waivers Team if you have questions about your waiver application before you submit your request. Contact: centralwaiversteam@fsa.gov.uk 	Application for waiver or modification of rule
12	Approved Persons		<ul style="list-style-type: none"> The implementation of MiFID introduces some changes to our Approved Person Regime, but these are minimal for UK firms. You are asked to consider the impact of the MiFID-led changes and to notify us of any changes that you may need to make to your existing controlled functions via the normal approved persons process by 12 October 2007. 	Approved Persons Form

The Financial Services Authority
25 The North Colonnade Canary Wharf London E14 5HS
Telephone: +44 (0)20 7066 1000 Fax: +44 (0)20 7066 1099
Website: <http://www.fsa.gov.uk>

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