

Consultation Paper

CP16/19\*\*\*

# Markets in Financial Instruments Directive II Implementation



July 2016



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We are asking for comments on this Consultation Paper. Please send your comments by 28 October 2016.

You can send them to us using the form on our website at:  
[www.the-fca.org.uk/cp16-19-response-form](http://www.the-fca.org.uk/cp16-19-response-form)

**Or in writing to:**

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25 The North Colonnade  
Canary Wharf  
London E14 5HS

**Telephone:** 020 7066 9758  
**Email:** [cp16-19@fca.org.uk](mailto:cp16-19@fca.org.uk)

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## Abbreviations used in this paper

<b>APA</b>	Approved Publication Arrangements
<b>ARM</b>	Approved Reporting Mechanism
<b>the Bank</b>	Bank of England
<b>CASS</b>	Client Assets sourcebook
<b>CBA</b>	Cost benefit analysis
<b>COBS</b>	Conduct of Business sourcebook
<b>Commission</b>	European Commission
<b>CP</b>	Consultation Paper
<b>CTP</b>	Consolidated Tape Provider
<b>CRD</b>	Capital Requirements Directive
<b>CRR</b>	Capital Requirements Regulation
<b>DP</b>	Discussion Paper
<b>DRS</b>	Data Reporting Services
<b>DRSP</b>	Data Reporting Services Provider
<b>EBA</b>	European Banking Authority
<b>EEA</b>	European Economic Area
<b>ESMA</b>	European Securities and Markets Authority

<b>EU</b>	European Union
<b>FCA</b>	Financial Conduct Authority
<b>FEMR</b>	Fair and Effective Markets Review
<b>FSA</b>	Financial Services Authority (predecessor to FCA)
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>GEN</b>	General Provisions – FCA Handbook
<b>IFPRU</b>	Prudential sourcebook for Investment Firms
<b>IPRU</b>	Interim Prudential sourcebook: Investment business (IPRU (INV))
<b>ITS</b>	Implementing Technical Standards
<b>MAR</b>	Market Conduct sourcebook
<b>MDP</b>	Market Data Processor
<b>MiFID</b>	Markets in Financial Instruments Directive
<b>MiFID II</b>	Markets in Financial Instruments Directive II (includes MiFIR, where the context indicates)
<b>MiFIR</b>	Markets in Financial Instruments Regulation
<b>MTF</b>	Multilateral Trading Facility
<b>OTC</b>	Over The Counter
<b>OTF</b>	Organised Trading Facility
<b>Parliament</b>	European Parliament
<b>PERG</b>	Perimeter Guidance
<b>PRA</b>	Prudential Regulation Authority
<b>PRIN</b>	Principles for Business sourcebook
<b>PS</b>	Policy Statement
<b>QMMF</b>	Qualifying Money Market Fund
<b>REC</b>	Recognised Investment Exchanges sourcebook
<b>Taping</b>	Recording of telephone conversations and electronic communications

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<b>RM</b>	Regulated Market
<b>RTS</b>	Regulatory Technical Standard
<b>SUP</b>	Supervision Manual
<b>SYSC</b>	Senior Management Arrangements, Systems and Controls – FCA Handbook
<b>the Treasury</b>	Her Majesty's Treasury
<b>TTCA</b>	Title Transfer Collateral Arrangements

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# 1. Overview

## Introduction

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- 1.1** Following the result of the United Kingdom's (UK) referendum on its membership of the European Union (EU) we published a statement<sup>1</sup> on 24 June in which we said: *'Firms must continue to abide by their obligations under UK law, including those derived from EU law and continue with implementation plans for legislation that is still to come into effect.'*
- 1.2** The Markets in Financial Instruments Directive (MiFID) II is in the category of legislation that is still to come into effect. It is due to apply from 3 January 2018, so both firms and we need to continue with implementation plans.
- 1.3** Given the need to continue implementing MiFID II, this CP follows on from CP15/43<sup>2</sup>, published in December 2015. In CP15/43 we set out the background to the introduction of MiFID II and its key objectives. CP15/43 mainly covered issues relating to the new rules in MiFID II governing the secondary trading of financial instruments. This CP covers a range of issues including the framework for position limits, management and reporting for commodity derivative contracts and the way that firms organise themselves to do business and comply with their regulatory obligations.
- 1.4** We have developed the policy in this Consultation Paper (CP) in the context of the existing UK and EU regulatory framework. We will keep the proposals under review to assess whether any amendments will be required due to changes in the UK regulatory framework, including as a result of any negotiations following the UK's vote to leave the EU.

## UK implementation of MiFID II

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- 1.5** Since we published CP15/43, European legislation has been adopted to put back the date of application and deadline for transposition of MiFID II to 3 January 2018 and 3 July 2017 to provide the necessary time for firms and regulators to make the significant changes that the implementation of MiFID II requires. We are now working to this revised timetable for implementation.
- 1.6** Following on from CP15/43 and this CP there are still a range of issues we need to cover to make the necessary changes to our Handbook to implement MiFID II. We will therefore publish a third CP on MiFID II implementation. That will include changes to our Conduct of Business sourcebook (COBS), material on product governance and some further changes to our Perimeter Guidance Manual.

<sup>1</sup> [www.fca.org.uk/news/european-union-referendum-result-statement](http://www.fca.org.uk/news/european-union-referendum-result-statement)

<sup>2</sup> CP15/43 'Markets in Financial Instruments Directive II Implementation – Consultation Paper 1' (December 2015) [www.fca.org.uk/static/documents/consultation-papers/cp15-43.pdf](http://www.fca.org.uk/static/documents/consultation-papers/cp15-43.pdf)

- 1.7** This staggered approach to consultation reflects discussions we have had at our regular roundtables on MiFID II implementation with a wide range of trade associations. Attendees have told us that publishing material in stages – rather than waiting until we are able to cover everything – helps firms.
- 1.8** We previously indicated that we hoped to publish a Policy Statement (PS) on the matters covered by CP15/43 in the first half of 2016. It is now likely we will publish a single policy statement covering all aspects of our implementation in 2017. Aspects of what we consulted on in CP15/43 depend on the finalisation of legislation by Her Majesty’s Treasury (the Treasury).
- 1.9** The Treasury consulted in March 2015 on MiFID II implementation<sup>3</sup> and will produce a policy statement in due course before presenting the legislation to Parliament. In the meantime the proposals in this CP are based on the draft legislation in the Treasury’s March 2015 CP.
- 1.10** The Prudential Regulation Authority (PRA) published its initial CP, CP9/16 in March 2016<sup>4</sup>, which covered passporting and algorithmic trading. It will consult on the remainder of its proposals in due course. We continue to liaise closely with the PRA on its implementation proposals.

### Content of this Consultation Paper

- 1.11** In this CP we seek views on the proposed changes to the Handbook in the areas below, and on our proposals for remuneration of sales staff, which reflect feedback we received to DP15/3<sup>5</sup>.
- **Commodity derivatives** – we propose a new section of the Market Conduct Sourcebook (MAR) to set out guidance and directions on MiFID II’s regime of position limits, position management and position reporting for commodity derivatives contracts. Position limits will be set in due course.
  - **Supervision (SUP)** – we propose updates of requirements to notify us of breaches of requirements and provide information to us that is accurate and complete to take account of the introduction of the Markets in Financial Instruments Regulation (MiFIR) and non-FSMA Treasury implementing regulations; transitional provisions for transaction reporting to take account of the revocation of the existing MiFID implementing regulation; and changes, building on those proposed in CP15/43, to passporting requirements.
  - **Prudential Standards** – we propose changes to our prudential sourcebooks to reflect MiFID II’s introduction of the new investment service of operating an Organised Trading Facility (OTF) and the abolition of the exemption for a local firm.
  - **Senior Management Arrangements, Systems and Controls (SYSC)** – proposals are made to enhance governance through new management body requirements, key organisational requirements which are in SYSC and in an EU directly applicable regulation. We also set out our proposed approach to how the management body and organisational requirements will apply to branches of non-EU firms and firms exempt under Article 3 of MiFID II.

<sup>3</sup> ‘Transposition of the Markets in Financial Instruments Directive II’ (March 2015)

[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/418281/PU\\_1750\\_MiFID\\_II\\_26.03.15.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418281/PU_1750_MiFID_II_26.03.15.pdf)

<sup>4</sup> CP9/16 ‘MiFID II Implementation – Part 1’ (March 2016) [www.bankofengland.co.uk/pr/Documents/publications/cp/2016/cp916.pdf](http://www.bankofengland.co.uk/pr/Documents/publications/cp/2016/cp916.pdf)

<sup>5</sup> DP15/3 ‘Developing our approach to implementing MiFID II conduct and organisational requirements’ (March 2015)

[www.fca.org.uk/static/documents/discussion-papers/dp15-03.pdf](http://www.fca.org.uk/static/documents/discussion-papers/dp15-03.pdf)

- **Remuneration requirements for sales staff** – we propose a new section in SYSC but do not propose cross-cutting standards applicable to firms regulated under other EU directives.
- **Whistleblowing** – there are provisions in several EU directives which deal with the protection of whistleblowers. We propose a single chapter in SYSC which implements the MiFID II requirements alongside existing domestic obligations. We signpost for ease of reference other related single market whistleblowing legislation.
- **Client Assets sourcebook (CASS)** – incremental changes are required to CASS to implement MiFID II, many of which are already part of our rules. We propose to continue our single rulebook approach and make the changes for all designated investment business.
- **Complaint handling** – we propose a new section in DISP to set out the enhanced complaint handling rules in MiFID II which will extend to a wider range of clients than is currently the case.
- **Fees Manual (FEES)** – we propose the initial and ongoing costs for firms who wish to apply to operate an OTF or vary their permission to do so, or to operate a Multilateral Trading Facility (MTF), and the onboarding fee for firms who connect to our Market Data Processor (MDP).

### Handbook approach

- 1.12** To help you understand the way MiFID II is being implemented in the UK we included a Handbook ‘MiFID Guide’ in CP15/43 (see Appendix 2) mapping out the MiFID II provisions affecting trading venues and Data Reporting Service Providers (DRSPs). This was well received by respondents to CP15/43. So in this CP we provide another such document, the MiFID Navigation Guide for SYSC (in Appendix 2).

**Q1: Do you find our latest navigation guide to the implementation of the MiFID II requirements on SYSC helpful? If not, how could we improve the guide?**

### MiFID II and branches of non-European Economic Area (EEA) (third-country) firms

- 1.13** MiFID II preserves Member States’ right to retain national regimes governing the provision of investment services and activities by third-country branches.<sup>6</sup> Therefore, the UK, as with other Member States, has the option to retain our current arrangements governing third-country access, subject to the EU law obligation to treat branches ‘no more favourably’ than EU firms.<sup>7</sup>
- 1.14** In CP15/43, as part of ensuring such branches are treated no more favourably, we consulted (see chapter 9) on a new General provision (GEN) that would allow us to apply provisions in directly applicable regulations made under MiFID II to third-country branches providing investment services. In light of the responses to CP15/43 and as we move to consulting on the new conduct and organisational requirements in MiFID II we think it is worth expanding on our

<sup>6</sup> Until three years subsequent to a positive equivalence finding by the European Commission with respect to a particular third-country jurisdiction. After this, third-country firms will be able to provide services directly to professional clients and eligible counterparties from their country of residence, subject to a compulsory ESMA registration regime, detailed in Article 46(1) of MiFIR

<sup>7</sup> See Recital 109 of MiFID II

approach to MiFID II and third-country branches. We will also continue to liaise closely with the PRA on its implementation proposals in this area.

- 1.15** We currently apply the same conduct rules to third-country branches as to UK investment firms and branches of EEA investment firms. However, we apply organisational requirements to third-country branches on a modular basis, depending on the nature of the requirement in question. Those which are conduct focused are typically applied as rules, such as conflicts of interest. Those which have a prudential focus tend to be either switched off or applied as guidance; eg the operational risk requirements for outsourcing are currently applied as guidance. Where requirements are applied as guidance instead of rules, third-country branches have the option of deciding how to comply with them; they can either follow the guidance, or demonstrate compliance by following the home state requirements. This helps to minimise the problems that arise where dual regulatory regimes are applied to one entity.
- 1.16** On the basis of the above, we propose to broadly a similar approach with respect to the application of ‘new’<sup>8</sup> and ‘upgraded’<sup>9</sup> conduct and organisational requirements introduced by MiFID II. We deal with the proposals we make on the application of individual organisational requirements to third-country branches in each chapter of this CP.

### Article 3

- 1.17** Under Article 3 of MiFID, Member States can exempt from authorisation as MiFID investment firms, firms (Article 3 firms providing investment advice and/or receiving and transmitting orders) who:
- do not hold client funds or securities
  - only receive and transmit client orders in relation to transferable securities and collective investment schemes (CIS) units and/or provide related investment advice, and only be allowed to transmit such orders to identified firms or funds
  - do not do business outside of their home member state
- 1.18** MiFID requires member states to subject Article 3 firms to national regulation. The UK, through a provision in legislation,<sup>10</sup> exercised the optional exemption in Article 3, which covers firms including financial advisers, corporate finance firms and venture capital firms (the number of Article 3 firms exceeds the number of UK authorised MiFID investment firms). However, we allow firms who might otherwise qualify for the exemption, but want to do business outside the UK, to opt out of the exemption and therefore become a MiFID investment firm.
- 1.19** MiFID II includes the same exemption but Article 3 firms must now be subject to ‘at least analogous’ requirements encompassing a fairly comprehensive range of authorisations, conduct of business and organisational requirements, but not the whole range of those that MiFID investment firms would be subjected to.
- 1.20** Specifically, Article 3(2)(a-c) of MiFID II prescribes that ‘at least analogous’ requirements must be in place with respect to (and in all three cases the corresponding implementing legislation):

<sup>8</sup> eg the product governance requirements in Article 16(3)

<sup>9</sup> eg the conflicts of interest requirements in Article 23 which are carried over from MiFID I, but significantly strengthened

<sup>10</sup> FSMA (Market in Financial Instruments)(Amendment) Regulations 2007, SI 2007/126

- conditions and procedures for authorisations and ongoing supervision as established in Article 5(1) and (3), Article 7 to 10, 21, 22 and 23 and corresponding delegated acts
- conduct of business obligations as established in Article 24(1), (3), (4), (5), (7) and (10), Article 25(2), (5) and (6) and, where the national regime allows those persons to appoint tied agents, Article 29 and corresponding delegated acts
- organisational requirements as laid down in Article 16(3) first, sixth and seventh subparagraphs and Article 16(6), (7)

**1.21** In our view, the new ‘at least analogous’ test means that the domestic requirements applied to Article 3 firms must achieve the same effects as MiFID II, and be substantially similar, to each of the individual requirements listed in Article 3(2)(a) to (c) and their corresponding implementing measures. We do, however, have discretion to choose whether new obligations in MiFID II that fall outside the ‘analogous requirements’ provisions are applied to Article 3 firms.

**1.22** In implementing MiFID the Financial Services Authority (FSA – the predecessor to the FCA) imposed a similar set of requirements on Article 3 firms as applied to MiFID firms. In significant respects therefore the UK already complies with the obligation to impose ‘analogous requirements’ on Article 3 firms.

**1.23** Throughout this CP we provide information, following the approach set out above, on some of the requirements we will be imposing on Article 3 firms in implementing MiFID II (in reading the draft Handbook instruments readers need to be aware that Article 3 firms are not included in the scope of the glossary term ‘MiFID investment firms’). Further information will be provided in the third CP covering conduct of business issues we intend publishing in due course.

### Equality and diversity considerations

**1.24** We have considered the equality and diversity issues that may arise from the proposals in this consultation.

**1.25** Overall, we do not consider that the proposals in this consultation paper adversely affect any of the groups with protected characteristics i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment. In fact, the management body provisions of MiFID II require firms to have targets to increase the representation of women on management bodies, and to have a policy to ensure the management body is adequately diverse.

**1.26** We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules. In the interim, we welcome any input to this consultation on such matters.

### Who does this consultation affect?

**1.27** At the start of each chapter are notes setting out those firms for whom the chapter is most likely to be relevant. This consultation affects a wide range of firms we authorise and recognise (as well as unregulated entities trading commodity derivatives), particularly:

- investment banks
- interdealer brokers
- stockbrokers
- investment advisers
- corporate finance firms and venture capital firms
- trading venues including Regulated Markets (RMs), MTFs, and prospective OTFs
- prospective Data Reporting Service Providers
- investment managers

### Is this of interest to consumers?

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- 1.28** Each chapter notes the implications for consumers. Consumers have a clear interest in financial markets that operate fairly and transparently, which is the rationale for the proposals in this Consultation. Certain of the subjects covered, including complaint handling and remuneration of sales staff, are rules of more concern to consumers. Our third CP will cover the MiFID II rules of most concern to consumers, the conduct of business rules.

### Next steps

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#### What do you need to do next?

- 1.29** We want to know what you think of our proposals. Please send us comments by 28 October 2016

#### How?

- 1.30** Use the online response form on our website or write to us at the address on page 3.

#### What will we do?

- 1.31** We will consider your feedback and publish our rules in a Policy Statement in the first half of 2017. We will also publish a further CP, as explained in paragraph 1.8 above, on the other Handbook changes required to implement MiFID II.

## 2. Commodity derivatives

### Who should read this chapter

Trading venues (regulated markets, MTFs and prospective OTFs), MiFID investment firms trading commodity derivatives, and users of commodity derivatives markets, including non-financial firms who conduct significant amounts of trading.

### Introduction

- 2.1 MiFID II introduces a harmonised regime for ensuring orderly trading of commodity derivatives. Trading venues are required to have arrangements to monitor and manage positions held by persons in the commodity derivatives they trade. Limits will be set by FCA on the size of positions that a person can hold in any commodity derivative traded on a venue and economically equivalent over the counter (OTC) contracts and there has to be daily reporting of positions to regulators.
- 2.2 Treasury legislation will partly transpose the requirements in MiFID II on position management, position limits and position reporting. In this CP we are proposing to introduce a new chapter in MAR – MAR 10 – to make the necessary changes to the Handbook. This includes guidance on aspects of the Treasury legislation, and rules on matters such as position management by investment firms operating MTFs and OTFs. In 2017, we will set position limits to take effect on 3 January 2018.

### Existing provisions

- 2.3 There are no existing requirements for position limits or position reporting. However, in our Recognised Investment Exchanges sourcebook (REC) 2.6.2 and MAR 5.3.1(1) operators of trading venues are required to have rules and procedures for fair and orderly trading. This includes appropriate position management arrangements for venues trading commodity derivatives.

### Proposals

- 2.4 We are proposing to include a new chapter in MAR, MAR 10, entitled 'Commodity Derivative Position Limits and Controls and Position Reporting'. This is split into five sections:

- application
- position limit requirements
- position management controls
- position reporting
- other reporting, notification and information requirements

### **Application**

- 2.5** The application part of the proposed MAR 10 is designed to help persons understand how the obligations in the chapter apply.
- 2.6** The Treasury, in its CP, explained its view on the territorial scope of positions limits. It said where two persons in a country outside the EEA, with no link to the UK, trade OTC contracts that are economically equivalent to contracts traded on UK trading venues position limits do not apply.

### **Position limits**

- 2.7** The position limit part of the proposed MAR 10 provides guidance on the main obligations placed on us to establish, apply and modify position limits in the Treasury's draft legislation. This includes the circumstances under which the FCA would consider granting an exemption to a non-financial firm entering into positions to reduce risks directly related to commercial activities.
- 2.8** There are directions regarding the commodity derivatives to which FCA position limits apply, and the form that non-financial firms must use to apply for an exemption. The form is based on the requirements for firms applying for an exemption set out in the draft RTS on position limits. A non-financial firm only needs to apply for an exemption where it thinks its trading activity might otherwise lead to it exceeding a position limit.

### **Position management controls**

- 2.9** In CP15/43 we set out revisions to REC governing position management controls for regulated markets based on the Treasury's draft changes to the recognition requirements. In the position management part of the proposed MAR 10 we set out draft rules with the corresponding requirements for investment firms and branches of non-EEA investment firms operating an MTF or OTF.

### **Position reporting**

- 2.10** In CP15/43 we set out revisions to REC governing position reporting, daily to us on a person by person basis and weekly to the European Securities and Markets Authority (ESMA) by specified categories of position holders, for regulated markets based on the Treasury's draft changes to the recognition requirements. In the position reporting part of the proposed MAR 10 we set out draft directions with the equivalent requirements for investment firms and branches of non-EEA investment firms operating an MTF or OTF. Additionally, there are draft directions on reporting positions in economically equivalent OTC contracts.

### Miscellaneous requirements

- 2.11** In the final part of the proposed MAR 10, we provide guidance on various powers we are given by the draft Treasury implementing legislation. This includes the power to require information about a position a person holds and the power to require someone to reduce the size of their position.

### Implications for firms

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- 2.12** Persons, whether authorised or not, trading commodity derivatives will need to configure their trading activities so they are able to comply with position limits. This will involve:

- some unauthorised firms applying for exemptions from position limits
- persons making arrangements to report their positions, or for their positions to be reported on a daily basis
- trading venues putting arrangements in place to provide position reports to regulators on a daily basis, and to report aggregated information about positions to ESMA on a weekly basis
- trading venues reviewing and adapting, as necessary, current rules and procedures they have regarding the monitoring and management of positions

**Q2: Do you agree with our proposed new MAR chapter, MAR 10? If not, how would you suggest we modify our proposals?**

### Implications for consumers

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- 2.13** The aim of the new regime governing commodity derivatives trading in MiFID II is to prevent market abuse and support orderly pricing and settlement to the benefit of those using the markets. Most users of these markets are financial services firms and firms involved in the extraction, production, distribution, consumption and trading of the underlying commodities rather than individuals.

### Discussion

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- 2.14** MiFID II will bring a significant change to commodity derivative markets in the UK by requiring the FCA to set position limits on all commodity derivatives trading on UK trading venues. There are hundreds of such contracts.
- 2.15** Position limits will be set on all commodity derivatives traded on UK trading venues in line with the methodology established by ESMA. We will hold sufficient powers to enable us to obtain information from trading venues and other sources to be able to establish the position limits.

- 2.16** Position reporting will be an obligation on trading venues and investment firms in line with MiFID II. We will provide guidance on our expectations for the production and submission of position reports – their methodology, content and format.

### References

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- 2.17** The high-level position limits, management and reporting requirements are in Articles 57 and 58 of MiFID II. RTS 21 contains details of the obligations on regulators in setting position limits. Article 82 of the MiFID II implementing regulation contains information on certain thresholds linked to the weekly aggregated reporting of positions published by ESMA. ITS 6 contains a format for daily and weekly position reporting of certain types of commodity derivatives, emission allowances and derivatives.

## 3. Supervision (SUP)

### Who should read this chapter

The notification provisions are relevant for all MiFID investment firms, the transitional provision to firms currently transaction reporting and the passporting provisions to MiFID investment firms who currently passport or intend to do so under MiFID II

### Introduction

- 3.1** We are proposing to make changes to the Supervision Manual (SUP) to cover three main issues related to MiFID II:
- first, to make clear that firms need to notify us of a breach of directly applicable regulations under MiFID II or implementing regulations introduced by the Treasury, and to ensure information given to us in accordance with any such requirement is accurate and complete
  - second, to introduce transitional provisions to deal with the revocation of the MiFID implementing regulation
  - third, to update aspects of the passporting provisions

### Existing provisions

- 3.2** The provision for notification of breaches of directly applicable obligations under MiFID is SUP 15.3.11R(1)(d), and SUP 15.6.1R deals with the requirement for information given to us to be accurate and complete.

### Proposals

- 3.3** **Notifications of breaches and information provided to us.** Under SUP 15.3, firms must notify us of breaches of various regulatory provisions including directly applicable regulations under MiFID. The specific reference to MiFID, SUP 15.3.11R(1)(d) needs updating to refer to MiFIR as well as MiFID. We have drafted a new provision in SUP 15.3 to require firms to notify us of breaches of the non-FSMA regulations the Treasury has proposed as part of MiFID II implementation dealing with commodity derivative position limits and DRSPs.

- 3.4** SUP 15.6 requires firms to take reasonable steps to ensure that information provided to us in accordance with a rule in the Handbook is accurate and complete. We propose adding a provision to make clear this includes a breach of a directly applicable regulation under MiFID and MiFIR, as well as non-FSMA regulations adopted by the Treasury to implement MiFID II.
- 3.5** **Transaction reporting.** The implementing regulation under MiFID will be repealed at the end of 2 January 2018, as MiFID II applies from 3 January 2018. This creates uncertainty about whether firms are obliged to notify us of any breaches of that implementing regulation they become aware of after 2 January 2018, and what happens to obligations firms incur under that implementing regulation which do not have to be discharged until after 2 January. In both cases we particularly have in mind firms' transaction reporting obligations.
- 3.6** We therefore propose a transitional provision in SUP to do two things:
- first, to make clear that an obligation which a firm incurs under SUP 17 or the MiFID implementing regulation on or before 2 January 2018 continues until it has been satisfied
  - second that the requirements in SUP relating to notification and remedy of breaches apply to breaches of MiFID implementing regulation even if the breach comes to light after 2 January 2018
- 3.7** These transitional provisions are without prejudice to whatever practical arrangements are agreed by ESMA for moving from current systems for transaction reporting to MiFID II systems. Member States have to exchange transaction reports through ESMA, who have to agree the practical arrangements necessary to achieve a smooth transition
- 3.8** **Passporting.** In chapter 9 of CP 15/43 we proposed changes to SUP 13 to signpost the draft regulatory technical standards (RTS) and draft implementing technical standards (ITS) that have been developed by ESMA, and that will be adopted by the Commission for MiFID II passporting. The RTS will set out the information to be included in a passport notification. The ITS will contain the procedures and forms to be used. The procedures include submitting a separate investment services and passport notification per Member State and submitting separate applications in relation to each MTF and OTF.
- 3.9** In this CP we build on the amendments proposed in chapter 9 of CP 15/43 and propose to reproduce the forms annexed to the ITS in the annexes to SUP 13. We propose branch forms are contained in new SUP 13 Annex 1AR and services forms are contained in SUP 13 Annex 2R. These forms will also be reproduced in the online FCA CONNECT system and we propose to amend SUP 13.5.3R and SUP 13.8.1R to require firms to submit their MiFID II passport notifications electronically by using that system, as is the case with our current MiFID notifications.
- 3.10** We also propose the issue of two new forms to complement those proposed by ESMA: one for the cancellation of investment services and activities passports, and another for the cancellation of passports in respect of OTFs and MTFs. We propose that these are contained in annex 2AR of SUP 13.

**Q3: Do you agree with our proposal relating to breaches of directly applicable regulations under MiFID II and non-FSMA Treasury regulations implementing MiFID II? If not, how could we amend it?**

- Q4: Do you agree with our proposal for transitional provisions to deal with the revocation of the MiFID implementing regulation? If not, how could we amend it?**
- Q5: Do you agree with our proposal relating to the passporting provisions in SUP? If not, how could we amend it?**

### Implications for firms

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- 3.11** Firms will need to extend their existing arrangements for monitoring and reporting of breaches under MiFID to the new requirements under MiFID II. They will also need to prepare, with help and guidance from us and ESMA, for the practical implications of the changeover from the current transaction reporting obligations to those under MiFID II. And they will need to review whether to revise existing passporting notifications.

### Implications for consumers

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- 3.12** The proposals in this chapter are to make sure MiFID II is implemented effectively and its new standards should ensure better protection for consumers and cleaner financial markets.

### References

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- 3.13** The MiFID implementing regulation is Commission Regulation (EC) 1287/2006. The transaction reporting obligations are in Article 26 of MiFIR and RTS 22. The passporting provisions are in Articles 34 and 35 of MiFID II.

## 4. Prudential rules

### Who should read this chapter

Investment firms who wish to operate an OTF, and 'local' firms currently exempt from MiFID.

### Introduction

- 4.1** A number of the prudential rules in our Handbook use terms that appear in MiFID. With the implementation of MiFID II, we need to update or remove certain of the references, in three areas.

### Existing provisions

- 4.2** In the Prudential sourcebook for Investment Firms (IFPRU) the prudential classification of a firm is affected if it operates a Multilateral Trading Facility (MTF).
- 4.3** Our Handbook Glossary includes the term 'local' and such a firm is currently subject to Chapter 3 of the Interim Prudential sourcebook: Investment business (IPRU (INV)).
- 4.4** Chapter 3 of IPRU (INV) makes certain references to MiFID.
- 4.5** Please note that our Handbook Glossary also includes the term 'local firm', as defined by Article 4(1)(4) of the Capital Requirements Regulation (CRR), and such a firm is subject to the relevant provisions in Chapter 9 of IPRU (INV); these provisions remain unaffected by MiFID II.

### Proposals

- 4.6** We have three sets of proposals to update our Prudential Handbook as part of implementing MiFID II:
- Firstly, we propose updating the prudential classifications to reflect the addition of the new category of investment service in MiFID II of operating an Organised Trading Facility (OTF) and to ensure that an investment firm operating an OTF, as with a firm operating an MTF, is classified as an IFPRU 730k firm, in line with the Capital Requirements Directive (CRD) IV.

- Secondly, the exemption in MiFID for a 'local', as set out in Article 2(1) point (l) of Directive 2004/39/EC, is not being carried across to MiFID II. As a result we propose deleting references to a 'local' in Chapter 3 of IPRU (INV) which sets prudential requirements for various categories of firms other than most categories of MiFID investment firms, and in SUP 16.12. In proposing these changes we have assumed that a 'traded options market maker' is a species of 'local' that currently falls under the above mentioned exemption in MiFID.
- Thirdly, we propose deleting certain references to MiFID in Chapter 3 of IPRU (INV) which are no longer needed because the relevant provisions now sit in the CRR and are not included in MiFID II.

**Q6: Do you agree with the changes we are making to our prudential rules? If not, please give reasons why.**

#### **Implications for firms**

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- 4.7** The changes we are making are all consequential changes as a result of the scope changes in MiFID II.
- 4.8** Those relating to OTFs are to ensure that the correct CRR prudential treatment is applied to investment firms that conduct this new investment service.
- 4.9** The changes relating to a 'local' firm reflect the fact that the current exemption under MiFID is not being carried across to MiFID II. The actual prudential treatment that will then apply to such a firm when MiFID II is implemented will depend upon the precise circumstances of the firm; the most directly comparable treatment would be that of a 'local firm' where the definition of Article 4(1)(4) of the CRR is met, such a firm being subject to the relevant provisions in Chapter 9 of IPRU (INV).

#### **Implications for consumers**

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- 4.10** The changes we are making are consequential changes as a result of the scope changes in MiFID II. Firms that either simply operate an OTF, or are a 'local' under the current MiFID exemption, will only interact with other market participant firms and otherwise should not have any consumers.

## 5. Senior Management Arrangements, Systems and Controls (SYSC)

### Who should read this chapter

Common platform firms (i.e. BIPRU firms, banks, building societies, MiFID investment firms, designated investment firms, IFPRU investment firm, exempt CAD firms, local firms and dormant account fund operators)

Article 3 MiFID firms such as retail financial advisers, boutique corporate firms and venture capitalist firms operating in the UK

UK branches of non-EEA firms (third-country firms)

### Introduction

- 5.1** This chapter explains the changes we propose to make to our SYSC sourcebook to implement those sections of the following provisions that require transposition: Article 9 (management body), Article 23 (conflicts of interest)<sup>11</sup>, and Article 16 (organisational requirements)<sup>12</sup>. MiFID II seeks to enhance the governance of MiFID investment firms by setting the responsibilities of management bodies and ensuring they are diverse and its members commit sufficient time to their duties. The organisational requirements involve new requirements about the operation of the compliance function and revised record-keeping requirements.
- 5.2** We explain changes to SYSC 4 to 10, which form the common platform requirements for common platform firms. In particular, this chapter considers our approach to:
- common platform firms (ie BIPRU firms, banks, building societies, designated investment firms, IFPRU investment firm, exempt CAD firms, local firms and dormant account fund operators)
  - firms subject to the optional exemption in Article 3 (Article 3 MiFID firms) such as retail financial advisers, boutique corporate firms and venture capitalist firms operating in the UK
  - UK branches of non-EEA firms (third-country firms)

<sup>11</sup> For organisational requirements and conflicts there are also implementing measures contained in the MiFID II implementing regulation: [http://ec.europa.eu/finance/securities/docs/isd/mifid/160425-delegated-regulation\\_en.pdf](http://ec.europa.eu/finance/securities/docs/isd/mifid/160425-delegated-regulation_en.pdf)

<sup>12</sup> Product governance and recording of electronic conversations and communications ('taping') which are also covered in Article 16 will be dealt with in our next CP.

- 5.3** This chapter is also relevant to UCITS investment firms and AIFM investment firms in respect of their MiFID business. The FCA will consider whether to consult on further changes to the rest of UCITS managers and alternative investment fund managers' business, at a later stage.
- 5.4** The draft Instrument includes two new tables (Table B and C) in SYSC Annex 1 listing which provisions in SYSC apply to the above firms and how (ie by way of rules or guidance):
- Table B shows how the common platform requirements in SYSC 4 to 10 apply to Article 3 MiFID firms and third-country firms
  - Table C shows how the requirements in articles 21 to 25, 30 to 35 and 72 of the MiFID II implementing regulation (referred to as the MiFID Org. Regulation in the draft Handbook text) apply to Article 3 MiFID firms and third-country firms
- 5.5** In addition, as noted in the introductory chapter, this CP includes a MiFID II navigation guide for systems and controls (Annex 2), which is intended to help firms to navigate the organisational requirements in SYSC and the MiFID II regulation.

### Article 3 firms

- 5.6** It is important that the large number of Article 3 firms understand the new requirements they must comply with to ensure a smooth functioning of the securities markets and to protect investors.

### Existing provisions

- 5.7** Currently the common platform requirements in SYSC 4-10 are applied to Article 3 firms as a mixture of rules and guidance.

### Proposals

- 5.8** To ensure Article 3 firms are subject to 'at least analogous requirements' we propose we apply:
- Provisions in SYSC 4 to SYSC 9 implementing MiFID II by way of rules or guidance depending on whether they apply to MiFID firms as rules or guidance (see Table B of the draft Instrument).
  - Articles 21 to 25, 30 to 32 and 72 of the MiFID implementing regulation as if such requirements applied to Article 3 firms as rules or guidance (see Table C of the draft Instrument). The above provisions are directly applicable to MiFID firms.
  - In both cases, the relevant obligations apply to the Article 3 MiFID firms' regulated activities and other activities identified in SYSC 1 Annex 1 2.8R and 2.8AR (whether or not subject to MiFID).
  - Other non-common platform requirements apply to an Article 3 MiFID firm in accordance with the application provisions of the relevant chapter.
- 5.9** As noted above, the draft Instrument includes two new tables in SYSC1 Annex 1, Table B and Table C, to facilitate navigation of requirements for these types of firms.

- Q7:** Do you agree with our proposals on the application of ‘at least analogous requirements’ to Article 3 firms authorised and operating in the UK? If not, please give reasons.
- Q8:** Do you agree with our proposals on the transposition of Article 16 (on organisational requirements) of MiFID II in SYSC 1 Annex 1, SYSC 4-9? If not, please give reasons.
- Q9:** Do you agree with our proposals on the application of the requirements in Articles 21 to 25, 30 to 32, and 72 of the MiFID Org. Regulation to the non-MiFID business of common platform firms, Article 3 MiFID firms and third-country firms? If not, please give reasons why.
- Q10:** Do you agree with our proposals on the application of the common platform requirements and those in Articles 21 to 25, 30 to 32, and 72 of the MiFID regulation, either as rules or as guidance to Article 3 MiFID firms and third-country firms? If not, please give reasons why.

#### Implications for firms

- 5.10** The application of ‘at least analogous’ requirements will have a limited impact in the UK where Article 3 MiFID firms are already subject to very similar regulations to firms regulated under MiFID.

#### Implications for consumers

- 5.11** The application of analogous requirements to Article 3 firms helps to ensure a consistent standard of regulation applies to different firms that consumers might use to access investment services.

#### References

- 5.12** The relevant rules in MiFID II are Article 9 (Recitals 53-55) and Article 16; the relevant rules of the implementing regulation are Articles 21-25, 30-32 and 72.

### Common platform firms

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#### Introduction

- 5.13** The effective management of conflicts of interest is a central tenet of the financial services regulatory framework in the UK. When implementing MiFID the Financial Services Authority created a unified set of reasonably high-level, risk management, oversight and systems and controls requirements, applying to firms subject to both MiFID and the CRD, although differentiated as necessary, ie the ‘common platform requirements’. The common platform rules were then used as a basis for requirements applying to many other types of firms, including firms subject to UCITS which has a similar set of organisational requirements, besides those subject to the CRD or MiFID.

#### Existing provisions

- 5.14** The common platform requirements are currently in SYSC 4 to 10 covering the key aspects of the organisational requirements in MiFID and the CRD: general organisational requirements, employees, compliance, risk control, outsourcing, record keeping and conflicts of interest.

### Proposals

**5.15** We intend to keep the common platform framework as we implement MiFID II, including the requirement to retain records for 5 years. However, many of the MiFID provisions that made up the common platform will now be in an implementing regulation under MiFID II rather than an implementing directive. This means that they will be directly applicable to firms covered by the scope of MiFID II. For this purpose, while retaining the familiar structure of the ‘common platform’, we propose to:

- transpose the relevant MiFID II provisions into SYSC
- signpost in the application provisions to individual SYSC chapters the relevant provisions in the MiFID II implementing regulation which supplement the rules implementing the MiFID requirements (rather than copying them out into the corresponding Handbook chapters)
- create a new rule that extends the application of a number of articles of the MiFID II implementing regulation to all of a UK MiFID investment firm’s designated investment business, whether or not subject to MiFID

### Implications for firms

**5.16** The provisions in MiFID II that make up the common platform are substantially similar to those in MiFID. New provisions have been included in the delegated regulation on the role of the compliance function. These build on the ‘Guidelines on certain aspects of the MiFID compliance function requirements<sup>13</sup>’ that ESMA issued in 2012. There have also been changes to the record keeping requirements including a list of minimum records being set out in the implementing regulation. Another key change is the application of CRD requirements in Articles 88 and 91 to all firms subject to MiFID II (Article 9(1)).

**5.17** We are also retaining the application of certain common platform requirements in the form of rules and guidance in relation to other types of firms such as Article 3 MiFID firms and third-country firms, as explained later in this chapter.

### Conflicts of interest

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#### Introduction

**5.18** The effective management of conflicts of interest is a central tenet of the financial services regulatory framework in the UK. It is considered to be at the heart of maintaining fair, orderly and efficient financial markets.

**5.19** MiFID II does not fundamentally change the existing conflicts of interest provisions. It does, however, strengthen certain key requirements. It now clarifies that firms must have effective organisational arrangements, not only to manage but also to prevent conflicts of interest. It strengthens the content and quality of disclosure when these arrangements fail, and introduces new requirements on firms to assess and periodically review, their conflicts of interest policy. It requires senior management to receive on a frequent basis – and at least annually – written reports on the situations contained in the conflicts of interest record.

**5.20** As set out in the Introduction to this CP, MiFID II requires Member States, to impose on Article 3 firms certain authorisation, supervision, conduct of business and organisational requirements,

<sup>13</sup> [www.esma.europa.eu/sites/default/files/library/2015/11/2012-388\\_en.pdf](http://www.esma.europa.eu/sites/default/files/library/2015/11/2012-388_en.pdf)

which are ‘at least analogous’ to those under MiFID II. This includes the conflicts of interest provisions.

- 5.21** The MiFID II conflicts of interest requirements will by virtue of Article 1(4) of MiFID II extend to MiFID investment firms when they sell or advise clients in relation to structured deposits. We propose to extend the MiFID organisational requirement provisions to the non-MiFID designated investment business of MiFID investment firms. The application of these requirements is further explained in the Navigation Guide for SYSC in Appendix 2 of this CP.

#### **Existing provisions**

- 5.22** From our Principles for Businesses sourcebook (PRIN), Principle 8 sets out the fundamental requirement on firms to identify and manage conflicts of interest that arise in the course of carrying on its business.
- 5.23** SYSC 10 sets out the overarching framework governing conflicts of interest. The provisions apply to all firms, in the form of either a rule or guidance depending on the type of firm, with the exception of insurers, managing agents and members of the Lloyd’s syndicate.

#### **Proposals**

- 5.24** We propose to amend SYSC 10 and align it with the provisions of the MiFID II. The delegated act in which the implementing measures for the conduct provisions are contained is a delegated regulation, which we do not need to transpose for investment firms. However, we have decided – due to the very important nature, and overarching organisational aspect, of these measures – to apply these provisions to other firms.
- 5.25** Currently, certain provisions of SYSC10 take the form of either a rule or guidance. We will continue this approach under MiFID II. This means that when a provision is denoted as guidance, firms ‘should’ instead of ‘must’ take the provision into account.
- 5.26** Our Handbook applies the MiFID conflicts of interest disclosure requirements as a rule to all firms. We also propose to extend as a rule to all firms the new detailed disclosure obligations under MiFID II. We also propose to apply as rules to all firms the MiFID II requirements to appropriately take steps to identify and to prevent or manage conflicts of interest. This includes those caused by the receipt of inducements from third parties or by the firm’s own remuneration and other incentive structures.
- 5.27** We propose to extend to ‘non-scope’ firms (those entities which are neither common platform nor Article 3 firms, including third-country branches) as guidance the obligations to assess and periodically review, at least annually, the conflicts of interest policy and the requirement for senior management to receive on a frequent basis written reports on situations contained in the conflicts of interest record.

#### **Implications for firms**

- 5.28** Changes to the general conflicts of interest provisions in MiFID II will require firms to update their existing organisational and administrative arrangements, in particular their approach to disclosure. However, we do not expect these changes to necessitate a material change in firms’ systems and controls.

#### **Implications for consumers**

- 5.29** MiFID II strengthens the disclosure requirements on firms, this increases transparency between the firm and the client and will enable clients to make more informed investment decisions, reducing the risk of information asymmetry taking place. Furthermore, the client should be able to better understand the implications of disclosure as well as its content.

## Discussion

- 5.30** MiFID II revises the current requirements in the following ways, it:
- requires firms to take all ‘appropriate’ steps to identify, *prevent* or manage conflicts of interest from arising
  - explicitly states that firms need to identify, *prevent* or manage the conflicts caused by inducements and remuneration or other incentive structures
  - increases the reporting obligations on firms and reviews to be carried out by senior management
  - significantly enhances the content and quality of the disclosure made to clients when firms cannot manage or prevent conflicts of interest from arising
- 5.31** MiFID II enhances the standards governing the steps that a firm must take to identify and to prevent or manage conflicts of interest from ‘reasonable’ to ‘appropriate’. This sets a somewhat higher bar, but still places the onus on firms to ensure compliance.
- 5.32** MiFID II makes it clear that firms need to identify (and prevent or manage) the conflicts caused by inducements and remuneration or other incentive structures. This is already implied in the MiFID conflict of interest provisions. So while this new explicit provision will be included in the revised SYSC10 Chapter of the Handbook, it will not involve a significant change in our regulatory approach.
- 5.33** MiFID II elevates the disclosure requirements for conflicts of interest from Level 2 to Level 1 and introduces more prescriptive requirements on firms in terms of the content of the disclosure. This recognises the onus on firms to act in a way which does not adversely affect the interest of their clients. Disclosure is explicitly noted as a measure of last resort to be used by firms where arrangements cannot prevent or manage the conflict from arising. This is consistent with our existing regulatory expectations so should not cause a change in approach for compliant firms.
- 5.34** However, the level of content and quality of the disclosure required under MiFID II is new and more extensive for firms. All disclosures will need to state that it is being made because the firm’s organisational and administrative arrangements to prevent or manage the conflict are not sufficient to ensure that the risk to the client’s interests will be prevented. We do not believe explicitly stating this will impact firms’ business as it is something which clients of existing compliant firms will already be aware of.
- 5.35** Firms will need to ensure that the content of the disclosure reflects the nature of the client; again, this is not new. However, the requirement to include the specific description of the conflicts of interest that arise, the steps undertaken to mitigate those risks, and the risks to the client *is* new.
- 5.36** We also propose to extend these new disclosure obligations as a rule to all firms to reflect our view that, having appropriate and robust organisational and administrative requirements in place to manage conflicts of interest is a fundamental obligation on firms.
- 5.37** Under MiFID II senior management will be required to receive, frequently and at least annually, written reports of situations contained in the conflicts of interest record. Firms will also be required to assess and periodically review, at least annually, their conflicts of interest policy and take measures to address any deficiencies with it. While neither of these requirements are

explicit in the existing rules, our analysis of the recent CBA results confirmed our expectation that many firms already apply the proposed requirements in practice now.

### References

- 5.38** The existing rules are under SYSC 10.
- 5.39** The relevant rules in MiFID II are Article 16(3) and Article 23 of the Directive, Recitals 45- 48 and Articles 33-35 of the Implementing Regulation.

**Q11: Do you agree with our proposed approach to implementing the MiFID II requirements on conflicts of interest? If not, how could we amend it?**

**Q12: What impact would this approach have on your firm?**

### Management bodies

- 5.40** This section covers the implementation of Article 9 of MiFID II on management bodies.
- 5.41** As in CRD IV, MiFID II includes measures to remedy weaknesses that were identified during the financial crisis regarding the functioning and composition of the management body of in-scope firms and the qualification of its members.

### Existing provisions

- 5.42** Management body arrangements are contained in SYSC 4.3.A, which currently applies to CRR firms (which include significant IFPRU firms). SYSC 4.3.A is being reviewed to apply to common platform firms and to take account of the extended obligations in MiFID II.

### Proposals

- 5.43** Article 9 aims to enhance effective oversight and control over the activities of investment firms<sup>14</sup> and requires the management body to assume clear responsibilities across the business cycle of the firm, including setting strategic objectives, and responsibility for the risk strategy and the internal governance of the firm.
- 5.44** As a result of the requirement in Article 9(1) that imports into MiFID the governance requirements from Articles 88 and 91 of the CRD, we are proposing to extend the scope of SYSC 4.3A (which at present only applies to CRR firms including significant IFPRU firms) to all common platform firms. In addition, we are proposing to extend the application of these requirements to Article 3 MiFID firms as rules.

**Q13: Do you agree with our proposals on the transposition of Article 9 (on the management body)? If not, please give reasons why.**

### Application to branches of third-country firms

- 5.45** We have considered how the changes to the management body and organisational requirements introduced under MiFID II should apply to branches of non-EEA firms (third-country firms). In doing so, we have sought to ensure that they should not be treated in such a way as to create a competitive disadvantage for EU firms.

<sup>14</sup> Recital 54

- 5.46** We have taken account of the current application of certain SYSC provisions as rules or guidance, and the fact that the governance structures of branches are likely to be different to the governance structures of UK firms, and will also likely be subject to equivalent organisational requirements in their home country.
- 5.47** In summary, where existing equivalent provisions apply to third-country branches, we propose to maintain the status quo where possible. There are a few exceptions to this, where we propose to change existing guidance into a rule. This is because we consider a rule to be more appropriate if the requirement has a particular conduct focus and improves consistency of approach between third-country firms and EU firms.
- 5.48** Where a new provision is introduced by MiFID II or the more detailed requirements in the MiFID regulation, we have proposed the application of the new provision to third-country branches either as a rule, guidance or not applicable, applying the same criteria as set out above.

**Q14: Do you agree with our proposed application of the Governance requirements to branches of third-country firms? If not, please give reasons why.**

**Implications for firms**

- 5.49** Common platform firms will be subject to new and enhanced requirements which will promote sound internal governance arrangements as well as a sound risk culture.
- 5.50** MiFID and our related Handbook material already contained provisions relating the managing body of in-scope firms and third-country branches and we do not expect that implementing the requirements in MiFID II will have a significant impact on their systems and controls.
- 5.51** Firms should note that ESMA and the European Banking Authority (EBA) will consult on joint guidelines on the assessment of the suitability of members of the management body and key function holders under CRD IV and MiFID II.

**Implications for consumers**

- 5.52** More effective governance of investment firms should bring benefits for consumers in terms of more effective compliance with regulatory obligations and greater consideration by investment firms of the needs of clients.

**References**

- 5.53** Article 9 of MiFID II deals with management bodies and incorporates by reference the obligations in Articles 88 and 91 of the CRD.

## 6. Remuneration

### Who should read this chapter

The remuneration provisions are relevant to MiFID investment firms and financial advisers and corporate finance firms exempt from MiFID under Article 3.

### Introduction

- 6.1** This chapter explains the changes we propose to make to our SYSC Sourcebook to implement Article 24(10) of MiFID II (and its implementing measures in Article 27 of the MiFID II implementing regulation), remuneration of sales staff. MiFID II remuneration requirements build on existing ESMA guidelines<sup>15</sup> and seek to ensure sales staff are not incentivised to act in ways which are detrimental to the best interests of clients. We propose a new SYSC 19F covering remuneration and performance management of sales staff, taking account of responses to Chapter 7 of DP15/3.
- 6.2** MiFID II introduces rules on staff incentives and the remuneration of sales staff and advisers designed to help prevent failures in the sales process. The rules seek to ensure sales staff and advisers are not remunerated in a way that creates incentives for staff to sell products inappropriately. They require that firms do not remunerate or assess the performance of their own staff in a way that conflicts with their duty to act in the best interest of their client, or provides an incentive for recommending or selling a particular financial instrument when another product may better meet the client's needs.

### Existing domestic provisions

- 6.3** As explained in DP15/3, we currently have various domestic provisions in place to ensure that firms' remuneration policies do not create incentives for employees to act in ways that are not in the best interests of the consumer.
- 6.4** For example, at a high level, Principle 3 of our Principles for Businesses requires all regulated firms to take reasonable care to organise and control their affairs responsibly and effectively. More detailed remuneration provisions focusing on specific types of firms are set out in our Handbook (SYSC Chapter 19), which currently contains five separate remuneration codes:

<sup>15</sup> [www.esma.europa.eu/sites/default/files/library/2016-411\\_final\\_report\\_on\\_guidelines\\_on\\_sound\\_remuneration\\_policies\\_under\\_the\\_ucits\\_directive\\_and\\_aifmd\\_0.pdf](http://www.esma.europa.eu/sites/default/files/library/2016-411_final_report_on_guidelines_on_sound_remuneration_policies_under_the_ucits_directive_and_aifmd_0.pdf)

- IFPRU Remuneration Code (SYSC 19A)
- AIFM Remuneration Code (SYSC 19B)
- BIPRU Remuneration Code (SYSC 19C)
- Dual-regulated firms Remuneration Code (SYSC 19D)
- UCITS Remuneration Code (SYSC 19E)

**6.5** While these remuneration codes focus on the senior management of firms who are ‘material risk takers’, they do contain several principles that apply on a firm wide basis, including a rule that a firm’s remuneration policy must include measures to avoid conflicts of interest.

**6.6** In January 2013, we introduced guidance to help firms manage the risks associated with sales based incentive structures. This was followed by thematic work to assess if and how firms were using the guidance to manage risks to consumers. The findings, as published in March 2014, showed that the response to the guidance was positive and our intervention had resulted in significant change and increased awareness and focus on financial incentives. This work was complemented by guidance on the risks to customers from performance management at firms, published in July 2015.

#### **Proposals**

**6.7** In DP15/3, we asked whether we should explore applying MiFID II’s remuneration standards for sales staff and advisers across to non-MiFID II businesses, for example by introducing a cross-cutting set of standards on sales staff remuneration.

**6.8** We received 40 responses to this question. Of these responses, a number of cautioned against extending the MiFID II to non-MiFID firms given the multiple European initiatives in this space that are currently being developed. The remaining responses generally agreed with the proposal to apply the MiFID remuneration requirements to non-MiFID firms as this would create a consistent regime across different products and markets, although a few of these responses again noted that it may be preferable to wait until there was greater certainty at EU level.

**6.9** While we recognise the advantages of introducing a cross-cutting set of standards on sales staff remuneration, at this stage we propose to only apply MiFID II’s remuneration standards for sales staff and advisers to:

- common platform firms (including for example MiFID investment firms and dormant account fund operators, but excluding collective portfolio management investment firms)
- Article 3 firms
- branches of third-country firms (only applies in relation to activities carried on from an establishment in the UK)

**6.10** These provisions will be transposed domestically through a new section of SYSC, SYSC 19.F. In addition, we propose Article 3 MiFID firms, third-country firms and dormant account fund operators must comply with a remuneration requirement similar to the one in Article 27 of the MiFID II implementing regulation (which is directly applicable for investment firms) as set out in SYSC 19F.1.1.R. Article 24 (10) of MiFID II is one of the conduct requirements to which we must apply ‘at least analogous requirements’ to Article 3 firms.

**6.11** We have not extended the MiFID II remuneration requirements more broadly at this stage, as there are several European initiatives under development that will (or are expected to) specifically address remuneration for particular markets, financial products and types of firms, including Solvency II, Insurance Distribution Directive, Mortgage Credit Directive and Capital Requirements Directive (CRD IV). In particular, the EBA has consulted on guidelines on the remuneration of sales staff that may impact on MiFID and non-MiFID firms.

**6.12** Accordingly, we consider that introducing a broader set of sales staff remuneration provisions at this point would be premature, as it would risk conflicting with other guidance being developed at the European level.

#### **Implications for firms**

**6.13** Given the high-level nature of the MiFID II remuneration provisions and existing domestic rules and guidance in this area, we do not think these proposals will create large additional regulatory burdens for firms and significant costs implications are unlikely.

#### **Implications for consumers**

**6.14** The proposals outlined in this chapter relate to how MiFID II firms conduct their remuneration policies and practices and so will primarily be of interest to firms. Nonetheless, consumers may also be interested in these proposals to understand how firms reward their employees and strategies in place to manage conflicts of interest.

**Q15: Do you agree with our proposal to only apply the remuneration provisions for sales staff to firms carrying on MiFID II business? If not, please give reasons why.**

**Q16: Do you agree with our approach to applying the remuneration provisions to article 3 firms and third-country firms? If not, please give reasons why.**

## 7. Client Assets Sourcebook (CASS)

### Who should read this chapter

This chapter is relevant to all firms holding client assets who conduct designated investment business..

### Introduction

- 7.1** This chapter explains the changes we propose to make to CASS arising from the implementation of MiFID II (including the MiFID II implementing directive<sup>16</sup>). Our implementation proposals do not mean significant changes to the existing CASS regime because MiFID II is broadly aligned to the CASS: we think most new MiFID II requirements are already implemented.
- 7.2** Our proposed approach is to:
- transpose new MiFID II requirements not already implemented in CASS through ‘intelligent copy out’<sup>17</sup>
  - apply all new MiFID II requirements not implemented in CASS to all designated investment business, including non-MiFID business

### Existing provisions

- 7.3** CASS contains provisions on safeguarding assets and monies belonging to clients. These transpose the MiFID requirements and largely apply to designated investment business, including non-MiFID business. After MiFID implementation in 2007, some new parts of CASS applied only to MiFID business. We combined these shortly after into a single rulebook with industry support<sup>18</sup>, keeping some minor differences between MiFID and non-MiFID business: the single rulebook approach predates the 2007 implementation of MiFID.

<sup>16</sup> [http://ec.europa.eu/finance/securities/docs/isd/mifid/160407-delegated-directive\\_en.pdf](http://ec.europa.eu/finance/securities/docs/isd/mifid/160407-delegated-directive_en.pdf)

<sup>17</sup> An ‘intelligent copy out’ approach means adhering closely to the wording of MiFID II when drafting the relevant provisions in the Handbook, but using alternative wording where appropriate to align with UK law and practice.

<sup>18</sup> CP08/06 - [www.fsa.gov.uk/pubs/cp/cp08\\_06.pdf](http://www.fsa.gov.uk/pubs/cp/cp08_06.pdf) and PS08/10 - [www.fsa.gov.uk/pubs/policy/ps08\\_10.pdf](http://www.fsa.gov.uk/pubs/policy/ps08_10.pdf)

## Proposals

### *Maintaining a single rulebook*

- 7.4** We propose to continue our single rulebook approach by implementing MiFID II for all designated investment business to ensure the same standards and investor protections for all designated investment business.
- 7.5** Professional clients of non-MiFID firms<sup>19</sup> can opt-out of CASS 7 (client money rules) and we propose no change.

### *Prohibition on Title Transfer Collateral Arrangements (TTCAs) with retail clients*

- 7.6** MiFID II contains a prohibition against entering into title transfer collateral arrangements (TTCAs) with retail clients.<sup>20</sup> A TTCA allows a client to agree that their monies or assets will be treated as collateral in respect of their existing or future obligations. They transfer full ownership of this collateral to the firm. If the firm fails, the client is generally an unsecured creditor for the value of their collateral.
- 7.7** A TTCA means that the client takes credit risk against the firm, i.e. the risk that the firm cannot pay the client back. As retail clients are less likely to have the resources to understand and quantify this risk, we think they should benefit from CASS protections in line with our consumer protection and integrity objectives and should not be able to TTCA their monies or assets.
- 7.8** Previous supervisory investigation and consultation in 2010<sup>21</sup> showed that most TTCAs with retail clients related to contracts for difference (CFDs), spreadbetting and rolling spot forex. We subsequently banned TTCA in relation to these products for retail clients.<sup>22</sup>
- 7.9** We did not ban other retail client TTCAs as we expected MiFID II to do so, which has now happened.<sup>23</sup> We propose to implement this in the CASS 6 and CASS 7 TTCA rules.

### *Inappropriate use of TTCAs*

- 7.10** MiFID II requires firms to consider non-retail client TTCA appropriateness<sup>24</sup> including:
- the relationship between the TTCA and the client's liability
  - ensuring the quantum of client funds or assets subject to the TTCA does not vastly exceed the client's liability
  - preventing automatic, blanket use of TTCAs for all clients, without considering their liabilities
- 7.11** We propose to implement this in the CASS 6 and CASS 7 rules on TTCA agreements.
- 7.12** We think firms must already assess client liabilities to enter into TTCA agreements and to manage risk. Firms may have provisions in their agreements fulfilling or largely fulfilling these requirements. For example, prime brokerage rehypothecation agreements are likely to define client indebtedness and the extent to which the firm may take client assets by a TTCA in relation to this, and to monitor this constantly.

<sup>19</sup> CASS 7.10.10R - [www.handbook.fca.org.uk/handbook/CASS/7/10.html](http://www.handbook.fca.org.uk/handbook/CASS/7/10.html)

<sup>20</sup> Article 16(10) of the MiFID II Level 1 Directive

<sup>21</sup> CP10/15 - [www.fsa.gov.uk/pubs/cp/cp10\\_15.pdf](http://www.fsa.gov.uk/pubs/cp/cp10_15.pdf)

<sup>22</sup> Handbook Notice 104 - [www.fsa.gov.uk/pubs/handbook/hb\\_notice104.pdf](http://www.fsa.gov.uk/pubs/handbook/hb_notice104.pdf)

<sup>23</sup> Article 16(10) of the MiFID II Level 1 Directive

<sup>24</sup> Article 6 of the MiFID II Implementing Directive

### ***Custody liens***

- 7.13** In 2010, we found<sup>25</sup> that some firms appeared to inappropriately grant custodians and sub-custodians general liens allowing recovery of debts of the firm or of other group companies from client assets. Such liens can significantly delay or obstruct recovery of assets.
- 7.14** In PS10/16 we prohibited such general liens with limited exceptions<sup>26</sup>, such as unless the lien is 'necessary for that firm to gain access to the local market' (with appropriate consideration and disclosures) or required by law<sup>27</sup>, MiFID II narrows the exemption to applicable law in a third-country jurisdiction in which the client's assets are held, and requires the firm to disclose information to the client so that the client is informed of the associated risks.<sup>28</sup> We propose updating the CASS 6 third-party custodian rules accordingly.
- 7.15** We understand<sup>29</sup> that generally firms already prefer to have such agreements in place only as a result of applicable law for legal certainty, as they are unwilling to put other clients' assets at risk because of business conducted for only a few clients.

### ***Delegation of safekeeping duties to a third party***

- 7.16** Under MiFID,<sup>30</sup> we require firms delegating safekeeping duties to a third party to ensure that the custody assets:
- are deposited with a third party in a jurisdiction that regulates and supervises their safekeeping
  - are not held with a third party in a non-EEA country, unless required by the professional client or nature of the custody assets<sup>31</sup>
- 7.17** MiFID II extends this requirement where a firm has delegated custody to a sub-custodian. We propose to implement this in our CASS 6 rules on third-party custodian agreements.

### ***Internal firm assessments when depositing client money in a qualifying money market fund***

- 7.18** Under MiFID<sup>32</sup>, we place due diligence conditions on a firm investing client money in a qualifying money market fund (QMMF).<sup>33</sup> One condition allows firms to rely on ratings of the QMMF provided by credit rating agencies.
- 7.19** MiFID II requires firms to make internal assessments when considering depositing client money in a QMMF *with reference* to credit rating agency ratings (not solely relying on these).<sup>34</sup> We propose updating the glossary definition of QMMF to reflect the new requirement.

25 CP10/09 - [www.fsa.gov.uk/pubs/cp/cp10\\_09.pdf](http://www.fsa.gov.uk/pubs/cp/cp10_09.pdf)

26 CASS 6.3.6(1) and (2)

27 CASS 6.3.6R - [www.handbook.fca.org.uk/handbook/CASS/6/3.html](http://www.handbook.fca.org.uk/handbook/CASS/6/3.html)

28 Article 2(4) of the MiFID II Implementing Directive

29 From firm and trade body discussions at the time of PS10/16

30 Articles 17(2) and (3) of the MiFID Implementing Directive

31 CASS 6.3.4R - [www.handbook.fca.org.uk/handbook/CASS/6/3.html](http://www.handbook.fca.org.uk/handbook/CASS/6/3.html)

32 Article 18(2) of the MiFID Implementing Directive

33 FCA Handbook glossary definition of *Qualifying Money Market Fund* - [www.handbook.fca.org.uk/handbook/glossary/G2422.html](http://www.handbook.fca.org.uk/handbook/glossary/G2422.html)

34 Article 1(4) of the MiFID II Implementing Directive

***Express consent from clients when depositing money in a QMMF***

**7.20** Under MiFID<sup>35</sup>, we require firms to allow clients to oppose segregating their funds in a QMMF<sup>36</sup>, while MiFID II requires explicit consent for this.<sup>37</sup> We propose amending CASS 7 accordingly. We think firms could comply through minor client agreement updates.

***Depositing client money in a group bank***

**7.21** To mitigate the risk of client money shortfalls on firm failure due to intra-group contagion, we prohibit firms from depositing over 20% of their client money in a group bank.<sup>38</sup> MiFID II contains the same prohibition, but allows firms an exemption<sup>39</sup> if they can demonstrate disproportionality under the following:

- the nature, scale and complexity of its business
- the safety offered by third parties
- the small balance of client money held

**7.22** We consider it likely that only a CASS small firm<sup>40</sup> would be holding a sufficiently 'small balance of client money' to justify use of that exemption and propose to amend the CASS 7 rules on intra-group deposits accordingly.

***Preventing unauthorised use of client assets***

**7.23** MiFID II requires firms to have in place measures to prevent unauthorised use of client assets<sup>41</sup>, including agreed procedures if a client has insufficient assets to settle a transaction, monitoring its ability to deliver securities with remedies in place if this cannot be done, and promptly requesting undelivered securities.

**7.24** We consider that firms may already have such measures in place. If not, implementing this proposal may involve updating client agreements.

***Taking collateral when arranging securities lending***

**7.25** We propose to implement the MiFID II requirement for firms to take collateral and monitor its continuing appropriateness when arranging securities lending for clients.<sup>42</sup>

***MiFID II requirements already implemented***

**7.26** We consider most new MiFID II requirements are already implemented in CASS:

<sup>35</sup> Article 18(3) of the MiFID Implementing Directive

<sup>36</sup> CASS 7.13.28R - [www.handbook.fca.org.uk/handbook/CASS/7/13.html](http://www.handbook.fca.org.uk/handbook/CASS/7/13.html)

<sup>37</sup> Article 4(2) of the MiFID II Implementing Directive

<sup>38</sup> CASS 7.13.20R - [www.handbook.fca.org.uk/handbook/CASS/7/13.html](http://www.handbook.fca.org.uk/handbook/CASS/7/13.html)

<sup>39</sup> Article 4(3) of the MiFID II Implementing Directive

<sup>40</sup> A CASS small firm is a firm has the meaning in CASS 1A.2.7R (CASS firm types)

<sup>41</sup> Article 5(3) of the MiFID II Implementing Directive

<sup>42</sup> Article 5(4) of the MiFID II Implementing Directive

**Table 1: New requirements and CASS provisions**

New MiFID II requirement	Equivalent CASS provision
Making records readily available to competent persons when a firm fails <sup>43</sup>	CASS 10
Appointing a single officer responsible for safeguarding of client assets <sup>44</sup>	CASS 1A.3
20% limit on group bank client money deposits <sup>45</sup>	CASS 7.13.20R except small firm exemption, see paragraph 1.23
Considering diversification of client money <sup>46</sup>	CASS 7.13.22R
Obtaining written client consent for securities financing transactions <sup>47</sup>	CASS 6.4.1R(1)

We propose to keep these CASS provisions rather than replacing with 'copied out' requirements, making minor drafting amendments where needed.

### Notifications to the Commission under MiFID

**7.27** MiFID II<sup>48</sup> allows member states to retain domestic provisions that were notified to the Commission under the article 4 procedure as additional to those in MiFID. Following two major post-MiFID CASS reviews<sup>49</sup>, we made two article 4 notifications.<sup>50</sup> We also notified some requirements to the Commission on a 'precautionary' basis where there were strong arguments that they implemented MiFID (and so were not additional). While some have been adopted by MiFID II, we propose to retain the requirements that were notified, in some cases making modifications to bring them in line with MiFID II.

**7.28** This includes one Article 4 notification on the prime broker's daily report to clients<sup>51</sup> and requirements notified on a precautionary basis relating to: third party custody agreements; terminating a TTCA; unclaimed assets and the prime brokerage agreement disclosure annex.<sup>52</sup>

### Third country branches

**7.29** CASS applies to third country branches in the same way as other firms. We propose to continue this approach when implementing MiFID II.

### Implications for firms

**7.30** Our implementation proposals do not mean significant changes to CASS as MiFID II is broadly aligned. We therefore think firm impact will be small.

### Implications for consumers

**7.31** CASS applies to firms. However, we think our proposed approach (i.e. maintaining the single rulebook) makes it clearer to consumers and firms on which rules apply and how money will be protected for MiFID and non-MiFID designated investment business.

43 Article 2(5) of the MiFID II Implementing Directive

44 Article 7 of the MiFID II Implementing Directive

45 Article 4(3) of the MiFID II Implementing Directive

46 Article 4(2) of the MiFID II Implementing Directive

47 Article 5(2) of the MiFID II Implementing Directive

48 Article 16(11) of the MiFID II Level 1 Directive

49 PS10/16 and PS14/9

50 These notifications are published on the European Commission's website - see: [http://ec.europa.eu/finance/securities/isd/mifid\\_implementation/index\\_en.htm](http://ec.europa.eu/finance/securities/isd/mifid_implementation/index_en.htm)

51 CASS 9.2

52 CASS 6.3.4AR to 6.3.4BG; CASS 6.1.8AR to 6.1.8EG and CASS 7.11.9R to 7.11.13G; CASS 6.2.8G to CASS 6.2.16G and CASS 9.3

**References**

- 7.32** The safeguarding provisions are largely contained in chapters 6 and 7 of CASS.
- 7.33** The feedback statement on the original implementation of MiFID is in PS08/10.

**Q17: Do you agree with our proposal to implement MiFID II requirements for MiFID and non-MiFID business maintaining a single rulebook? If not, please give reasons.**

**Q18: Do you agree with our proposals to implement MiFID II safeguarding of client assets provisions? If not, please give reasons.**

## 8. Complaint handling (DISP)

**Who should read this chapter**  
Consumers and regulated firms

### Introduction

- 8.1** This Chapter explains the changes that we propose to our Dispute Resolution: Complaints sourcebook (DISP) arising from the implementation of MiFID II. We propose copying out directly the requirements in MiFID II into DISP, and creating a new section which will contain all the complaint handling requirements for MiFID complaints.

### Existing provisions

- 8.2** Our general approach is that, wherever possible, the same rules should apply to firms' handling of complaints, regardless of subject matter. However, where requirements deriving from EU law relate to complaints about specific regulated activities, we have included specific rules accordingly.
- 8.3** The current DISP rules contain some requirements on firms which are doing MiFID business, in terms of the procedures they must have in place to deal with complaints. These requirements can be found in DISP 1.3. Our rules also contain record keeping requirements on firms doing MiFID business in DISP 1.9, and DISP 1 Annex 2 sets out how other DISP requirements (which do not derive from MiFID) apply to firms doing MiFID business from an establishment in the UK, a branch of a UK firm in another EEA state and an incoming branch of an EEA firm doing MiFID business in the UK. Additionally, these rules apply to 'third country' firms which are headquartered outside the EEA area, but have an establishment in the UK and are conducting relevant business.

### Proposals

- 8.4** We propose to implement the requirements of MiFID II in relation to complaint handling by amending DISP. We propose creating a new definition for 'MiFID complaint' covering those complaints that are subject to the new MiFID II complaint handling requirements. We propose a new draft section DISP 1.1A, which sets out the provisions that apply to relevant firms when handling MiFID complaints, such as those requirements that are in MiFID II, as well as certain existing DISP 1 provisions that are outside of MiFID II scope or are required by other EU legislation such as the Alternative Dispute Resolution (ADR) Directive. The draft instrument also

makes a number of consequential changes to DISP to either remove or amend the previous MiFID-derived rules.

**8.5** We propose using a copy out approach to incorporate the complaint handling requirements from Article 26 of the MiFID II (Delegated Regulation) into DISP 1 using the current DISP 1 headings to sub-divide the new section. Given the brevity of the MiFID II complaint handling provisions and their similarities to existing complaint handling rules in DISP, we consider that this proposed approach would better assist readers to understand the provisions that apply to MiFID complaints.

**8.6** The MiFID II amendments achieve the following:

- An introduction sets out how the rules do or do not apply to MiFID complaints received by different types of firm. As is currently the case, the rules apply differently depending on whether or not the firm is UK authorised and where the activity is taking place – a table sets out how this works in detail. It also notes that for the MiFID complaints of third country investment firms, MiFID II requirements apply to complaints from retail clients and elective professional clients. This is reflected in amendments to the table in DISP 1 Annex 2 which sets out how DISP applies to various kinds of firm.
- This introduction also notes that the MiFID II requirements apply to retail clients, professional clients, and eligible counterparties (in relation to eligible counterparty business), as opposed to eligible complainants.
- The draft rules set out obligations in relation to consumer awareness, firms must publish details of their complaint handling process and contacts, and to provide these details to consumers on request or when responding to a complaint.
- The draft rules then set out how firms should handle complaints, including rules in relation to a complaints management policy, senior management responsibility, complaints being free of charge, the complaints management function and analysis of complaints to identify risks and issues. The sections on the complaints management policy and senior management responsibility also refer to guidelines issued by the European Securities and Markets Authority (ESMA) and European Banking Agency (EBA).<sup>53</sup>
- We have also applied certain existing DISP rules in relation to consumer awareness, complaint handling, complaint resolution, complaint time limits, complaint forwarding, complaint time barring and complaint data publication; these are applied to MiFID complaints but only where the complaint is received from complainants who are eligible to complain to the Financial Ombudsman Service.
- MiFID II contains specific record-keeping requirements which apply to MiFID complaints received from retail clients, professional clients and in relation to eligible counterparty business, eligible counterparties. The requirements on firms to report complaints are still in place for complaints from retail clients and are extended to include complaints from professional clients and in relation to eligible counterparty business, eligible counterparties. We are therefore making clear that, in reporting complaints about MiFID business, firms must include complaints from retail clients, professional clients and in relation to eligible counterparty business, eligible counterparties rather than eligible complainants.
- We have amended the jurisdiction of the Financial Ombudsman Service to ensure that it

<sup>53</sup> Joint Committee Final Report on guidelines for complaints handling for the securities (ESMA) and banking (EBA) sectors, 13 June 2014

can consider complaints about advice on or sales of structured deposits where such services are provided by CRD credit institutions and investment firms authorised under MiFID. This reflects MiFID II requirements.

- MiFID II also requires Member States to ensure that all investment firms adhere to one or more ADR entities in relation to MiFID complaints brought by consumers. This is a home Member State responsibility. Whilst investment firms with an establishment in the UK are already covered by the FOS, we have added an additional rule requiring branches of UK MiFID investment firms to adhere to the relevant ADR entities in the relevant EEA State in which they are established.

**Q19: Do you agree with our proposals to implement the requirements of MiFID II in relation to complaint handling? If not, please give reasons why.**

**Implications for firms**

- 8.7** We do not believe that most of these proposals will have any material impact on firms, given that they are largely the same as the existing requirements. Extending complaint record keeping and reporting requirements to complaints from professional clients might have some small cost implications. In line with the requirements of MiFID II, we have extended the jurisdiction of the Financial Ombudsman Service to complaints about sales of and advice in relation to structured deposits and added an additional rule requiring branches of UK MiFID investment firms to adhere to the relevant ADR entities in the relevant EEA State in which they are established. These changes might result in additional costs to firms but we do not have any relevant data on these points.

**Implications for consumers**

- 8.8** The implications for consumers of the proposed rule changes are that a wider range of them will be able to make a complaint which will be subject to rules governing its treatment and a consumer will be able to make a complaint in regard to a wider range of financial products.

## 9. Whistleblowing

### Who should read this chapter

This chapter is relevant for investment firms and branches of non-EEA firms providing investment services.

### Introduction

- 9.1** MiFID II, along with various other recent pieces of EU legislation, including the Market Abuse Regulation, CRD IV, Units in Collective Investment Undertakings (UCITS) V, Securities Financing Transactions Regulation (SFT) and Insurance Distribution Directive (IDD), requires whistleblowing mechanisms and obligations. These obligations include requirements for market participants to have appropriate internal procedures in place allowing their employees to whistleblow in respect of the firm's obligations under MiFID II.
- 9.2** We do not think we can create a 'common platform' of whistleblowing requirements across the various pieces of EU legislation; this would result in gold plating of some standards, and under-delivery of others. We therefore propose a new chapter in SYSC to bring together domestic and EU whistleblowing requirements.

### Existing provisions

- 9.3** The FCA has updated SYSC 18 (PS 15/24<sup>54</sup>) oblige certain authorised firms (deposit-takers, PRA-Designated Investment Firms and Insurers) to undertake enhanced whistleblowing requirements from 7 September 2016.

### Proposals

- 9.4** In terms of the provisions in various pieces of EU legislation for whistleblowing, there are two options to introduce provisions in the FCA Handbook oblige market participants to comply with legislative requirements.
- 9.5** The first option is to transpose individually each of the EU provisions disparately in the Handbook (when Handbook transposition is required – some transposition may alternatively be achieved by statutory implementation). This would not seem to be an ideal approach as the requirements would be fragmented in terms of location within the Handbook, and complex for the market to apply, especially if the implementation of these EU provisions includes diverging FCA guidance.

<sup>54</sup> PS15/24 – [www.fca.org.uk/static/fca/article-type/policy%20statement/ps-15-24.pdf](http://www.fca.org.uk/static/fca/article-type/policy%20statement/ps-15-24.pdf)

- 9.6** The second option is to provide an overarching section in the Handbook providing all firms with a ‘starting point’ to meet obligations under the various EU and domestic whistle-blowing provisions. This second option can itself be split into two potential approaches, as follows:
- An all-encompassing set of rules implementing all the various EU/ domestic whistleblowing obligations which require Handbook implementation and signposting the EU requirements which do not require Handbook implementation (i.e. whistleblowing obligations under directly applicable EU Regulations). However, in our view the differences in scope and application of the various whistleblowing provisions are too great to enable the creation of one set of provisions covering them all. In addition, new EU whistleblowing requirements could be added in the future which could create new complications.
  - Create a new Handbook chapter/ sub-chapter to act as the single ‘home’ for all the various whistleblowing requirements. Such a chapter/ sub-chapter would include separate rules implementing each EU whistleblowing obligation requiring Handbook implementation, and would also include (or at least reference) each domestic FCA whistleblowing rule. The chapter/ sub-chapter would also include signposts to all EU whistleblowing obligations not implemented in the Handbook (i.e. implemented under statute, or simply existing as a directly applicable EU provision).
- 9.7** We therefore propose a new section of SYSC 18, SYSC 18.6 to transpose the whistleblowing requirements in Article 73 (2) of MiFID II for investment firms and branches of third-country firms. We also signpost whistleblowing requirements in other pieces of European legislation.

**Q20: Do you agree with our proposal? If not, how could we approach this issue?**

**Implications for firms**

- 9.8** Firms have in place adequate policies on dealing with whistleblowers and that a senior manager takes responsibility for overseeing these policies. Mechanisms within firms are in place to encourage staff to voice concerns, raise issues and challenge poor practice and behaviour.<sup>55</sup>

**Implications for consumers**

- 9.9** Consumer protection is enhanced by having efficient and effective whistleblowing procedures in place.

**References**

**Relevant EU provisions**

- 9.10** MiFID II – Article 73

‘Member states shall require investment firms, market operators, data reporting services providers, credit institutions in relation to investment services or activities and ancillary services, and branches of third-country firms to have in place appropriate procedures for their employees to report potential or actual infringements internally through a specific, independent and autonomous channel’.

- 9.11** MAR – Article 32

‘Member states shall require employers who carry out activities that are regulated by financial services regulation to have in place appropriate internal procedures for their employees to

<sup>55</sup> In 2015 we published new rules which followed recommendations by the 2013 Parliamentary Commission on Banking Standards (PCBS) that banks put in place mechanisms to allow their employees to raise concerns internally (ie, to ‘blow the whistle’) and that they appoint a senior person to take responsibility for the effectiveness of these arrangements.

report infringements of this Regulation’.

**9.12** CRD IV Directive – Article 71

‘..Member states shall require institutions to have in place appropriate procedures for their employees to report breaches internally through a specific, independent and autonomous channel. Such a channel may also be provided through arrangements provided for by social partners. The same protection as referred to..’

**9.13** UCITS V – Article 99d

‘Member states shall require management companies, investment companies and depositories to have in place appropriate procedures for their employees to report infringements internally through a specific, independent and autonomous channel’.

**9.14** CSDR – Article 65

‘Member states shall require institutions to have in place appropriate procedures for their employees to report actual or potential infringements internally through a specific, independent and autonomous channel. Such a channel may also be provided through arrangements provided for by social partners. The same protection.....’

**9.15** SFTs Regulation – Article 24

‘Counterparties shall have in place appropriate internal procedures for their employees to report infringements of Articles 4 and 15’

**9.16** IDD – Article 30

Current draft contains no obligations on institutions in respect of ‘appropriate internal procedures’

# 10.

## Fees Manual (FEES)

### Who should read this chapter

Operators of OTFs, MTFs, DRSPs and those applying for VoPs. Firms connecting to our MDP.

### Introduction

- 10.1** In this chapter, we set out the main fees implications of MiFID II.
- 10.2** In the first part of the chapter, we set out our proposals for consultation:
- fees for operators of organised trading facilities (OTFs) and clarification of charge for variations of permission (VoPs) by operators of OTFs and multilateral trading facilities (MTFs) and firms undertaking new regulated activities in structured deposits
  - onboarding fees for establishing technical conformance with our market data processing (MDP) system in order to submit the data prescribed under MiFID II
- 10.3** The draft rules are in Appendix 1. Following consultation, we will publish the final rules and provide feedback on the responses received in a handbook notice (HN) or policy statement (PS) in December, so that they can take effect from 1 January 2017.
- 10.4** We are not consulting on periodic (annual) fees. Since MiFID II will come into effect from 3 January 2018, firms will pay fees for the final quarter of 2017/18. We will identify the fee-blocks from which we propose to recover MiFID II costs in our October 2016 fees policy CP and the rates themselves in our consultation on periodic fee-rates for 2017/18 in spring 2017.
- 10.5** In the second part of the chapter, we take the opportunity to clarify some fees issues which do not require consultation:
- update on earlier consultation: fees structure for data reporting service providers (DRSPs) and
  - application and VoP fees relating to MiFID II

### Consultation: fees for OTFs and MTFs and some VoPs

- 10.6** MiFID II creates the new regulated activity of operating an OTF. We propose to charge them on the same basis as operators of MTFs. At the same time, we are clarifying the charges for variations of permission (VoPs) by both OTFs and MTF operators.
- 10.7** MTFs are charged the FCA's 'complex' application fee of £25,000 and they pay a two-tier periodic fee depending on whether they are supervised by a named 'fixed portfolio' supervisor, or by a team of 'flexible portfolio' supervisors. We propose to charge the same fees for operators of OTFs, in relation to their new permitted activity. In 2016/17, fixed portfolio MTFs are paying £300,000 and the others pay £28,290. The rates may change for 2017/18, in which case they will be included in the consultation in spring 2017.
- 10.8** When a firm applies for a variation of permission (VoP), it is charged half of the application fee if the VoP has the effect of moving it into a new fee-block, and £250 if it remains within the same fee-block. We believe £250 would not be a reasonable contribution towards our costs when the operator of an MTF extends its permission to operate an OTF, or the operator of an OTF seeks to operate an MTF, and so we propose to charge the conventional 50% VoP fee of £12,500. This is a fair reflection of the work we would undertake. If a firm already has permission to operate an MTF and extends it by extending the investment types it covers, it will pay the £250 VoP fee. The same position will apply for an OTF operator.
- 10.9** We are also proposing to expand the definition of fee-block A13 (Advisors, arrangers, dealers or brokers) to include the new MiFID II permissions relating to structured deposits – this would carry the usual £250 VoP charge.

**Q21: Do you agree with our proposed fees for operators of organised trading facilities (OTFs) and the clarification of the charge for varying the permission of operating an OTF or multilateral trading facility (MTF), and for activities relating to structured deposits? If not, please give reasons why.**

### Consultation: onboarding fees for connecting to our MDP in order to submit to us the data prescribed under MiFID II

- 10.10** In November 2015 (CP15/34 – *FCA regulated fees and levies: policy proposals for 2016/17*), we consulted on the structure of 'onboarding' fees for entities connecting their systems to our new MDP so that they can submit the data prescribed under MiFID II. The charge is intended to recover the costs of establishing connectivity with the MDP for secure file transfer, compatibility of systems, testing of data conformance etc. We proposed a two tier charge, with a higher rate for entities intending to submit transaction reports and a lower rate for all other data types (transparency reports, commodity position reports, instrument reference data and double volume cap data). The present onboarding fee for Approved Reporting Mechanisms (ARMs) and other entities which submit transaction reports to our Zen database, is £100,000. When we consulted in November 2015, we had not appointed the MDP provider so had no definitive costings. Therefore, we did not consult on the rates but quoted upper limit indicative charges of £80,000 for connecting to submit transaction reports and £40,000 for each of the other data types to help firms with their business planning. We said in CP15/34 that we would discount by 20% the onboarding charges from 'incoming' DRSPs, which have been authorised in other EU member states.

- 10.11** We summarised the consultation responses we received in *Handbook Notice 30* (February 2016). The only comments relating to onboarding charges were concerns about the high indicative onboarding charges we had quoted and a suggestion that a single entity should only be charged once if it makes a subsequent connection to the FCA system.
- 10.12** Now that we have appointed the MDP supplier and have more robust estimates of the number of entities who will submit market data to our new system, we have a more accurate basis for estimating costs. We accordingly propose rates of £20,000 for applying to establish conformance in order to submit transaction reporting data and £10,000 for each application to establish conformance for all other data types. On our present assumptions, these rates would recover our anticipated costs. Any over or under recovery will be balanced out through the following year's periodic fees. Subsequent to the MiFID II go-live, we currently anticipate only a few applications per year.
- 10.13** Since each data type requires conformance with a specific set of technical specifications then, once a person has established conformance for a specific data type, replicating the conformance with that data type for further applications from the same person should require limited testing and the costs should be relatively low. Each entity will therefore be charged only once for conforming to the technical specifications of a particular data type.

#### **Example A**

- An investment firm or a credit institution, authorised under FSMA and CRD IV respectively, might apply to establish conformance with the MDP for the following purposes:
  - It wishes to submit transaction reports directly to the FCA on its own behalf (Article 26 MiFIR).
  - It operates two MTFs and an OTF. OTFs will submit transparency calculation data (Article 22 MiFIR), instrument reference data (Article 27 MiFIR), transaction reports on behalf of non-MiFID member firms (Article 26(5) MiFIR) and transaction reports for MiFID member firms in relation to the market-side transaction report (Article 26(7) MiFIR). The MTFs will also be required to submit double volume cap data (Article 22 MiFIR) in addition to all the data types specified above.
  - It is in the process of setting up a DRSP, to be authorised under the Data Reporting Services Regulations 2016 (DRS Regulations). This will include (a) an ARM submitting transaction reports to the FCA (Article 26 MiFIR) and (b) Approved Publication Arrangements (APA) and a Consolidated Tape Provider (CTP) submitting transparency calculation data and double volume cap data.
- DRSPs will be authorised separately by us, so in this case we would expect to receive two applications: one application from the investment firm in respect of its MTF and OTF activities; and one application from the prospective DRSP. The investment firm would pay once for transaction reporting (£20,000), once for transparency calculation data (£10,000), once for instrument reference data (£10,000) and once for double volume cap data (£10,000), resulting in a total fee of £50,000. The DRSP, incorporating the ARM, the APA and the CTP, would also pay £40,000 for these activities –consisting of £20,000 for transaction reporting, £10,000 for transparency calculation data and £10,000 for double volume cap data. In this case, total fees for MDP onboarding across all activities operated by the investment firm and its DRSP, would be £90,000.

**Example B**

- If, instead of operating its MTFs and OTF within a single business, the investment firm operated them as separate subsidiaries within a more complex group structure, each UK subsidiary might apply separately to establish conformance with the MDP in which case they would pay separate charges in respect of each data type. In this case, the fees paid by the investment firm in Example A above would be £50,000 for each MTF they operate and £40,000 for the OTF, in addition to £40,000 for its DRSP activities, resulting in total MDP onboarding fees of £180,000.

**Example C**

- A recognised investment exchange (RIE), operating two regulated markets (RMs), an MTF and an OTF, would be expected to establish conformance with the MDP for the purpose of submitting transparency calculation data (Article 22 MiFIR), instrument reference data (Article 27 MiFIR), double volume cap data and transaction reports on behalf of non-MiFID member firms (Article 26(5) MiFIR) and transaction reports for MiFID member firms in relation to the market-side transaction report (Article 26(7) MiFIR). It would pay £50,000 in respect of MDP onboarding fees comprising, £20,000 for transaction reporting, £10,000 for transparency calculation data, £10,000 for instrument reference data, £10,000 for double volume cap data to cover these data types for its RMs, MTF and OTF.

**Example D**

- An investment firm, authorised under FSMA, operating an SI and establishing conformance with the MDP for the purpose of submitting instrument reference data (Article 27 MiFIR), would pay £10,000.

**Example E**

- Any entities/persons irrespective of regulatory status establishing conformance with the MDP for the purpose of submitting commodity position reports directly to the FCA (Article 58 MiFID II) would pay £10,000.

**Example F**

- An incoming DRSP, authorised in another EU member state, would pay 80% of each charge to establish conformance with the MDP.

**Q22: Do you agree with our proposal to charge onboarding fees from entities that connect to our system to submit the data prescribed under MiFID II? If not, please give reasons why.**

**Update on earlier consultation: fees for DRSPs**

- 10.14** We also consulted in CP15/34 on application fees for DRSPs and the structure of periodic fees and summarised the responses in *Handbook Notice 30*. Although we will not be making the rules until December, we are taking this opportunity to confirm that we are implementing the proposals as consulted on.
- 10.15** There will be three categories of DRSP, depending on the data to be submitted – ARMs, APAs and CTPs. In CP15/34, we proposed separate charges for each category – with a full charge of £5,000 for the first application and a discount of 50% for each additional DRSP application. The discount would apply whether the applications were made at the same time or later. We proposed a flat-rate periodic fee for a single category of DRSP, plus an extra 50% flat rate fee

for each additional category. We did not consult on the fee rate but gave an indicative full-rate fee of £20,000 – £30,000. We will consult on the amount in spring 2017.

- 10.16** The only comment we received on DRSP fees was that we should consider discounting application charges from firms taking advantage of ‘derogated’ provisions in Article 59(2) of MiFID II. These envisage a more streamlined approval process for DRSPs, so might reduce demands on our resources.
- 10.17** We do not believe it is appropriate to amend our proposal. We do not normally recover the full cost of authorisation from applicants but share the costs with existing fee payers, on the ground that all firms in the market benefit from effective policing of the perimeter so all should contribute towards it. In line with this policy, we said in CP15/34 that we considered the charges we had proposed to be a reasonable contribution towards the cost of processing their applications. We do not anticipate that derogated applications will reduce the task sufficiently to warrant a further reduction in their contribution towards our costs.

### Application and VoP fees relating to MiFID II

- 10.18** In Table 3, we summarise the application charges for activities affected by MiFID II, including the charges for DRSPs consulted on in November 2015, the charges now under consultation and existing charges that are not changing. We hope firms will find this useful. We encourage firms to contact us if they are unsure about any activities they are planning to undertake which they believe fall under MiFID II but are not covered in the table. If necessary, we will expand the table and reissue it when we provide our feedback in December.

**Table 3: application and VoP fees relating to MiFID II**

Entity/activity	Current fee	Fee under MiFID II	Status of MiFID II fee
DRSP – first application (ARMs, APAs, CTPs)	N/A	£5,000	Following consultation in CP15/34, Nov 2015, fees to be introduced from January 2017
DRSP – subsequent application for carrying on data reporting services	N/A	£2,500 for each subsequent application	
MTF – first application	£25,000	No change	Rule already in fees handbook
MTF – VoP	£250 if already operating an MTF, otherwise £12,500	£12,500	Consultation in this CP for introduction from January 2017
OTF – first application	N/A	£25,000	
OTF – VoP	N/A	£12,500	

Entity/activity	Current fee	Fee under MiFID II	Status of MiFID II fee
Recognised investment exchange	£100,000	No change	Rules already in fees handbook
Bidding in emissions auctions	£1,500	No change	
Recognised auction platform	£35,000	No change	
SME growth markets	N/A	No fee – authorised investment firm operating an MTF registers as SME growth market or authorised investment firm with the permission to deal in investments as principal registers as an SI	
Systematic internalisers			
Trading in emissions allowances	N/A	No change apart from expansion of definition of fee-block A13 (see paragraph 11.9): these investment products will be traded under permissions in fee-block A13. Straightforward application fee: £1,500 VoP fee: £250	
Trading in binary bets			
Trading in structured deposits			
Onboarding fee: transaction reports	£100,000	£20,000	Consultation in this CP for introduction from January 2017
Onboarding fee: Transparency reports	N/A	£10,000	
Commodity position reports		£10,000	
Instrument reference data		£10,000	
Double volume cap data		£10,000	

# Annex 1

## List of questions

- Q1:** Do you find our latest navigation guide to the implementation of the MiFID II requirements on SYSC helpful? If not, how could we improve the guide?
- Q2:** Do you agree with our proposed new MAR chapter, MAR 10? If not, how would you suggest we modify our proposals?
- Q3:** Do you agree with our proposal relating to breaches of directly applicable regulations under MiFID II and non-FSMA Treasury regulations implementing MiFID II? If not, how could we amend it?
- Q4:** Do you agree with our proposal for transitional provisions to deal with the revocation of the MiFID implementing regulation? If not, how could we amend it?
- Q5:** Do you agree with our proposal relating to the passporting provisions in SUP? If not, how could we amend it?
- Q6:** Do you agree with the changes we are making to our prudential rules? If not, please give reasons why.
- Q7:** Do you agree with our proposals on the application of 'at least analogous requirements' to Article 3 firms authorised and operating in the UK? If not, please give reasons.
- Q8:** Do you agree with our proposals on the transposition of Article 16 (on organisational requirements) of MiFID II in SYSC 1 Annex 1, SYSC 4-9? If not, please give reasons.
- Q9:** Do you agree with our proposals on the application of the requirements in Articles 21 to 25, 30 to 32, and 72 of the MiFID Org. Regulation to the non-MiFID business of common platform firms, Article 3 MiFID firms and third-country firms? If not, please give reasons why.

- Q10:** Do you agree with our proposals on the application of the common platform requirements and those in Articles 21 to 25, 30 to 32, and 72 of the MiFID regulation, either as rules or as guidance to Article 3 MiFID firms and third-country firms? If not, please give reasons why.
- Q11:** Do you agree with our proposed approach to implementing the MiFID II requirements on conflicts of interest? If not, how could we amend it?
- Q12:** What impact would this approach have on your firm?
- Q13:** Do you agree with our proposals on the transposition of Article 9 (on the management body)? If not, please give reasons why.
- Q14:** Do you agree with our proposed application of the Governance requirements to branches of third-country firms? If not, please give reasons why.
- Q15:** Do you agree with our proposal to only apply the remuneration provisions for sales staff to firms carrying on MiFID II business? If not, please give reasons why.
- Q16:** Do you agree with our approach to applying the remuneration provisions to Article 3 firms and third-country firms? If not, please give reasons why.
- Q17:** Do you agree with our proposal to implement MiFID II requirements for MiFID and non-MiFID business maintaining a single rulebook? If not, please give reasons.
- Q18:** Do you agree with our proposals to implement MiFID II safeguarding of client assets provisions? If not, please give reasons.
- Q19:** Do you agree with our proposals to implement the requirements of MiFID II in relation to complaint handling? If not, please give reasons why.
- Q20:** Do you agree with our proposal? If not, how could we approach this issue?
- Q21:** Do you agree with our proposed fees for operators of organised trading facilities (OTFs) and the clarification of the charge for varying the permission of operating an OTF or multilateral trading facility (MTF), or for dealing in structured deposits? If not, please give reasons why.
- Q22:** Do you agree with our proposal to charge onboarding fees from entities that connect to our system to submit the data prescribed under MiFID II? If not, please give reasons why.

## Annex 2

# Cost benefit analysis (CBA)

1. When proposing rules, we must publish a cost benefit analysis (CBA) – under Section 138I(2)(a) of FSMA, as amended by the Financial Services Act (2012)). In CP15/43 (Annex 2) we provided an overview of EU work on the impact of MiFID II and its relevance to the UK. We also explained that in implementing MiFID II we would provide a high-level cost benefit analysis on matters where a common approach across the EU is intended and we have little discretion. But we would provide a more detailed CBA where we exercise discretion in our implementation. We are continuing with this approach in this CP.

### Commodity derivatives

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2. MiFID II requires that there are limits set on positions that a person can have in all commodity derivatives contracts traded on EU markets (and economically equivalent OTC contracts). Trading venues and participants must have arrangements in place to give regulators details of positions in commodity derivatives, emission allowances and derivatives to enable regulators to supervise the position limit regime. MiFID II also requires that aggregated information about positions in commodity derivatives contracts, categorised by type of participant and type of position, is published by trading venues and sent to ESMA on a weekly basis for ESMA to undertake centralised publication of the reports. Trading venues will also have to have in place arrangements to monitor and manage positions in the contracts that they trade. The position limit and reporting regime in MiFID II is intended to introduce a common approach across the EU, so below is a high level CBA of the changes.

### Costs

3. For position limits, market participants need to establish systems and controls to ensure that their trading activity complies with the limits set on commodity derivatives. For position reporting, trading venues and participants in commodity markets will need to establish arrangements to report positions to regulators who will also need to build systems to receive such reports. If calibrated inappropriately, limits could make commodity markets more volatile and make it more costly for non-financial firms to hedge the risks they face from movements in commodity prices.
4. For the weekly commitment of trader reports, participants, trading venues, regulators and ESMA will have to build IT and maintain systems to report, collate and publish the reports. There is a risk that if the aggregation of the data published is at too low a level the market impact of participants' trading will increase because it is possible to work out information about the identity or behaviour of individual traders.

### Benefits

5. Position limits should make it more difficult to manipulate commodity markets and might reduce systemic risk by making it more difficult for entities to amass large speculative positions. The information might increase participants' confidence in commodity derivatives markets and deter aggressive trading activity.

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## Supervision

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6. There are three sets of changes in this chapter of the CP: requiring firms to notify us of a breach of directly applicable regulations under MiFID II and Treasury implementing regulations, and to ensure information given to us in accordance with any such requirement is accurate and complete; transitional provisions for transaction reporting; and passporting. We have no discretion when implementing these MiFID II requirements, so below is a high level CBA of the changes

### Costs

7. Firms should already have arrangements in place to ensure that breaches of regulatory obligations are notified to us and that information they provide to us is accurate and complete. There should therefore only be incremental costs associated with the fact that these arrangements need to cover a wider range of obligations. The transitional arrangements for transaction reporting should have no costs. With passporting there will be one-off costs for investment firms to arrange to notify new activities, for banks to notify their use of tied agents and for regulators to revise their systems to take account of the new harmonised passporting forms.

### Benefits

8. It is important firms give us comprehensive notification of breaches and provide accurate and complete data to us to ensure we can take appropriate supervisory and enforcement action, which encourages higher standards of conduct. The transitional arrangements for transaction reporting ensure there is no gap in reporting requirements and we can take action against breaches of the requirements in MiFID even when this comes to light after the requirements have been repealed. With passporting bringing more activities within the scope of the passport should strengthen the single market in financial services. Exchange of information about banks' use of tied agents should enhance investor protection by providing more information to host supervisors about activities for which they are responsible.

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## Prudential rules

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9. We are required to update certain references in our Prudential Handbooks because of the changes in MiFID II. This includes changes resulting from the creation of the new investment service of operating and OTF and the abolition of the exemption in the existing MiFID for 'local' traders.
10. The changes to the scope of regulation in the UK as a result of MiFID II that require us to update references in our Prudential Handbooks will be given effect in the UK by Treasury legislation. The Treasury presented an impact assessment when they consulted on the draft legislation in March 2015..

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## SYSC – Organisational and management body requirements

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### Overview

11. MiFID defined a high-level framework for fit and proper requirements regarding persons who direct the business of investment firms, the establishment and the operation of internal control functions and organisational requirements.

12. The 2008 financial crisis showed multi-dimensional governance failures in the organisation, processes, risk controls and assessment of some market participants. Specific concerns included the degree of experience and engagement of the directors of firms. A combination of the above factors led to insufficient organisation in the provision of services and incorrect assessment or control of risks and consequently to sub-efficient financial markets and unnecessary costs for market participants.
13. MiFID II seeks to address these issues through the reinforcement of Article 9 on the management body and Article 16 on organisational requirements with the objective of harmonising requirements in those areas and avoiding practices which result in consumer detriment. The Commission's impact assessment estimated, based on conservative assumptions, this would result in one-off costs of between €61-€134 million and ongoing costs of €69 – €133 million for investment firms across the EU (in CP15/43 we noted that the Treasury had used an assumption that UK firms would bear 36% of the total EU costs of implementing MiFID II).
14. Many of the MiFID provisions that make up the common platform (ie SYSC 4-10) are in a delegated regulation under MiFID II rather than an implementing directive, as under MiFID. This means that they will be directly applicable to investment firms in the scope of MiFID II. As such, we provide a high-level cost benefit analysis as a common approach across the EU is intended and we have little discretion. Also where we are proposing to extend the requirements in the delegated regulation to non-MiFID business, where this is not required by MiFID II, there will be no increase in costs for firms because we are proposing applying obligations which are currently requirements in our Handbook.

#### ***Management bodies***

15. MiFID II aims to strengthen the role of the management bodies by providing measures harmonising corporate governance frameworks across firms. In particular, Article 9(1) imports into MiFID II the requirements on governance arrangements and management body set forth in Article 88 and Article 91 of CRD IV, respectively. Article 9 focuses on, among other things, the effective oversight and control that the management body should have over the activities of the firms (especially in areas such as risk strategy and internal governance); in addition it deals with issues such as a time commitment and diversity which should be taken into account by regulators at the gateway.

#### **Benefits**

16. Application of the new management body requirements in Article 9 will promote sound internal governance arrangements as well as a sound risk culture. As a result, we believe there will be better mitigation of the risk of consumer detriment.

#### **Costs**

17. MiFID already contained provisions relating the managing body and we believe that the requirements in MiFID II will involve only minimal incremental impact on their corporate governance systems and controls with accompanying minimal incremental costs.

#### ***Article 3 firms***

18. We are retaining the application of certain common platform requirements in the form of rules and guidance in relation to other types of firms such as firms exempt under Article 3 of MiFID and third-country firms – as explained below.
19. Member States are allowed to continue exempting certain investment service providers from authorisation as MiFID investment firms under Article 3 but MiFID II introduces requirements for the national requirements applicable to them in a number of areas (notably fit and proper criteria and conduct of business rules), to be 'at least analogous' to the MiFID II requirements

(plus corresponding implementing measures).

20. In the UK, which exercised the optional exemption under Article 3 of MiFID, there are more firms operating under the article 3 exemption than under MiFID. These are mainly retail financial advisors and corporate boutique finance firms.

#### **Benefits**

21. By observing the enhanced requirements in MiFID II as transposed in SYSC, Article 3 firms' systems and control will be strengthened and, ultimately, the mitigation of the risk of detriment to investors is strengthened.

#### **Costs**

22. The application of 'at least analogous' requirements will have a limited impact in the UK where Article 3 firms are already subject to very similar regulations to firms regulated under MiFID. As such we expect these changes to lead to minimal incremental costs.

#### **Third-country firms**

23. This consultation sets out how we propose to apply the organisational and management body requirements, which will apply directly to MiFID investment firms under the MiFID II implementing regulation, to UK branches of third-country investment firms servicing retail and wholesale clients.

24. We have sought to ensure that the proposals do not treat third-country firms in such a way as to create a competitive disadvantage for EU firms, as required by MiFID, whilst taking account the fact that branches will also likely be subject to home country governance requirements.

25. In summary, we propose largely to maintain the status quo where possible, and our proposals are designed to achieve a no more beneficial regime for third-country firms, while avoiding unnecessary duplication with third-country regimes.

#### **Benefits**

26. The benefits are (i) increased harmonisation, (ii) prevention of duplication of regimes between the host state and the third-country regulatory system, and (iii) recognition that the governance structures of branches are different to the governance structures of firms.

#### **Costs**

27. We consider that our proposals will have limited impact in the UK where third-country firms are already subject to similar provisions to firms regulated under MiFID, by way of rules, or guidance (to avoid duplication where equivalent home state oversight may exist). As such we expect these changes to lead to minimal incremental costs.

### **SYSC – Conflicts of interest**

#### **Introduction**

28. We are considering applying MiFID II conflicts of interest requirements to non-MiFID firms<sup>1</sup>. As set out in the Conflicts of Interest chapter above, these changes cover the following:

29. Under new disclosure requirements (when firms cannot prevent or manage conflicts of interest and which can only be used as a measure of last resort where the effective organisational and

<sup>1</sup> These are also known as non-scope firms.

administrative arrangements established by the firm have failed) firms:

- shall clearly state in the disclosure that the organisational and administrative arrangements established by the firm to prevent or manage that conflict are not sufficient to ensure, with reasonable confidence, that the risks of damage to the interests of the client will be prevented
- shall include specific description of the conflicts of interest that arise in the provision of investment and/or ancillary services taking into account the nature of the client to whom the disclosure is being made
- shall explain in the disclosure the general nature and sources of conflicts of interest, as well as the risks to the client that arise as a result of the conflicts of interest, and the steps undertaken to mitigate these risks in sufficient detail before undertaking the business

**30.** More generally, the new conflicts requirements would mean that:

- Senior management will receive on a frequent basis, and at least annually, written reports on situations in which firms that carry out business in which a conflict of interest entailing a risk of damage to the interests of one or more clients has arisen, or may arise.
- Additionally, the firm will also need to review periodically, at least annually the conflicts of interest policy and take measures to address any deficiencies.
- The current conflict of interest requirements in SYSC 10.1 applies as rules to all common platform firms and management companies. For all other firms (non-scope firms) only SYSC 10.1.3 – identifying conflicts, SYSC 10.1.7 – managing conflicts and SYSC 10.1.8 – disclosure of conflicts apply as rules. The remaining section of SYSC 10.1 applies as guidance for these firms.

**Rationale for intervention**

- 31.** MiFID is predicated on a series of key principles including: market transparency, non-discriminatory and equal treatment of market participants and the avoidance of conflicts of interests by intermediaries. These objectives are relevant and indeed desirable to all types of financial intermediation irrespective of whether a MiFID activity is being carried out or not. Applying these principles, we propose to extend the MiFID II conflicts of interest framework requirements to non-scope firms. It is likely to be the case that the same investment risks apply to non-MiFID business and it is appropriate that clients are informed of the risks to them so that they can make informed decisions about whether to continue with the service. In this regard, the Fair and Effective Markets Review (FEMR) report acknowledged that transparency is a key objective and should apply irrespective of client categorisation or activity.<sup>2</sup>
- 32.** Conflicts of interest can arise in a number of circumstances, either between the firm and a client or one client of the firm and another. Conflicts of interest that are not prevented or managed can adversely affect the interests of clients.
- 33.** We believe that extending these additional requirements to non-scope firms will reduce the risk of consumer detriment arising from unmanageable conflicts of interest. There are also benefits to having a level playing field across firms providing similar services, as we discuss later on in this chapter.

<sup>2</sup> The Treasury, the Bank, FCA (2015) 'Fair and Effective Markets Review, Final Report' June 2015: [www.bankofengland.co.uk/markets/Documents/femrjun15.pdf](http://www.bankofengland.co.uk/markets/Documents/femrjun15.pdf)

### Baseline for analysis

- 34.** The relevant baseline against which we measure the additional impacts of the FCA's policy is the current conflicts of interest requirements these firms are subject to. These are in the form of FCA rules or guidance. The conflicts of interest framework applies as rules to common platform firms and management companies. The following requirements currently apply as rules to non-scope firms.
- taking all reasonable steps to identify conflicts of interest (SYSC 10.1.3R)
  - maintaining and operating effective organisational and administrative arrangements to prevent conflicts of interest resulting in a material risk of damage to clients' interests (SYSC10.1.7R) and
  - disclosing conflicts where there remains a risk of damage to clients' interests (SYSC10.1.8R)
- 35.** The remaining aspects of SYSC10.1 apply as guidance to non-scope firms.
- 36.** MiFID II also makes changes to Article 3. Member states are now required to submit firms who rely on the exemption in that Article to certain requirements that are at least analogous to certain provisions of MiFID II. This includes conflicts of interest. We therefore propose to apply the same organisational requirements that will apply to common platform firms to Article 3 firms.
- 37.** For the remaining firms, we propose to extend the MiFID II requirements proportionately. We propose to continue our approach of applying the new requirements as both rules and guidance to non-scope firms. We propose applying the following requirements as rules to non-scope firms:
- Taking all appropriate steps to identify and to prevent or manage conflicts of interest SYSC 10.1.3R
  - The enhanced disclosure requirements that apply where organisational or administrative arrangements by the firm are insufficient SYSC 10.1.8R. Additionally, we propose to apply the following requirements under MiFID II as guidance to non-scope firms:
    - The minimum criteria list which firm may use to identify the various types of conflicts whose existence may damage the interests of a client SYSC 10.1.4AG
    - Conflicts of interest policy and the contents of that policy SYSC 10.1.11AG
    - The periodic review, on an at least annual basis, of the conflicts of interest policy SYSC 10.1.11B The requirement to keep and regularly update the conflicts of interest record and the requirement upon senior management to receive on a frequent basis, and at least annually, the record of the kinds of activities or services which entail a risk of damage to the interests of one or more clients which has arisen or may arise SYSC 10.1.6AG
- 38.** We assume that most firms undertaking both MiFID and non-MiFID business (eg investment banks and discretionary investment managers) would apply the same conflicts of interest policies organisationally. In 2006, the FSA consulted on extending the MiFID derived requirements to a broader range of business operations or activities than contemplated by MiFID. At the time,

the FSA engaged Europe Economics<sup>3</sup> to carry out some scoping work on our behalf. They reported that half of interviewed firms applied two different standards in respect to certain parts of the conflicts of interest framework but also reported that the incremental costs of our original proposals to be immaterial. Europe Economics also reported that firms reported no or low numbers of conflicts arising from non-MiFID activities. We believe this is unlikely to have changed in the intervening years. Indeed, this view is supported by the responses to the CBA exercise we carried out last year. We therefore expect that non-scope firms are likely to incur only minimal incremental costs when adhering to the disclosure and conflicts requirements of the enhanced MiFID II standards.

### Costs

39. We first discuss the likely scope of the impacts of the policies, and then present the associated cost estimates.

### Scope of cost impact

40. The mapping above shows that the new conflict of interest requirements under MiFID II are unlikely to require a significant departure from existing practices. This is because the requirements relating to identification, managing and disclosure of conflicts of interest currently apply as rules. The remaining section of SYSC10.1 applies as guidance to non-scope firms. Indeed, the large majority of respondents to our survey said that they already undertake some of the elements of the new requirements. Just over half of Article 3 exempt firms and investment firms, and around 70 per cent of management companies, thought that they would incur some additional costs from this policy.
41. Further, we understand from our fieldwork that most firms undertaking MiFID business (ie investment firms) would apply any new requirements under MiFID II to their non-MiFID business as part of their standard operational procedures, and hence would not incur costs as a result of FCA discretionary action in this area.

### Direct costs to firm

42. For those firms that would incur costs associated with the policy changes, the most common driver is likely to be the need to review and amend (if necessary) existing processes for the disclosure of conflicts to clients. Other, less common, one-off costs would be related to legal and compliance, and staff training. A minority of firms would incur IT systems related costs. We estimate the one-off costs for investment firms, Article 3 exempt firms and UCITs management companies and AIFMs to be £9.0 million, £5.5 million and £0.6 million respectively across affected firms.<sup>4</sup>
43. Affected firms would also incur ongoing costs, the most commonly incurred cost relating to documenting and disclosing conflicts of interest in more detail. Annual reporting to senior management and annual reviews of policies were also expected to incur ongoing costs. We estimate ongoing costs for investment firms, Article 3 exempt firms and UCITs management companies and AIFMs to be £4.3 million, £3.6 million and £0.4 million per year respectively.<sup>5</sup>

3 [www.fsa.gov.uk/pubs/cp/cp06\\_09.pdf](http://www.fsa.gov.uk/pubs/cp/cp06_09.pdf) page 30

4 Based on an estimated average cost per firm (range) and number of *affected* firms as follows. Investment firms: £6,500 – £15,000 per firm across 1,245 firms; Article 3 exempt firms: £3,700 per firm across 1,500 firms; UCITs mancos and AIFMs: £1,300 – £7,500 per firm across 120 firms. However to note that we received no responses to the CBA survey from large investment firms and we therefore assume that one-off costs will be around £15,000 per firm.

5 Based on an estimated average cost per firm (range) and number of *affected* firms as follows. Investment firms: £3000-£10000 per firm across 1,245 firms; Article 3 exempt firms: £2400 per firm across 1,500 firms; UCITs mancos and AIFMs: £3,500 per firm across 120 firms. However, note that we received no responses to the CBA survey from large investment firms and we therefore assume that ongoing costs will be around £10,000 per firm. Please note, this estimate does not include an outlier which if included would have changed our ongoing costs for investment firms from £4.3m to £8.7m.

Other potential ongoing costs not included in these estimates but cited by a few firms could be those related to dealing with additional questions from clients raised in response to more detailed disclosures.

#### **Wider impacts**

44. There are unlikely to be any wider impacts of these policy changes beyond compliance costs. Survey respondents did not foresee any loss of business or adverse competitive impacts.

#### **Benefits**

45. The extension of the scope of the MiFID II conflicts of interest framework to non-scope firms would create a level playing field and avoid regulatory arbitrage, as well as avoid situations (and associated potential detriment) where consumers engage with non-scope firms but expect the same level of disclosure as present for MiFID business (for example if they were not aware of the MiFID distinction).<sup>6</sup>
46. In addition, the changes introduced by MiFID II provide for a more rigorous monitoring and disclosure of conflicts of interest and thus there would also be benefits from the prevention of potential negative outcomes. Nevertheless, they will ensure that all firms formally have these measures in place and are all operating at the same standard. We expect the additional requirements to have impacts in the following ways.
- The enhanced disclosure requirements will ensure that clients have more comprehensive, thorough and detailed information about the conflicts that the firm is unable to manage. The new requirements will require firms to state within the disclosure that the firm's organisational and administrative arrangements to prevent or manage the conflict are not sufficient to ensure that the risk to the client's interests will be prevented. Firms will also be required to include the specific description of the conflicts of interest that arise, the steps undertaken to mitigate those risks and the risks to the client. This will enable the client to make a better informed decision as to whether they wish to continue with the transaction or service, and avoid potential negative outcomes resulting from unidentified conflicts of interest. MiFID II also requires firms, when they use disclosure, to take into account the nature of their client. The new disclosure requirements should therefore lead to better informed and more engaged clients.
  - The requirement for firms to periodically review their conflicts of interest policies should ensure that policies are regularly updated to take account of new and emerging risks, which will as a consequence increase consumer protection. It will also avoid the risk on conflicts remaining unidentified across the organisation.
  - The annual reporting to senior management will ensure that the management body has full sight and scope of situations where conflicts of interest have arisen and help them to design policies that identify the circumstances which may constitute or give rise to conflicts of interest that entails a risk of damage to the interests of their clients. It will specify the procedures to be followed and measures to be adopted to prevent or manage such conflicts.

<sup>6</sup> Indeed, the European Commission notes that unclear demarcation lines between products or services are subject to higher levels of protection can lead to investors being sold financial instruments which are not appropriate for them and to make investment choices which are sub-optimal. It also notes that regulatory arbitrage may occur as firms seek to avoid rules by inflating sales of products outside of the scope of the regulation. See European Commission MiFID II Impact Assessment, page 115 and 117. [http://ec.europa.eu/internal\\_market/securities/docs/isd/mifid/SEC\\_2011\\_1226\\_en.pdf](http://ec.europa.eu/internal_market/securities/docs/isd/mifid/SEC_2011_1226_en.pdf)

- 47.** The main mechanisms through which these benefits are likely to flow are:
- Additional detail to the current conflicts of interest provisions set out in SYSC 10 will make it clearer to firms what is expected in terms of their management and disclosure of conflicts of interest (likely to be small, based on our mapping).
  - The application of these provisions as rules and guidance is likely to result in firms reviewing their existing processes in order to benchmark themselves against the new MiFID standard.
- 48.** We do not consider it reasonably practicable to quantify the additional benefits of extending the conflicts of interest requirements to non-MiFID business. This is because there is no straightforward way of measuring detriment arising from current potential shortcomings in the approach to conflicts of interest among firms carrying out non-MiFID business which the new requirements might address.
- 49.** However, we provide as a benchmark an illustration of the potential detriment resulting from poorly managed conflicts of interest. There have been a number of recent enforcement cases associated with firms' failures to manage conflicts of interest. We have levied substantial fines amounting to £45 million in 2014 and 2015 and a firm has paid out compensation to its customers of around £130 million.<sup>7</sup> Fines and compensation can be seen as an (imperfect) proxy for associated detriment, in this case in excess of £175 million over less than two years.<sup>8</sup>
- 50.** In addition, we and the FSA have conducted a number of thematic reviews into the management of conflicts of interest across various parts of the financial services market, including asset management firms, wealth managers, and advisory firms.<sup>9</sup> A range of shortcomings (some serious) have been identified, and communicated to firms or addressed through guidance. Although unquantified, this provides evidence of failings in this area.
- 51.** In the main these enforcement cases do not necessarily imply shortcomings with the current rules themselves.<sup>10</sup> However, it is possible that similar detriment may arise in the future, and that this may be avoided or reduced by a strengthened conflicts of interest framework.

<sup>7</sup> The FCA fined Sesame and Barclays bank £1.6 million and £26 million respectively in 2014, and Aviva Investors £17.1 million in 2015. Aviva Investors also paid compensation to its customers. [www.fca.org.uk/firms/being-regulated/enforcement/fines](http://www.fca.org.uk/firms/being-regulated/enforcement/fines)

<sup>8</sup> However, fines are likely to provide substantially underestimated evidence of detriment as they may be capped for various reasons (e.g. good behaviour of the firm following the failings; or for financial viability reasons), and do not necessarily take into account all negative outcomes across the market. Published fines also do not capture cases that have remained undetected or which have not yet been resolved.

<sup>9</sup> See for example Financial Services Authority "Conflicts of interest between asset managers and their customers: Identifying and mitigating the risks", November 2012 [www.fca.org.uk/static/pubs/other/conflicts-of-interest.pdf](http://www.fca.org.uk/static/pubs/other/conflicts-of-interest.pdf); FCA "Guidance consultation Supervising retail investment advice: inducements and conflicts of interest", September 2013 [www.fca.org.uk/static/documents/guidance-consultations/gc13-05.pdf](http://www.fca.org.uk/static/documents/guidance-consultations/gc13-05.pdf); FCA "TR14/19 – Wealth management firms and private banks – Conflicts of interest: in-house investment products" November 2014 [www.fca.org.uk/news/tr14-19-wealth-management-firms-private-banks-conflicts-of-interest](http://www.fca.org.uk/news/tr14-19-wealth-management-firms-private-banks-conflicts-of-interest)

<sup>10</sup> They rather demonstrate that appropriate action has been taken when firms do not comply with the rules.

## Remuneration

### Changes required as a consequence of MiFID II

52. Article 24(10) of MiFID II introduces a specific provision in relation to remuneration, which requires a firm that provides investment services and activities to clients to ensure that it does not remunerate or assess the performance of its staff in a way that conflicts with its duty to act in the best interests of its clients. In particular, a firm must not make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to its staff to recommend a particular financial instrument to a retail client when the firm could offer a different financial instrument which would better meet that client's needs.
53. Article 27 of the MiFID II implementing regulation also sets out a number of directly applicable requirements in relation to firm's remuneration policies and practices.
54. As part of this consultation, we are proposing to transpose Article 24(10) of MiFID II as a new rule in SYSC 19F. Article 27 of the MiFID II implementing regulation applies directly to MiFID firms, so there is no need for us to transpose it into our Handbook.
55. MiFID II also requires us to introduce a regime for Article 3 firms that is 'analogous' to the remuneration requirements articulated under the Directive, and also requires that Member States do not treat branches of non-EEA firms more favourably than branches of EEA firms.
56. We have therefore proposed to apply the new rule in SYSC 19F to common platform firms (other than collective portfolio management investment firms), as well as Article 3 MiFID firms and third-country firms. In addition, we have proposed to require Article 3 MiFID firms, third-country firms and dormant account fund operators to comply with a rule in SYSC 19F the content of which is similar to Article 27 of the MiFID Regulation.
57. The MiFID II remuneration provisions are intended to introduce a common approach across the EU and we have little discretion around their implementation, as such we provide a high level CBA.

### Existing rules and guidelines on remuneration

58. As noted above, MiFID II introduces a specific provision on remuneration. Whilst there were no explicit restrictions under MiFID I in relation to remuneration, there were general requirements in relation to managing conflicts of interest under Article 13 (3) of MiFID I. In addition, ESMA published detailed Guidelines on remuneration for MiFID firms that was designed to ensure the consistent and improved implementation of existing MiFID conflicts of interest and conduct of business requirements in the area of remuneration under MiFID. In particular, the guidelines already require firms to align their remuneration policies and practices with effective conflicts of interest management, ensure that remuneration policies and practices do not create incentives that may lead relevant persons to favour their own (or the firm's) interests to the potential detriment of clients, and prevent firms from assessing variable remuneration purely on quantitative criteria (for example sales volumes).
59. In addition, we currently have various domestic provisions in place to ensure that firms' remuneration policies do not create incentives for employees to act in ways that are not in the best interests of the consumer. For example, at a high level, Principle 3 of our Principles for Businesses requires all regulated firms to take reasonable care to organise and control their affairs responsibly and effectively. More detailed remuneration provisions focusing on specific types of firms are set out in our Handbook (SYSC Chapter 19), which currently contains five separate remuneration codes. While these remuneration codes focus on material risk takers, they do contain several principles that apply on a firm-wide basis, including a rule that a firm's remuneration policy must include measures to avoid conflicts of interest. Firms are also required to ensure that the fixed and

variable components of total remuneration are appropriately balanced.

60. In January 2013, the FSA also introduced guidance to help firms manage the risks associated with sales-based incentive structures. This was followed by thematic work to assess if and how firms were using the guidance to manage risks to consumers. The findings, as published in March 2014, showed that the response to the guidance was positive and that FCA intervention had resulted in significant change and increased awareness and focus on financial incentives. This work was complemented by guidance on the risks to customers from performance management at firms, published in July 2015.

### Costs

61. Given the existing domestic rules and guidance in this area, we think that the new remuneration rules will result in minimal incremental costs to firms. In particular, Article 24(10) of MiFID II prohibits firms from remunerating or assessing the performance of staff in a way that conflicts with the clients' best interests. Firms subject to our Remuneration Codes are already required to ensure that their remuneration policies include measures to avoid conflicts of interest. In addition, the ESMA Guidelines provide that firms should consider the conduct of business and conflicts of interest risks that may arise when designing or reviewing remuneration policies and practice.
62. Where the rules under MiFID II apply to firms for the first time, we expect firms to incur some compliance costs in order to fully incorporate these rules into their remuneration policies. Firms may, for example, need to review their existing remuneration policies and practices to consider whether they introduce any conflicts of interest or sales targets that could be an incentive for staff to recommend a particular financial instrument to a retail client when the firm could offer a different financial instrument which would better meet that client's needs. Firms may need to change employment contracts and renegotiate bonus schemes if they are not in line with the rules under MiFID II.
63. We do not expect there to be a detrimental effect on competition for those firms subject to SYSC 19F and the related MiFID regulation, as there are similar rules and guidance that apply to firms that are not subject to SYSC 19F in relation to managing conflicts of interest and the remuneration of sales staff (as set out in Chapter X of the Consultation Paper).

### Benefits

64. The inclusion of a specific rule on remuneration will promote the consistent application of the conflicts of interest principle under MiFID II, which will support the same level of investor protection in different jurisdictions. There may also be benefits flowing from changes in behaviour from firms that are currently not complying with existing requirements to manage conflicts of interest, and a renewed focus from all affected firms on how remuneration policies and practices may impact on clients.

### CASS

65. As set out in Chapter 7, we propose to make the following changes to existing CASS provisions for all designated investment business, including non-MiFID business:
- prohibit TTCAs with retail clients and require firms to consider the appropriateness of TTCAs for non-retail clients
  - only allow firms to agree with third parties that client assets can be used to satisfy a firm's

obligations if required by law, and to record in client contracts

- extend safeguarding provisions for onward delegation to third party custodians
  - when placing a client's money in a QMMF, require firms to make internal assessments and obtain express client consent
  - provide a conditional proportionality exemption for CASS small firms from the prohibition on depositing over 20% of client money in a group bank
  - require firms to have measures to prevent unauthorised use of client assets
  - require firms to take collateral and monitor its continuing suitability when arranging securities lending for clients
- 66.** Section 138I(2)(a) of FSMA requires us to publish a cost benefit analysis (CBA) when proposing draft rules. Section 138L(3) of FSMA states that section 138I(2)(a) does not apply when we consider that there will be either no or minimal incremental cost increases.
- 67.** We believe that the changes described above will only entail minimal incremental costs for firms conducting non-MiFID business. We set out our analysis below.

#### **Costs**

- 68.** We think the new requirements do not materially impact firms conducting non-MiFID business either because they are not engaged in the relevant activity or are already subject to other rules effecting the new requirements. In particular, in our view:
- The new requirements are incremental changes to the current CASS rules (as described the CASS chapter above).
  - The majority of firms conducting non-MiFID business in the UK also conduct MiFID business and would often be implementing the new requirements for all business, including updating client contracts.
  - We did not find any evidence of firms facing competitive disadvantages owing to the new requirements.
  - New requirements addressing appropriateness of TTCAs are likely to be met by many firms.
  - We understand most firms already have measures to manage such client liabilities and so would not be impacted greatly by the requirement to do so.
  - Certain firms conducting non-MiFID business are unlikely to be engaged in the activities affected by the new requirements. For example, peer-to-peer lending firms would not be impacted by the TTCA restriction with retail clients because under an existing prohibition in SYSC.<sup>11</sup>
  - We intend to retain our longstanding provisions of allowing professional clients of non-MiFID firms to opt out of the CASS rules in the industry.
- 69.** Some firms may need to review compliance procedures and client agreements against the new requirements. We do not expect this to result in material costs in relation to CASS non-MiFID

<sup>11</sup> SYSC 4.1.8ER

business, as firms will have to update procedures and agreements for MiFID business and in relation to other Handbook modules.

### Benefits

**70.** We propose extending the requirements to non-MiFID business to address market failures. In particular:

- Clients do not always distinguish between MiFID business and non-MiFID business. If we do not apply the same protections for both, this could be harmful to clients undertaking non-MiFID business due to information asymmetries and may assume one level of protection without actually receiving it.
- The new requirements enhance consumer protection. For example, retail clients are unlikely to be able to understand or have the resources to monitor the risks of entering into a TTCA. The barring TTCA with retail clients would therefore ensure retail client protection in line with our consumer protection objective. This applies regardless of the type of business being conducted.
- Some new requirements address systematic risks and would advance our integrity objective. For example, requiring firms not to solely rely on credit rating agency (CRA) ratings when depositing client money in a QMMF addresses the risk of mechanistic reliance on credit rating agency ratings.<sup>12</sup>

**71.** In addition to the benefits of individual policy changes, some of which are in line with the incremental increase in burden, collectively, we believe the new requirements are beneficial in the following ways:

- They would ensure the same standards and investor protections for all designated investment business (status quo).
- Firms doing both MiFID and non-MiFID business have indicated in industry discussions that they would prefer one set of rules for simplicity, consistency and lower compliance costs compared to two rulebooks and to increase compliance by minimising errors that could occur between differentiated rule books. This could mean better outcomes for clients, especially in insolvency, through lower costs of interpreting records for the return of money to clients.
- Supervision of a single rulebook approach could be more effective.

**72.** As noted in the CASS chapter 7, MiFID II provides an exemption to the rule relating to the 20% limit on depositing client money in a group bank. Implementing this provision would provide some firms flexibility in compliance.

### Third country branches

**73.** CASS applies to third country branches in the same way as to other firms, so any impact is included in the CBA above.

<sup>12</sup> This change implements a post-crisis G20 commitment to reduce systemic and mechanistic reliance on CRA ratings, thought to have contributed to sudden market movements in the first wave of the crisis.

### Complaint handling (DISP)

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74. The revised complaint handling rules in MiFID II extend the existing rules to complaints from all clients and to services provided in relation to structured deposits. They also set out more detail of the way in which firms complaint handling procedures should operate. The MiFID II complaint handling rules are intended to introduce a common approach across the EU and we have little discretion around their implementation, as such we provide a high level CBA.

#### Costs

75. In relation to the costs to firms arising from the proposed amendments, we do not anticipate that these will amount to any significant increases in the current costs of handling complaints relating to MiFID business, to which DISP already applies. However, the current complaint handling rules and complaints reporting rules in DISP apply to complaints from retail clients, whereas the new provisions also apply to other clients. Whilst we anticipate that the complaints from non-retail clients may be likely to be lower in number, this could increase the overall numbers of complaints which MiFID firms receive and the associated costs (including costs associated with recording and reporting complaints).

#### Benefits

76. We believe there are clear benefits to consumers resulting from the new provisions relating to complaint handling, complaints resolution and consumers awareness. Respondent will be required to keep complainants informed about the complaints process, including by providing copies of the complaints procedure, and telling them about the Financial Ombudsman Service. This will help to ensure that both respondents and complainants have the information they need to ensure the fair resolution of complaints.
77. The requirements for firms to undertake analysis of MiFID complaints, identifying any issues arising, brings this category of complaints in line with the existing provisions in DISP which require firms to carry out 'root cause analysis' of complaints.
78. The requirements to record, report and publish data on complaints in relation to MiFID business will both assist the FCA in its supervisory functions, as well as providing the necessary levels of transparency for consumers. These are consistent with the recording, reporting and publication requirements for other types of regulated business.

### Whistleblowing

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79. MiFID II includes an obligation for investment firms to have in place procedures for firms to report through an independent and anonymous channel a potential or actual breach of requirements under MiFID II.
80. A common approach across the EU is intended for the implementation of this MiFID II obligation and we therefore we provide a high level CBA below.

#### Costs

81. In addition to the MiFID II requirements, from 7 September 2016 firms will be under domestic requirements to establish whistleblowing procedures. The whistleblowing requirements under MiFID II should not add to the costs of the arrangements that firms are putting in place to comply with that obligation.

#### Benefits

- 82.** Whistleblowing should help firms to be able to improve their risk management by making them aware of potential or actual breaches of regulatory requirements that they would not otherwise be aware of, or at an earlier point than they might otherwise be aware of. This should assist in reducing consumer detriment through breaches of regulatory obligations.

### **SYSC Navigation Guide**

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- 83.** The SYSC Navigation Guide is a guide to the legal carpentry of the implementation of the MiFID II rules in this area. There is therefore no FSMA obligation on us to conduct a CBA or produce a compatibility statement. But we believe that the Guide has positive benefits in assisting market participants to have greater clarity about their obligations, which should also assist with consumer protection. The Guide therefore advances our strategic objective and our operational objectives.

# Annex 3

## Compatibility statement

### Compatibility with the FCA's general duties

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1. This annex follows the requirements set out in section 138I FSMA. When consulting on new rules, we are required by section 138I FSMA to include an explanation of why we consider the proposed rules are compatible with our strategic objective, advance one or more of our operational objectives, and have regard to the regulatory principles in section 3B FSMA. We are also required by section 138K(2) FSMA to state our opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons. We also note the application of section 139A (5) relating to consulting on guidance. This annex also includes our assessment of the equality and diversity implications of these proposals. Sections 1B (1) and 3B of FSMA require us to have regard to the regulatory principles.

### The FCA's objectives and regulatory principles

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2. Our proposals in this CP meet our strategic objective of ensuring that the relevant markets function well and are primarily intended to advance our operational objectives of:
  - enhancing market integrity, protecting and enhancing the integrity of the UK financial system, by ensuring there is adequate monitoring and management of positions in commodity derivatives positions, and
  - securing consumer protection, maintaining and securing an appropriate degree of protection for consumers, by ensuring firms are properly organised to comply with their obligations, including consumer protection obligations under MiFID II
  - promoting effective competition in the interests of consumers, by enhancing client asset rules, complaint handling and governance requirements
3. In preparing our proposals, we have paid attention to the regulatory principles set out in section 3B FSMA. In particular:

#### **The desirability of exercising our functions in a way that recognises differences in the nature and objectives of businesses carried on by different persons.**

4. We do not believe that our proposals discriminate against any particular business model or approach. The treatment of third-country firms and Article 3 firms ensures a similar treatment of firms with different business models conducting similar business.

- The principle that we should exercise our functions as transparently as possible.**
5. We believe that by consulting on our proposals we are acting in accordance with this principle.
- The need to use our resources in the most efficient and economical way.**
6. For the proposals in this CP in the limited areas where we have discretion in implementing MiFID II we have had regard to the burden on us in assessing how best to implement.
- The principle that a burden or restriction should be proportionate to the benefits.**
7. We believe the proposals in this CP containing burdens or restrictions are proportionate to the benefits.
- The desirability of publishing information relating to persons, or requiring persons to publish information.**
8. We have had regard to the desirability of publishing information in our MiFID II proposals which require firms to publish information to assist customers. These include those relating to conflicts of interest, which are covered by this CP. We believe that our proposals do not undermine this principle.

#### **Expected effect on mutual societies**

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9. Section 138K of FSMA requires us to state whether, in our opinion, our proposed rules have a significantly different impact on authorised mutual societies, compared to other authorised bodies. The relevant rules we propose to amend will apply, according to the powers exercised and to whom they are addressed, equally regardless of whether it is a mutual society or another authorised body.

#### **Equality and diversity**

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10. We are required under the Equality Act 2010 to 'have due regard' to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions. As part of this, we conduct an equality impact assessment to ensure that the equality and diversity implications of any new policy proposals are considered.
11. Our equality impact assessment (EIA) suggests that our proposals do not result in direct discrimination for any of the groups with protected characteristics (i.e. age, disability, gender, pregnancy and maternity, race, religion and belief, sexual orientation and transgender), nor do we believe that our proposals should give rise to indirect discrimination against any of these groups. As highlighted in the EIA the provisions for management bodies of investment firms seek to promote diversity. We welcome any comments respondents may have on any equality issues they believe may arise.

# Appendix 1

## Draft Handbook text

## MiFID 2 ORGANISATIONAL REQUIREMENTS AND MISCELLANEOUS PROVISIONS INSTRUMENT 2017

### Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”):
    - (a) section 137A (The FCA’s general rules);
    - (b) section 137B (FCA general rules: clients’ money, right to rescind etc);
    - (c) section 137H (General rules about remuneration);
    - (d) section 137T (General supplementary powers);
    - (e) section 138D (Action for damages);
    - (f) section 139A (Power of the FCA to give guidance);
    - (g) section 226 (Compulsory jurisdiction);
    - (h) paragraph 23 (Fees) of Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority);
    - (i) paragraph 19 (Establishment) of Schedule 3 (EEA Passport Rights);
    - (j) paragraph 20 (Services) of Schedule 3 (EEA Passport Rights); and
    - (k) paragraph 13(3)-(4) ([FCA’s]...rules) of Schedule 17 (The Ombudsman Scheme).
  - (2) the powers of direction, guidance and related provisions in or under the following provisions of the [Financial Services and Markets Act 2000 (Data Reporting Services) Regulations 2016]:
    - (a) regulation 20 (Fees);
    - (b) regulation 21 (Guidance); and
    - (c) regulation 23 (Reporting requirements).
  - (3) the powers of direction, guidance and related provisions in or under the following provisions of the [Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2016]:
    - (a) regulation 9 (Power to require information);
    - (b) regulation 20 (Fees);
    - (c) regulation 21 (Guidance); and
    - (d) regulation 23 (Reporting Requirements).
  - (4) paragraph 9 (Record-keeping and reporting requirements relating to relevant transitional complaints) of the Financial Services and Markets Act 2000 (Transitional Provisions) Complaints relating to General Insurance and Mortgages) Order 2004 (SI 2004/454);
  - (5) paragraph 15 (Record-keeping and reporting requirements relating to relevant complaints) of the Financial Services and Markets Act 2000 (Transitional

Provisions) (Ombudsman Scheme and Complaints Scheme) Order 2001 (SI 2001/2326); and

- (6) in relation to the Glossary of definitions, the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA's Handbook.

- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

### Commencement

- C. This instrument comes into force on 3 January 2018, except for the following provisions:
- (1) certain definitions, or parts of definitions, in Annex A (Glossary of definitions) which are used in Handbook provisions in this instrument referred to in (2), (3) and (4) below which will not come into force on 3 January 2018;
  - (2) the provisions in Annex C (Fees Manual (FEES)), which will come into force on [•]<sup>1</sup>;
  - (3) MAR 10.2.4 D and MAR 10 Annex 1 D in Annex G (Market Conduct sourcebook (MAR)), relating to the application process for non-financial entities for the exemption from position limit obligations, which will come into force on [•]<sup>2</sup>; and
  - (4) the provisions of SUP 13 in Annex H (Supervision manual (SUP)), which relate to the exercise of passport rights by UK firms, which will come into force on [•]<sup>3</sup>.

### Amendments to the FCA Handbook

- D. The modules of the FCA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below.

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Fees manual (FEES)	Annex C
Prudential sourcebook for Investment Firms (IFPRU)	Annex D
Interim Prudential sourcebook for Investment Businesses	Annex E

<sup>1</sup> Date to be inserted following the making of each of the [Financial Services and Markets Act 2000 (Data Reporting Services) Regulations 2016] and [Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2016].

<sup>2</sup> Date to be inserted following the making of the [Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2016].

<sup>3</sup> Date to be inserted following the making of the [Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2016].

(IPRU(INV))	
Client Assets sourcebook (CASS)	Annex F
Market Conduct sourcebook (MAR)	Annex G
Supervision manual (SUP)	Annex H
Dispute Resolution: Complaints (DISP)	Annex I

### Notes

- E. In the Annexes to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

### European Union Legislation

- F. Although European Union legislation is reproduced in this instrument, only European Union legislation reproduced in the Official Journal of the European Union is deemed authentic.

### Citation

- G. This instrument may be cited as the MiFID 2 Organisational Requirements and Miscellaneous Provisions Instrument 2017.

By order of the Board  
[date] 2017

[*Editor's note:* The text in this Annex sets out new definitions, amended definitions and, for ease of reference, definitions that were consulted on as part of CP15/43 *Markets in Financial Instruments Directive II Implementation – Consultation Paper 1* (December 2015), where such definitions are referred to in the draft instrument. Definitions from CP15/43 that are amended for the purposes of this consultation are preceded with an asterisk. The text in this Annex also takes into account the changes suggested by CP15/34 *Regulatory fees and levies: policy proposals for 2016/17* (October 2015), as if they were made.]

## Annex A

### Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text in this section is not underlined.

<i>algorithmic trading</i>	trading in <i>financial instruments</i> which meets the following conditions: <ul style="list-style-type: none"> <li>(a) where a computer algorithm automatically determines individual parameters of orders such as whether to initiate the order, the timing, price or quantity of the order for how to manage the order after its submission; and</li> <li>(b) there is limited or no human intervention;</li> </ul> <p>but does not include any system that is only used for the purpose of routing orders to one or more <i>trading venues</i> or the processing of orders involving no determination of any trading parameters or for the confirmation of orders or the post-trade processing of executed transactions.</p> <p>[Note: article 4(1)(39) of <i>MiFID</i>]</p>
<i>APA</i>	<i>approved publication arrangement.</i>
<i>*approved publication arrangement</i>	a <i>person</i> permitted under regulation 5 of the <i>DRS Regulations</i> to provide services to an <i>investment firm</i> for the <i>investment firm</i> to meet its obligations under articles 20 and 21 of <i>MiFIR</i> .
<i>ARM</i>	<i>approved reporting mechanism.</i>
<i>article 3 MiFID firm</i>	a <i>firm</i> that complies with regulation 4(8) of the <i>MiFI Regulations</i> .
<i>*branch passport</i>	a notification made in accordance with article 35(2) of <i>MiFID</i> and <i>ITS 4A</i>

<i>notification</i>	Annex VI.
<i>central competent authority</i>	(in <i>MAR 10</i> ) in respect of a particular <i>commodity derivative</i> traded in significant volumes on <i>trading venues</i> in more than one <i>EEA</i> jurisdiction, the <i>competent authority</i> of the <i>trading venue</i> where the largest volume of trading in the <i>commodity derivative</i> takes place in the [ <i>EEA</i> ].
<i>commodity derivative</i>	those <i>financial instruments</i> defined in point (44)(c) of article 4(1) <i>MIFID</i> ; which relate to: <ul style="list-style-type: none"> <li>(a) a <i>commodity</i>; or</li> <li>(b) an underlying referred to in Section C(10) of Annex I to <i>MIFID</i>; or in points (5), (6), (7) and (10) of Section C of Annex I to <i>MIFID</i>.</li> </ul> <p>[Note: article 2(1)(30) <i>MiFIR</i>]</p>
<i>*consolidated tape provider</i>	a <i>person</i> permitted under regulation 5 of the <i>DRS Regulations</i> to provide the service of: <ul style="list-style-type: none"> <li>(1) collecting trade reports for <i>financial instruments</i> listed in articles 6, 7, 10, 12, 13, 20 and 21 of <i>MiFIR</i> from <i>regulated markets</i>, <i>MTFs</i>, <i>OTFs</i> and <i>APAs</i>; and</li> <li>(2) consolidating the trade reports into a continuous electronic live data stream providing price and volume data per <i>financial instrument</i>.</li> </ul>
<i>CTP</i>	<i>consolidated tape provider</i> .
<i>data reporting service</i>	(in accordance with regulation 2(1) of the <i>DRS Regulations</i> ) the operation of an <i>APA</i> , an <i>ARM</i> or a <i>CTP</i> when carried out as a regular occupation or business activity.
<i>*data reporting services provider</i>	a <i>person</i> operating one or more <i>data reporting services</i> .
<i>DRS Regulations</i>	the Financial Services and Markets Act 2000 (Data Reporting Services) Regulations 2016 (SI 2016/[XXXX]).
<i>economically equivalent OTC contract</i>	(in <i>MAR 10</i> ) <ul style="list-style-type: none"> <li>(1) in respect of a <i>commodity derivative</i> traded on a <i>trading venue</i>, an <i>OTC derivative</i> which has identical contractual specifications and terms and conditions, excluding the following, to those of that <i>commodity derivative</i>: <ul style="list-style-type: none"> <li>(a) different lot size specifications;</li> <li>(b) delivery dates diverging by less than one calendar day; and</li> </ul> </li> </ul>

- (c) different post-trade risk management arrangements;
- (2) in respect of an *emission allowance* traded on a *trading venue*, a contract which has identical contractual specifications and terms and conditions, excluding the following, to those of that *emission allowance*:
  - (a) different lot size specifications;
  - (b) delivery dates diverging by less than one calendar day; and
  - (c) different post-trade risk management arrangements.

[Note: article [6] of [RTS 21]]

<i>Emission Allowance Trading Directive</i>	Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community, and amending Council Directive 96/61/EC.
<i>EU regulation</i>	a regulation made pursuant to article 288 of the <i>Treaty</i> .
<i>incoming data reporting service provider</i>	a <i>data reporting services provider</i> authorised under Title V of <i>MiFID</i> in an <i>EEA State</i> , other than the <i>UK</i> , providing <i>data reporting services</i> in the <i>UK</i> .
<i>investment services and activities passport notification</i>	a notification made in accordance with article 34(2) of <i>MiFID</i> and <i>ITS 4A</i> Annex I.
<i>ITS 4A</i>	Commission Implementing Regulation (EU) No [.../...] laying down implementing technical standards with regard to standard forms, templates and procedures for the transmission of information in accordance with <i>MiFID</i> ( <a href="https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-esma-1006_-_mifid_ii_final_report_on_mifid_ip_technical_standards.pdf">https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-esma-1006_-_mifid_ii_final_report_on_mifid_ip_technical_standards.pdf</a> ).
<i>*ITS 4</i>	Commission Implementing Regulation (EU) No [.../...] laying down implementing technical standards with regard to the format of position reports by investment firms and market operators ( <a href="https://www.esma.europa.eu/sites/default/files/library/2015-1858_-_final_report_-_draft_implementing_technical_standards_under_mifid_ii.pdf">https://www.esma.europa.eu/sites/default/files/library/2015-1858_-_final_report_-_draft_implementing_technical_standards_under_mifid_ii.pdf</a> ).
<i>ITS 5</i>	Commission Implementing Regulation (EU) No .../... laying down implementing technical standards with regard to the format and the timing of position reports by investment firms and market operators of trading venues

according to *MIFID* of the European Parliament and of the Council on markets in financial instruments ([https://www.esma.europa.eu/sites/default/files/library/2015-1858\\_-\\_final\\_report\\_-\\_draft\\_implementing\\_technical\\_standards\\_under\\_mifid\\_ii.pdf](https://www.esma.europa.eu/sites/default/files/library/2015-1858_-_final_report_-_draft_implementing_technical_standards_under_mifid_ii.pdf)).

<i>market data processing system</i>	the IT system set up and maintained by the <i>FCA</i> to receive data under <i>MiFID</i> and <i>MiFIR</i> .
<i>markets data</i>	data that must be reported to the <i>FCA</i> under: <ul style="list-style-type: none"> <li>(a) articles 22 and 27 of <i>MiFIR</i>; and</li> <li>(b) article 58 of <i>MiFID</i>.</li> </ul>
<i>*member of the management body</i>	(in relation to a <i>UK recognised body</i> ) <u>any one of the following</u> : <ul style="list-style-type: none"> <li>(a) its chairman or president;</li> <li>(b) its <i>chief executive</i>;</li> <li>(c) a member of its <i>governing body</i>; <u>or</u></li> <li>(d) a <i>person</i> who, alone or jointly with one or more others, is responsible under the immediate authority of a <i>person</i> in (a), (b) or (c) or a committee of the <i>governing body</i> for the conduct of any <i>relevant function</i>.</li> </ul>
<i>MiFID complaint</i>	any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a <i>person</i> about the provision of, or failure to provide, a financial service or a <i>redress determination</i> : <ul style="list-style-type: none"> <li>(a) which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and</li> <li>(b) either: <ul style="list-style-type: none"> <li>(i) to which article 26 of the <i>MiFID Org Regulation</i> applies; or</li> <li>(ii) which concerns the <i>equivalent business of a third country investment firm</i>.</li> </ul> </li> </ul> <p>[Note: For the application of article 26 of the <i>MiFID Org Regulation</i>, see articles 1.1, 1.3, 1.4, 39 and 41 of <i>MiFID</i>, and article 1 of the <i>MiFID Org Regulation</i>, and <i>DISP</i> 1.1A.3G and <i>DISP</i> 1.1A.4G]</p> <p>[Note: a <i>MiFID complaint</i> which falls within the jurisdiction of the <i>Financial Ombudsman Service</i> is a <i>complaint</i>]</p>

<i>MiFID Delegated Directive</i>	Commission Delegated Directive (EU) [xxx/xxx] of [day/month/year] supplementing <i>MiFID</i> of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits ( <a href="http://ec.europa.eu/finance/securities/docs/isd/mifid/160407-delegated-directive_en.pdf">http://ec.europa.eu/finance/securities/docs/isd/mifid/160407-delegated-directive_en.pdf</a> ).
<i>MiFID Org Regulation</i>	Commission Delegated Regulation (EU) [xxx/xxx] of [day/month/year] supplementing <i>MiFID</i> of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive ( <a href="http://ec.europa.eu/finance/securities/docs/isd/mifid/160425-delegated-regulation_en.pdf">http://ec.europa.eu/finance/securities/docs/isd/mifid/160425-delegated-regulation_en.pdf</a> ).
<i>MiFI Regulations</i>	the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2016 (SI 2016/[xx]).
<i>non-financial entity</i>	a natural or legal person other than: <ul style="list-style-type: none"> <li>(a) an <i>investment firm</i> authorised in accordance with <i>MIFID</i>,</li> <li>(b) a <i>CRD credit institution</i>,</li> <li>(c) an <i>insurance undertaking</i> authorised in accordance with Directive 73/239/EEC,</li> <li>(d) an assurance undertaking authorised in accordance with Directive 2002/83/EC of the European Parliament and of the Council,</li> <li>(e) a <i>reinsurance undertaking</i> authorised in accordance with Directive 2005/68/EC of the European Parliament and of the Council,</li> <li>(f) a <i>UCITS</i> and, where relevant, its <i>management company</i>, authorised in accordance with the <i>UCITS Directive</i>,</li> <li>(g) an institution for occupational retirement provision within the meaning of article 6(a) of Directive 2003/41/EC of the European Parliament and of the Council,</li> <li>(h) an <i>alternative investment fund</i> managed by <i>AIFMs</i> authorised or registered in accordance with the <i>AIFMD</i>,</li> <li>(i) a CCP authorised in accordance with <i>EMIR</i>,</li> <li>(j) a central securities depository authorised in accordance with <i>CDSR</i>.</li> </ul>

[Note: article [2] of [*RTS 21*]]

<i>organised trading facility</i>	<p>(in accordance with article 3(1) of the <i>Regulated Activities Order</i>):</p> <p>(a) an organised trading facility (within the meaning of article 4(1)(23) of <i>MiFID</i>) operated by an <i>investment firm</i>, a <i>credit institution</i> or a <i>market operator</i>; or</p> <p>(b) a facility which:</p> <p style="padding-left: 20px;">(i) is operated by an <i>investment firm</i>, a <i>credit institution</i> or a <i>market operator</i> which does not have a <i>Home State</i>; and</p> <p style="padding-left: 20px;">(ii) if its operator had a <i>Home State</i>, would be an <i>organised trading facility</i> within the meaning of article 4(1)(23) of <i>MiFID</i>.</p> <p>[Note: article 4(1)(23) of <i>MiFID</i>]</p>
<i>OTF</i>	<i>organised trading facility</i> .
<i>RTS 21</i>	Commission Delegated Regulation (EU) No [...] of [...] supplementing <i>MiFID</i> with regard to regulatory technical standards for the application of position limits to commodity derivatives ( <a href="https://www.esma.europa.eu/sites/default/files/library/2016-668_annex_opinion_on_draft_rts_21.pdf">https://www.esma.europa.eu/sites/default/files/library/2016-668_annex_opinion_on_draft_rts_21.pdf</a> ).
<i>securities financing transactions regulation</i>	Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 ( <a href="http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015R2365">http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015R2365</a> ). <sup>4</sup>
<i>third country firm</i>	<p>(in <i>SYSC</i>) either:</p> <p>(a) a <i>third country investment firm</i>; or</p> <p>(b) the <i>UK</i> branch of a <i>non-EEA bank</i>.</p>
<i>title transfer collateral arrangement</i>	<p>(1) (in <i>CASS 6</i>) an arrangement by which a <i>client</i> transfers full ownership of a <i>safe custody asset</i> (or an asset which would be a <i>safe custody asset</i> but for the arrangement) to a <i>firm</i> for the purpose of securing or otherwise covering present or future, actual, contingent or prospective obligations.</p> <p>(2) (in <i>CASS 7</i>) an arrangement by which a <i>client</i> transfers full ownership of <i>money</i> to a <i>firm</i> for the purpose of securing or otherwise covering present or future, actual, contingent or</p>

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<sup>4</sup> *Editor's note:* The text in this Annex sets out the definition being consulted on as part of CP16/14 *UCITS V Level 2 Regulation, SFTR and consequential changes to the Handbook* (May 2016) as if it were made.

prospective obligations.

[Note: recital 52 to *MiFID*]

*TTCA* a *title transfer collateral arrangement*.

Amend the following definitions as shown.

<i>advising on investments (except P2P agreements)</i>	<p>the <i>regulated activity</i>, specified in article 53(1) of the <i>Regulated Activities Order</i> (Advising on investments), which is in summary: advising a <i>person</i> if the advice is:</p> <p>(1) ...</p> <p>(2) advice on the merits of their doing any of the following (whether as principal or agent):</p> <p style="padding-left: 20px;">(a) <i>buying, selling</i>, subscribing for or underwriting a particular <i>investment</i> which is a <i>security</i> or <i>relevant investment</i> (that is, any <i>designated investment</i> (other than a <i>P2P agreement</i>), <i>funeral plan contract</i>, <i>pure protection contract</i>, <i>general insurance contract</i> <del>or</del> right to or interests in a <i>funeral plan contract</i> <u>or structured deposit</u>);</p> <p>...</p>
<i>ancillary service</i>	<p>(1) (except in <i>CONC</i>) any of the services listed in Section B of Annex I to <i>MiFID</i>, that is:</p> <p style="padding-left: 20px;">(a) safekeeping and administration of <i>financial instruments</i> for the account of <i>clients</i>, including custodianship and related services such as cash/collateral management <u>and excluding maintaining securities accounts at the top tier level; ('central maintenance service')</u> referred to in point 2 of section A of the Annex to <i>CSDR</i>;</p> <p>...</p>
<i>*approved reporting mechanism</i>	<p><del>a trade matching or reporting system approved by the FCA in accordance with Section 412A of the Act</del> <u>a person permitted under regulation 5 of the DRS Regulations to provide services to an investment firm in order for it to meet its obligations under article 26 of MiFIR.</u></p>
<i>arranging (bringing about) deals in investments</i>	<p>the <i>regulated activity</i>, specified in article 25(1) of the <i>Regulated Activities Order</i>, which is in summary: making arrangements for another <i>person</i> (whether as <i>principal</i> or agent) to <i>buy, sell</i>, subscribe for or underwrite a particular <i>investment</i> which is:</p>

...

(e) *rights to or interests in investments* in (b), (c) or (d) ; or(f) a structured deposit.*branch*

(a) ...

(b) (in relation to an *investment firm*):(i) a place of business other than the head office which is a part of an *investment firm*, which has no legal personality and which provides *investment services and/or activities* and which may also perform *ancillary services* for which the *firm* has been ~~authorized~~ authorised;(ii) all the places of business set up in the same *EEA State* by an *investment firm* with headquarters in another *EEA State* are regarded as a single branch;[Note: article ~~4(1)(26)~~ 4(1)(30) of *MiFID*]

...

*commodity*(1) (except for (2) ~~and (3)~~) a physical asset (other than a financial instrument or cash) which is capable of delivery.(2) (for the purpose of calculating *position risk requirements*) any of the following (but excluding gold):

(a) a commodity within the meaning of paragraph (1); and

(b) any:

(i) physical or energy product; or

(ii) of the items referred to in paragraph 10 of Section C of Annex 1 of the *MiFID* as an underlying with respect to the derivatives mentioned in that paragraph; which is, or can be, traded on a secondary market.(3) ~~(in relation to the *MiFID Regulation*, including the definitions of a *financial instrument* and an *ancillary service*)~~ (in relation to *MiFID* or *MiFIR*) any goods of a fungible nature that are capable of being delivered, including metals and their ores and alloys, agricultural products, and energy such as electricity, ~~not including services or other items that are not goods, such as currencies or rights in real estate, or that are entirely intangible.~~[Note: article ~~2(1)~~ of the *MiFID Regulation* article 2(6) of the *MiFID*]

Org Regulation]

<i>common platform firm</i>	...	(c) a <i>UK MiFID investment firm</i> which falls within the definition of 'local firm' in <del>Article 3.1P of the Capital Adequacy Directive</del> <u>article 4(1)(4) of the EU CRR</u> ;
	...	
<i>common platform organisational requirements</i>	(1) <u>SYSC 4 to SYSC 9; and</u>	
	(2) <u>those articles of the MiFID Org Regulation as applied in accordance with SYSC 1 Annex 1 2.8AR, SYSC 1 Annex 1 3.2-AAAR, SYSC 1 Annex 1 3.2-AAR, SYSC 1 Annex 1 3.2CR and SYSC 1 Annex 1 3.3R.</u>	
<i>common platform record-keeping requirements</i>	<del>the record keeping requirements applicable to common platform firms set out in</del> <u>(in relation to common platform firms) the following:</u>	
	(1) <u>SYSC 9; and</u>	
	(2) <u>those articles of the MiFID Org Regulation as applied in accordance with SYSC 1 Annex 1 2.8AR, SYSC 1 Annex 1 3.2-AAAR, SYSC 1 Annex 1 3.2-AAR, SYSC 1 Annex 1 3.2CR and SYSC 1 Annex 1 3.3R.</u>	
<i>common platform requirements</i>	(1) <u>SYSC 4 to SYSC 10; and</u>	
	(2) <u>those articles of the MiFID Org Regulation as applied in accordance with SYSC 1 Annex 1 2.8AR, SYSC 1 Annex 1 3.2-AAAR, SYSC 1 Annex 1 3.2-AAR, SYSC 1 Annex 1 3.2CR and SYSC 1 Annex 1 3.3R.</u>	
<i>competent authority</i>	...	
	(4) the authority, designated by each <i>EEA State</i> in accordance with <del>Article 48</del> <u>article 67</u> of <i>MiFID</i> , unless otherwise specified in <i>MiFID</i> .	
		[Note: <del>article 4(1)(22)</del> <u>4(1)(26)</u> of <i>MiFID</i> ]
	...	
		<del>[Note: This definition is based on the definition contained in the CRD (Consequential Amendments) Instrument 2006 which was consulted on in the consultation paper Strengthening Capital Standards 2 (CP 06/3)]</del>
<i>competent employees rule</i>	(a) for a <i>firm</i> which is not a <del>common platform firm</del> <u>any of (b) to (d) below, SYSC 3.1.6R</u> ;	
	(b) for a <i>common platform firm</i> , <del>SYSC 5.1.1R</del> <u>article 21(1)(d) of the</u>	

MiFID Org Regulation that applies in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR; -

- (c) for an article 3 MiFID firm and a third country firm, article 21(1)(d) of the MiFID Org Regulation that applies in accordance with SYSC 1 Annex 1 2.8R, SYSC 1 Annex 1 2.8AR and SYSC 1 Annex 1 3.2CR; and
- (d) for a UCITS firm, SYSC 5.1.1R.
- complaint* ...
- (2) (in ~~SUP 10 and DISP~~, except *DISP* 1.1 and (in relation to *collective portfolio management*) the consumer awareness rules, the complaints handling rules and the complaints record rule ~~in relation to MiFID business~~, and in *CREDS* 9) any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a *person* about the provision of, or failure to provide, a financial service or a *redress determination*, which:
- ...
- (3) (in *DISP* 1.1, ~~the consumer awareness rules only~~ and (in relation to *collective portfolio management*) and in the consumer awareness rules, the complaints handling rules and the complaints record rule only in relation to MiFID business and collective portfolio management) any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a *person* about the provision of, or failure to provide, a financial service or a *redress determination*, which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience.
- conflicts of interest policy*
- (1) (except in MAR 8) the policy established and maintained in accordance with SYSC 10.1.10R.
- (2) (in *MAR* 8) the policy established and maintained in accordance with *MAR* 8.2.8G which:
- (a) identifies circumstances that constitute, or may give rise to, a conflict of interest arising from *benchmark submissions* and the process of gathering information in order to make *benchmark submissions*; and
- (b) sets out the process to manage such conflicts.
- consumer* ...
- (7) (in the definitions of *cross-border dispute*, *domestic dispute*, *sales contract* and *service contract*, and in *DISP* 1.1A.37R, *DISP* 2.7.3R

and *DISP* 2.7.9AR) has the meaning in regulation 3 of the *ADR Regulations*, which is an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft, or profession.

[Note: article 4(1) of the *ADR Directive*]

...

- control*
- (1) (except in (2) and (2A)) (in relation to the acquisition, increase or reduction of control of a *firm*) the relationship between a *person* and the *firm* or other *undertaking* of which the *person* is a controller.
- (2) (in *SYSC* 8 and *SYSC* 10) ~~control as defined in Article 1 of the Seventh Council Directive 83/349/EEC (The Seventh Company Law Directive) :~~
- (a) the relationship between a parent undertaking and a subsidiary, in all cases referred to in articles 22(1) and (2) of the *Accounting Directive*; or
- (b) a similar relationship between any natural or legal person and an undertaking.

[Note: article ~~4(1)(30)~~ 4(1)(35)(b) of *MiFID*]

...

*dealing in investments as agent* the *regulated activity*, specified in article 21 of the *Regulated Activities Order* (Dealing in investments as agent), which is in summary: *buying, selling, subscribing for or underwriting designated investments* (other than *P2P agreements*), *pure protection contracts* ~~or~~, *general insurance contracts* or *structured deposits* as agent.

*designated investment* a *security* or a contractually-based investment (other than a *funeral plan contract* and a right to or interest in a *funeral plan contract*), that is, any of the following *investments*, specified in Part III of the *Regulated Activities Order* (Specified Investments):

...

- (h) *stakeholder pension scheme* (article 82(1));
- (ha) ...
- (hb) *emissions auction product* (article 82A) where it is a *financial instrument*;
- (hc) *emissions allowance* (article 82B);

...

- designated investment business* any of the following activities, specified in Part II of the *Regulated Activities Order* (Specified Activities), which is carried on by way of business:
- ...
- (da) ...
- (daa) operating an *organised trading facility* (article 25DA);
- ...
- \*emissions emission allowance*
- (1) an 'allowance', within the meaning of article 3(a) of ~~Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC~~ the *Emission Allowance Trading Directive*;
- (2) (in relation to *MiFID business* other than in *MAR 10* (Commodity Derivative Position Limits and Controls and Position Reporting)) the *investment*, specified in article 82B of the *Regulated Activities Order* ('Emission Allowances'), which is in summary emission allowances:
- (a) consisting of any units recognised for compliance with the *Emission Allowance Trading Directive*; and
- (b) to which article 82B of the *Regulated Activities Order* applies; and
- (3) (in *MAR 10* (Commodity Derivative Position Limits and Controls and Position Reporting)):
- (a) an allowance consisting of any units recognised for compliance with Directive 2003/87/EC (Emission Trading Scheme), as specified in paragraph (11) of Section C of Annex I of *MiFID*; or
- (b) any *derivative* of such an allowance, whether falling under paragraph (4) or (10) of Section C of Annex I of *MiFID*.
- final response* ...
- (3) (in *DISP*) ~~has the meaning given in *DISP 1.6.2 R(1)*~~ either:
- (a) in relation to a *MiFID complaint*, a response in accordance with *DISP 1.1A.24EU*, *DISP 1.1A.25EU* and *DISP 1.1A.26R*; or
- (b) in relation to all other *complaints*, has the meaning given in *DISP 1.6.2R(1)*.
- \*financial* (1) ...

## instrument

- (d) options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash;
- (da) (in relation to derivative contracts relating to a currency) has the meaning in article 10 [link] of the *MiFID Org Regulation* (in summary):
- (i) an instrument which is not a contract within the meaning of paragraph 2 of that article; or
- (ii) a means of payment as described in paragraph 1(b) of that article;
- (e) options, futures, swaps, ~~forward rate agreements~~ forwards 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~~ other than by reason of default or other termination event );
- (f) 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, an MTF or an OTF, except for wholesale energy products (having regard to article 6 of the *MiFID Org Regulation*) traded on an OTF that must be physically settled where the conditions of article 5 of the *MiFID Org Regulations* are met;
- (g) options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in (f) and :
- (i) not being for commercial purposes having regard to article 7(4) of the *MiFID Org Regulation*;
- (ii) 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 call (see article 38(1), (2) and (4) of the *MiFID Regulation*) having regard to article 7(1) of the *MiFID Org Regulation*; and
- (iii) not being spot contracts having regard to articles 7 (1) and (2) of the *MiFID Org Regulation*;

...

- (j) options, futures, swaps, forward rate agreements and any other derivative contracts relating to:
  - (i) climatic variables;
  - (ii) freight rates;
  - (iii) emission allowances;
  - (iv) inflation rates or other official economic statistics;
  - (v) telecommunications bandwidth;
  - (vi) commodity storage capacity;
  - (vii) transmission or transportation capacity relating to commodities, whether cable, pipeline or other means;
  - (viii) an allowance, credit, permit, right or similar asset which is directly linked to the supply, distribution or consumption of energy derived from renewable resources;
  - (ix) a geological, environmental or other physical variable;
  - (x) any other asset or right of a fungible nature, other than a right to receive a service, that is capable of being transferred;
  - (xi) an index or measure related to the price or value of, or volume of transactions in any asset, right, service or obligation;
  - (xii) a derivative contract to which article 8 of the *MiFID Org Regulation* applies;

where the conditions in articles ~~38~~ 7(3) and (4) of the ~~*MiFID Regulation*~~ *MiFID Org Regulation* are met;

[Note: article ~~4(1)(17)~~ 4(1)(15) and section C of Annex I to *MiFID* and ~~articles 38 and 39 of the *MiFID Regulation*~~ articles 7 and 8 of the *MiFID Org Regulation*]

- (k) emission allowances consisting of any units recognised for compliance with the *Emission Allowance Trading Directive*;

firm

...

(8) (in SYSC 18, with the exception of ~~the guidance in SYSC 18.3.9G and SYSC 18.6~~):

- (a) A UK relevant authorised person except a small deposit taker; and
- (b) a firm as referred to in Chapter 1.1 of the PRA Rulebook: Solvency II Firms: Whistleblowing.

Home State ...

(2) (in relation to an *investment firm*):

...

[Note: article ~~4(1)(20)~~ 4(1)(55)(a) of *MiFID*]

...

(15) (in relation to a *data reporting services provider*):

- (a) the EEA State in which its head office is situated, for a natural person; or
- (b) the EEA State in which its registered office is situated, for a legal person; or
- (c) if the *data reporting services provider* has, under its national law, no registered office, the EEA State in which its head office is situated.

[Note: article 4(1)(55)(c) of *MiFID*]

Home State regulator ...

(4) (in *REC*) the competent authority (within the meaning of Article ~~(4)(1)(22)~~ 4(1)(26) of *MiFID*) of the *EEA State* which is the *Home State* in relation to the *EEA market operator* concerned.

...

(6) (for a *data reporting services provider*) the competent authority (within the meaning of article 4(1)(26) of *MiFID*) of the *EEA State* which is the *Home State* for that *data reporting services provider*.

*IFPRU 125K firm* has the meaning in *IFPRU 1.1.9R* (Types of investment firm: *IFPRU 125K firm*), which in summary is an *IFPRU investment firm* that satisfies the

following conditions:

...

- (e) it does not operate a *multilateral trading facility* or an organised trading facility.

*IFPRU 50K firm*

has the meaning in *IFPRU* 1.1.10R (Types of investment firm: IFPRU 50K firm) which in summary is an *IFPRU investment firm* that satisfies the following conditions:

...

- (d) it does not operate a *multilateral trading facility* or an organised trading facility.

*investment firm*

- (1) any ~~person~~ person whose regular occupation or business is the provision of one or more *investment services* to third parties and/or the performance of one or more investment activities on a professional basis.

[Note: article 4(1)(1) of *MiFID*]

...

*investment service*

any of the following involving the provision of a service in relation to a *financial instrument*:

...

- (h) operation of ~~*multilateral trading facilities*~~: an MTF;

- (i) operation of an OTF.

[Note: article 4(1)(2) of, and section A of Annex 1 to, *MiFID* and article 6(5) of the *auction regulation*]

*investment services and/or activities*

any of the services and activities listed in Section A of Annex I to *MiFID* relating to any *financial instrument*, that is:

...

- (h) operation of ~~*multilateral trading facilities*~~: an MTF; and

- (i) operation of an OTF.

[Note: article 4(1)(2) of, and section A of Annex 1 to, *MiFID* and article 6(5) of the *auction regulation*]

*local firm*

~~a firm which falls within the definition of "local firm" in Article 3.1P of CAD, that is a firm dealing for its own account on markets in financial~~

~~futures or options or other derivatives and on cash markets for the sole purpose of hedging positions on derivatives markets, or dealing for the accounts of other members of those markets and being guaranteed by clearing members of the same markets, where responsibility for ensuring the performance of contracts entered into by such a firm is assumed by clearing members of the same markets~~

has the meaning in article 4(1)(4) of the *EU CRR*.

*making arrangements with a view to transactions in investments* the *regulated activity*, specified in article 25(2) of the *Regulated Activities Order* (Arranging deals in investments), which is in summary: making arrangements with a view to a *person* who participates in the arrangements *buying, selling, subscribing for or underwriting any of the following investments* (whether as *principal* or agent):

- (f) ...
- (g) a *general insurance contract*; or
- (h) a *structured deposit*.

*\*management body* (1) (other than in (2)) (in accordance with article 3(7) of *CRD* and article 4.1(36) of *MiFID*) the *governing body* and *senior personnel* of a *CRR firm* who are empowered to set ~~the~~ a *firm's* strategy, objectives and overall direction, and which oversee and monitor management decision-making in the following:

- (a) a *CRR firm*; or
  - (b) a *common platform firm* (in relation to the requirements imposed by or under *MiFID* or *MiFIR*).
- (2) (in *COLL* and in *SYSC* 19E and in accordance with article 2(1)(s) of the *UCITS Directive*), the *governing body* of a *management company* or *depository* of a *UCITS scheme* or an *EEA UCITS scheme*, as applicable, with ultimate decision-making authority comprising the supervisory and the managerial function or only the managerial function, if the two functions are separated.

*managing investments* the *regulated activity*, specified in article 37 of the *Regulated Activities Order* (Managing investments), which is in summary: managing assets belonging to another *person* in circumstances which involve the exercise of discretion, if:

- (a) the assets consist of or include any *security* or *contractually based investment* (that is, any *designated investment* (other than a *P2P agreement*), *funeral plan contract*, *structured deposit* or right to or interest in a *funeral plan contract*); or
- (b) ...

*MiFID* The European Parliament and Council Directive on markets in financial instruments (No. 2004/39/EC);

See also *MiFID Regulation* and *MIFID implementing Directive*

Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending the *insurance mediation directive* and *AIFMD*.

*MiFID investment firm*

(1) (in summary) (except in SUP 13, SUP 13A and SUP 14 in relation to notification of *passport*ed activity) a *firm* to which *MiFID* applies including, for some purposes only, a *credit institution* and *collective portfolio management investment firm*.

(2) (in full) (except in SUP 13, SUP 13A and SUP 14 in relation to notification of *passport*ed activity) a *firm* which is:

~~(1)~~ (a) an *investment firm* with its head office in the *EEA* (or, if it has a registered office, that office);

~~(2)~~ (b) a *CRD credit institution* (only when providing an *investment service or activity* in relation to:

(i) the *rules* implementing the articles referred to in ~~Article 1(2)~~ article 1(3) of *MiFID*);

(ii) the requirements imposed upon it by and under *MiFIR*; and

(iii) the requirements imposed upon it by *EU regulations* made under *MiFID*);

~~(3)~~ (c) a *collective portfolio management investment firm* (only when providing the services referred to in article 6(4) *AIFMD* or ~~Article~~ article 6(3) of the *UCITS Directive* in relation to the *rules* implementing the articles of *MIFID* referred to in article 6(6) of *AIFMD* or article 6(4) of the *UCITS Directive* and for a *full-scope UK AIFM* or the *rules* implementing article 12(2)(b) of *AIFMD*);

unless, and to the extent that, *MiFID* does not apply to it as a result of ~~Article~~ article 2 (Exemptions) or ~~Article~~ article 3 (Optional exemptions) of *MiFID*.

(3) (in SUP 13, SUP 13A and SUP 14 in relation to notification of *passport*ed activity) an *investment firm* with its head office in the *EEA* (or, if it has a registered office, that office) unless, and to the extent that, *MiFID* does not apply to it as a result of article 2 (Exemptions) or article 3 (Optional exemptions) of *MiFID*.

*multilateral*

a multilateral system, operated by an *investment firm* or a *market operator*,

<i>trading facility</i>	<p>which brings together multiple third-party buying and selling interests in <i>financial instruments</i> – in the system and in accordance with non-discretionary rules – in a way that results in a contract in accordance with <del>the provisions of</del> Title II of <i>MIFID</i>.</p> <p>[Note: article 4(1)(15) <del>4(1)(22)</del> of <i>MiFID</i>]</p>
<i>option</i>	<p>the <i>investment</i>, specified in article 83 of the <i>Regulated Activities Order</i> (Options), which is <u>in summary</u> an option to acquire or dispose of:</p> <p>(a) a <i>designated investment</i> (other than a <i>P2P agreement</i>, an option or one to which (d) or (e) applies); or</p> <p>...</p>
<i>outsourcing</i>	<p>(1) ...</p> <p>(2) (in <i>SYSC</i> 8, <i>COBS</i> 11.7, <i>SYSC</i> 3 and <i>SYSC</i> 13 to the extent applicable to a <i>Solvency II firm</i>, and the definition of <i>relevant person</i>) an arrangement of any form between a <i>firm</i> and a service provider by which that service provider performs a process, a service or an activity which would otherwise be undertaken by the <i>firm</i> itself.</p> <p>[Note: <del>article 2(6) of the <i>MiFID implementing Directive</i></del> <u>article 2(3) of the <i>MiFID Org Regulation</i></u> and article 13(28) of the <i>Solvency II Directive</i>]</p>
<i>qualifying holding</i>	<p>(1) (in <i>GENPRU</i> and <i>BIPRU</i>) has the meaning in <i>GENPRU</i> 2.2.203R (Qualifying holdings), which is in summary a direct or indirect holding of a <i>bank</i> or <i>building society</i> in a non-financial <i>undertaking</i> which represents 10% per cent or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that <i>undertaking</i>.</p> <p>(2) (otherwise) <del>any</del> <u>a</u> direct or indirect holding in an <i>investment firm</i> which represents 10% <u>per cent</u> or more of the capital or of the voting rights, as set out in <del>Article 92</del> <u>articles 9 and 10 of the European Parliament and Council Directive on the admission of securities to official stock exchange listing and on information to be published on those securities (No. 2001/34/EC) <i>Transparency Directive</i>, taking into account the conditions regarding aggregation in article 12(4) and (5) of that Directive</u>, or which makes it possible to exercise a significant influence over the management of the <i>investment firm</i> in which that holding subsists.</p> <p>[Note: article 4(1)(27) <del>4(1)(31)</del> of <i>MiFID</i>]</p>
<i>qualifying money market fund</i>	<p>(1) (in <i>COLL</i>, <i>CASS</i> 7 and <i>BSOCS</i>) a <i>collective investment scheme undertaking</i> authorised under the <i>UCITS Directive</i>, or which is subject to supervision and, if applicable, authorised by an authority</p>

under the national law of ~~an EEA State~~ the authorising Member State, and which satisfies the following conditions:

- (a) its primary investment objective must be to maintain the net asset value of the undertaking either constant at par (net of earnings), or at the value of the investors' initial capital plus earnings;
  - (b) it must, with a view to achieving that primary investment objective, invest exclusively in high quality money market instruments with a maturity or residual maturity of no more than 397 days, or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of no more than 60 days. It may also achieve this objective by investing on an ancillary basis in deposits with credit institutions;
  - (c) it must provide liquidity through same day or next day settlement.
- (2) For the purposes of (b), a money market instrument ~~is to~~ may be considered to be of high quality if ~~it has been awarded the highest available credit rating by each competent rating agency which has rated that instrument. An instrument that is not rated by any competent rating agency is not to be considered to be of high quality~~ the management/investment company performs its own documented assessment of the credit quality of money market instruments that allows it to consider a money market instrument as high quality subject to the conditions below:
- (a) where one or more credit rating agencies registered and supervised by ESMA have provided a rating of the instrument, the management/investment company's internal assessment must have regard to, inter alia, those credit ratings; and
  - (b) while there can be no mechanistic reliance on such external ratings, a downgrade below the two highest short-term credit ratings by any agency registered and supervised by ESMA that has rated the instrument will lead the manager to undertake a new assessment of the credit quality of the money market instrument to ensure it continues to be of high quality.
- (3) ~~For the purposes of (2), a rating agency is to be considered to be competent if it issues credit ratings in respect of money market funds regularly and on a professional basis and is an eligible ECAI within the meaning of Article 81(1) of the BCD.~~ ~~[deleted]~~

~~[Note: article 18(2) of the MiFID implementing Directive]~~ [Note: article 1(4) and recital 4 of the MiFID Delegated Directive]

*regulated market* (1) a multilateral system operated and/or managed by a *market operator*, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in *financial instruments* – in the system and in accordance with its nondiscretionary rules – in a way that results in a contract, in respect of the *financial instruments* admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with ~~the provisions of~~ Title III of *MiFID*.

[Note: article 4(1)(14) ~~4(1)(21)~~ of *MiFID*]

...

*regulatory system* the arrangements for regulating a *firm* or other *person* in or under the *Act*, including the *threshold conditions*, the *Principles* and other *rules*, the *Statements of Principle*, codes and *guidance*, or in or under the *CCA*, and including any relevant directly applicable provisions of a Directive or Regulation such as those contained in the ~~*MiFID implementing Directive*~~, ~~the *MiFID Regulation*~~, *MiFID Org Regulation* and the *EU CRR*.

*relevant person* any of the following:

- (1) (in *COMP*) a *person* for *claims* against whom the *compensation scheme* provides cover, as defined in *COMP* 6.2.1R.
- (2) any of the following:
  - (a) a *director*, *partner* or equivalent, manager or *appointed representative* (or where applicable, *tier agent*) of the *firm*;
  - (b) a *director*, *partner* or equivalent, or manager of any *appointed representative* (or where applicable, *tier agent*) of the *firm*;
  - (c) an *employee* of the *firm* or of an *appointed representative* (or where applicable, *tier agent*) of the *firm*; as well as any other natural person whose services are placed at the disposal and under the control of the *firm* or an *appointed representative* or a *tier agent* of the *firm* and who is involved in the provision by the *firm* of *regulated activities*;
  - (d) a natural person who is directly involved in the provision of services to the *firm* or its *appointed representative* (or where applicable, *tier agent*) under an *outsourcing* arrangement or (in the case of a *management company*) a delegation arrangement to third parties, for the purpose of the provision by the *firm* of *regulated activities* or (in the case of a *management company*) *collective portfolio management*.

[Note: ~~article 2(3) of the *MiFID implementing Directive*~~ article 2(1) of the *MiFID Org Regulation* and article 3(3) of the *UCITS implementing*

*Directive]*

- remuneration* (1) (except where (2) applies) any form of remuneration, including salaries, *discretionary pension benefits* and benefits of any kind.
- [Note: article 92(2) of the *CRD*]
- (2) (in relation to those articles of the *MiFID Org Regulation* as applied in accordance with *SYSC 1 Annex 1 2.8AR*, *SYSC 1 Annex 1 3.2-AAR*, *SYSC 1 Annex 1 3.2-AAAR*, *SYSC 1 Annex 1 3.2CR*, *SYSC 1 Annex 1 3.3R*; *SYSC 19F.1.3R*; *SYSC 19F.1.4R* and *SYSC 19F.1.5R*) all forms of payments or financial or non-financial benefits provided directly or indirectly by a *firm* to *relevant persons* in the provision of one or more of *designated investment business*, ~~and~~ *ancillary activities* and *ancillary services* to *clients*.
- [Note: article 2(5) of the *MiFID Org Regulation*]
- securities financing transaction* (1) (in *COBS*, ~~in~~ *CASS*) an instance of stock lending or stock borrowing or the lending or borrowing of other *financial instruments*, a repurchase or reverse repurchase transaction, or a buy-sell back or sell-buy back transaction.
- [Note: ~~article 2(10) of the *MiFID Regulation*~~]
- (1A) (in *CASS*) transactions defined in article 3(11) of the *securities financing transaction regulation*.
- [Note: article 1(3) of the *MiFID Delegated Directive*]
- (2) (in any other case) any of the following:
- (a) a *repurchase transaction*; or
- (b) a *securities or commodities lending or borrowing transaction*; or
- (c) a *margin lending transaction*.
- senior management* (1) ...
- (2) (in *SYSC* (except *SYSC 4.3A*) and *IFPRU* and in accordance with article 3(9) of *CRD*) those *persons* who are a natural person and who exercise executive functions in an *institution* and who are responsible and accountable to the *management body* for the day-to-day management of the *institution*.
- (3) (in *SYSC 4.3A* and in accordance with article 4.1(37) of *MiFID*) those *persons* who are a natural person, who exercise executive functions in *common platform firms* and who are responsible and

accountable to the *management body* for the day-to-day management of the *firm*, including for the implementation of the policies concerning the distribution of services and products to *clients* by it and its personnel.

*structured deposit*

~~a deposit paid on terms under which any interest or premium will be paid, or is at risk, according to a formula which involves the performance of:~~

- ~~(a) an index (or combination of indices) (other than money market indices);~~
- ~~(b) a stock (or combination of stocks); or~~
- ~~(c) a commodity (or combination of commodities).~~

(in accordance with article 3 of the RAO) a deposit which is fully repayable at maturity on terms under which interest or a premium will be paid or is at risk, according to a formula involving factors such as:

- (a) an index or combination of indices, excluding variable rate deposits whose return is directly linked to an interest rate index such as EURIBOR or LIBOR;
- (b) a financial instrument or combination of financial instruments;
- (c) a commodity or combination of commodities or other physical or non-physical non-fungible assets; or
- (d) a foreign exchange rate or combination of foreign exchange rates.

[Note: article 4(1)(43) of MiFID]

*third country investment firm*

a firm which would be a *MiFID investment firm* if it had its head office or registered office in the *EEA*.

*trading venue*

- (1) (except in *FINMAR* and *MAR*) a *regulated market*, an MTF or systematic internaliser acting in its capacity as such, and, where appropriate, a system outside the *EU* with similar functions to a *regulated market* or *MTF*.

~~[Note: article 2(8) of the MIFID Regulation article 4(1)(24) of MiFID]~~

- (2) (in *FINMAR*) (as defined in article 2(1)(1) of the *short selling regulation*) a *regulated market* or an *MTF*.
- (3) (in *MAR*) a *regulated market*, ~~or~~ an MTF or an OTF.

[Note: article 4(1)(24) of MiFID]

- transaction* (1) (except in *CONC* App 1.1 and *SUP* 17) only the purchase and sale of a *financial instrument*. For the purposes of the ~~*MiFID Regulation*~~, excluding Chapter II, this does not include:
- (a) ~~*securities financing transactions*~~; or
  - (b) ~~the exercise of options or covered warrants~~; or
  - (c) ~~primary market transactions (such as issuance allotment or subscription) in *financial instruments* falling within Article 4(1)(18)(a) and (b) of *MiFID*~~.
- (2) (in *CONC* App 1.1, except in *CONC* App 1.1.6R(1)(c)) a *credit agreement*, any transaction which is a *linked transaction*, any contract for the provision of *security* relating to the *credit agreement*, any *credit broking* contract relating to the *credit agreement* and any other contract to which the *borrower* or a *relative* of his is a party and which the *lender* requires to be made or maintained as a condition of the making of the *credit agreement*.
- [~~Note: article 5 of the *MiFID Regulation*~~]
- (3) (in *SUP* 17) a concluded acquisition or disposal of a *reportable financial instrument*, including those in articles 2(2) to 2(4) of *RTS* 22, but excluding those in article 2(5) of that Regulation.

*UCITS*  
*management*  
*company*

- ...
- (2) (in relation to *MiFID* business) a *management company* as defined in the *UCITS Directive*.

[~~Note: article 4 (1)(24)~~ article 4(1)(28) of *MiFID*]

*UK*  
*designated*  
*investment*  
*firm*

(in *BIPRU* 12 and in *SYSC* 19D) a *designated investment firm* which is a *body corporate* or *partnership* formed under the law of any part of the *UK*.

Delete the following definitions.

*common*  
*platform*  
*outsourcing*  
*rules*

*SYSC* 8.1.1R to *SYSC* 8.1.12G.

*local*

- (1) (except in *IFPRU* 1.1 (Application and purpose)) a *firm* which is a member of a *futures* and *options* exchange and whose *permission*

includes a *requirement* that:

- (a) the *firm* will not conduct *designated investment business* other than:
    - (i) *dealing* for its own account on that *futures* or *options* exchange; or
    - (ii) *dealing* for the accounts of other members of the same *futures* and *options* exchange; or
    - (iii) making a price to other members of the same *futures* and *options* exchange; and
    - (iv) *dealing* for its own account in financial *futures* and *options* or other *derivatives* in the capacity of a customer; and
  - (b) The performance of the *firm's* contracts must be guaranteed by and must be the responsibility of one or more of the clearing members of the same *futures* and *options* exchange.
- (2) [deleted]
- (3) (in *IFPRU* 1.1 (Application and purpose) has the meaning given in the definition of “local firm” in article 4(1)(4) of the *EU CRR*.

*MiFID II* Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending the *insurance mediation directive* and *AIFMD* ([http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?url=OJ:JOL\\_2014\\_173\\_R\\_0009&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?url=OJ:JOL_2014_173_R_0009&from=EN)).

*MiFID outsourcing rules* SYSC 8.1.1R to SYSC 8.1.11R.

## Annex B

### Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless indicated otherwise.

## 1 Application and purpose

### 1.1A Application

...

- 1.1A.1A G The application of this sourcebook to *firms* that are not *PRA-authorised persons* is summarised at a high level in the following table. The detailed application is cut back in SYSC 1 Annex 1 and in the text of each chapter.

Type of firm	Applicable chapters
<i>Full-scope UK AIFM</i>	<del>Chapter</del> <u>Chapters 4 to 10, 12, 18, 19B, 21</u>
...	...

...

## 1 Annex 1 Detailed application of SYSC

...

Part 2	Application of the common platform requirements ( <del>SYSC 4 to 10</del> )	
...		
2.6C	R	The <i>common platform requirements</i> apply to an <i>AIFM investment firm</i> which is a <i>full-scope UK AIFM</i> in respect of its <i>MiFID business</i> in line with Column A <u>in Table A</u> of Part 3.
2.6D	R	The <i>common platform requirements</i> apply to a <i>full-scope UK AIFM</i> of an <i>authorised AIF</i> in line with <del>column</del> <u>Column A++ in Table A</u> of Part 3.
2.6E	G	The <i>common platform requirements</i> apply to a <i>small authorised UK AIFM</i> in line with Column B <u>in Table A</u> of Part 3 (unless such a <i>firm</i> is also a <i>common platform firm</i> , in which

		case they must comply with Column A).
...		
2.7A	G	<i>EEA UCITS management companies</i> are also reminded that they must comply with:
		(1) the <i>common platform requirements</i> indicated in Column A+ (Application to a management company) <u>in Table A</u> in Part 3 of this Annex;
		...
	What?	
2.8	R	The <i>common platform organisational requirements</i> apply with respect to the carrying on of the following (unless provided otherwise within a specific <i>rule</i> ):
		(1) <i>regulated activities</i> ;
		(2) activities that constitute <i>dealing in investments as principal</i> , disregarding the exclusion in article 15 of the <i>Regulated Activities Order</i> (Absence of holding out etc);
		(3) <i>ancillary activities</i> ;
		(4) in relation to <i>MiFID business, ancillary services</i> ; and
		(5) <i>collective portfolio management</i> .
<u>2.8A</u>	<u>R</u>	(1) <u>Subject to (2) and (3):</u>
		(a) <u>in SYSC 1 Annex 1 2.8R, articles 1(2), 21 to 25, 30 to 32 and 72 of the <i>MiFID Org Regulation</i>; and</u>
		(b) <u>in SYSC 10.1.1R, SYSC 10.2.1R and articles 33 to 35 of the <i>MiFID Org Regulation</i> on conflicts of interest;</u>
		<u>(including any relevant definitions in <i>MiFID, MiFIR</i> and the <i>MiFID Org Regulation</i>) apply to a <i>firm's</i> business other than <i>MiFID business</i> as if they were <i>rules or guidance</i> in accordance with Part 3 (Tables summarising the application of the common platform requirements to different types of firm).</u>
		(2) <u>References in Column (1) to a word or phrase used in the <i>MiFID Org Regulation</i> for the purpose of (1) have the meaning indicated in Column (2) of the table below:</u>

		(1)	(2)
		<u>“ancillary services”</u>	<i>ancillary services or ancillary activities associated with the firm’s regulated activities</i>
		<u>“client” and “potential client”</u>	<i>client</i>
		<u>“competent authority”</u>	<i>FCA</i>
		<u>“investment firm” and “firm”</u>	<i>firm</i>
		<u>“investment service” and “investment services and activities”</u>	<i>designated investment business</i>
		<u>“portfolio management” and “portfolio management service”</u>	<i>managing investments</i>
		<u>“Directive 2014/65/EU”, “Regulation (EU) No 600/2014”, “Directive 2014/57/EU” and “Regulation (EU) No 596/2014” and their implementing measures</u>	<i>regulatory system, except where the reference is to a specific provision of a Directive or Regulation in Column (1) in which case the reference must be read as referring to such specific provision</i>
		<u>“shall”</u>	<i>must</i>
		(3)	<i>Any references within the MiFID Org Regulation for the purpose of (1) to other provisions of EU law must be interpreted in light of this rule.</i>
		(4)	<i>This rule does not apply to a collective portfolio management investment firm in relation to the firm’s business other than its MiFID business.</i>
		<b>[Note: The MiFID Org Regulation can be found at: [insert link].]</b>	
<u>2.8B</u>	<u>G</u>	<u>The purpose of SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR is that the common platform organisational requirements or the common platform requirements on conflicts of interest also apply when carrying on any of the activities</u>	

		listed in SYSC 1 Annex 1 2.8R even where they do not involve <i>investment services and activities</i> and, where relevant, <i>ancillary services</i> (unless provided otherwise within a specific rule).
<u>2.8C</u>	<u>G</u>	<u>SYSC 1 Annex 1 2.8AR(3) has the effect that, where the requirement in the MiFID Org Regulation that is a common platform organisational requirement or a common platform requirement on conflicts of interest includes a reference or cross reference to another part of the MiFID Org Regulation, that reference or cross reference is given the same meaning as for the purposes of SYSC 1 Annex 1 2.8AR.</u>
<u>2.8D</u>	<u>G</u>	<u>For the purpose of SYSC 1 Annex 1 2.8AR, a firm should apply any guidance published by the FCA that assists with interpreting the definitions in MiFID, MiFIR and the MiFID Org Regulation.</u>
...		
2.10	R	The provisions on record-keeping in SYSC 9 and articles 21 and 72 of the <i>MiFID Org Regulation</i> apply as set out in SYSC 1 Annex 1.2.8R and SYSC 1 Annex 1.2.8AR, except that they only apply to the carrying on of <i>ancillary activities</i> that are performed in relation to:
		(1) <i>designated investment business</i> ;
		(2) <i>home finance activity</i> ;
		(3) <i>insurance mediation activity</i> ;
		(4) <i>credit-related regulated activity</i> .
...		
<u>2.14A</u>	<u>G</u>	<u>The systems and control requirements in article 17 of MiFID for the following are in chapter 7A of the Market Conduct sourcebook (MAR):</u>
		(1) <u><i>algorithmic trading</i></u> ;
		(2) <u><i>direct electronic access to a trading venue</i></u> ; and
		(3) <u><i>acting as a general clearing member of a trading venue</i></u> .
<u>2.14B</u>	<u>G</u>	<u>Firms should refer to articles 38 to 42 of the MiFID Org Regulation for additional organisational requirements for underwriting and placing.</u>
		Where?

...			
2.16A	R	(1)	The <i>common platform requirements</i> referred to in Column A+ in <u>Table A</u> of Part 3 (below) apply to a <i>UK UCITS management company</i> in relation to <i>passport activities</i> carried on by it from a <i>branch</i> in another <i>EEA State</i> .
		...	
...			
2.17	R		The <i>common platform record-keeping requirements</i> apply to activities carried on by a <i>firm</i> from an establishment maintained in the <i>United Kingdom</i> , unless another applicable <i>rule</i> which is relevant to the activity has a wider territorial scope, in which case the <i>common platform record-keeping requirements</i> apply with that wider scope in relation to the activity described in that <i>rule</i> .
			[ <b>Note:</b> article <del>13(9)</del> <u>16(11)</u> first paragraph of <i>MiFID</i> ]
...			
<u>2.18A</u>	<u>G</u>		<u>SYSC 6.1.1R on systems and controls for countering the risk that a <i>firm</i> might be used to further <i>financial crime</i> is:</u>
		(1)	<u>a <i>common platform organisational requirement</i>, not a <i>common platform requirement on financial crime</i>; and</u>
		(2)	<u>subject to the application, amongst other provisions, of <i>SYSC 1 Annex 1 2.13R</i>, <i>SYSC 1 Annex 1 2.16R</i> and <i>SYSC 1 Annex 1 2.18R</i>.</u>
...			
<b>Part 3</b>	<b>Tables summarising the application of the common platform requirements to different types of firm</b>		
3.1	G		The <i>common platform requirements</i> apply <del>in the following four ways</del> as described in the following table (subject to the provisions in Part 2 of this Annex ( <u>Application of the common platform requirements</u> )).
		<u>Type of firm</u>	<u>Common platform requirements</u>
		<u>Common platform firm</u>	<u>SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2-AAAR and</u>

			<u>SYSC 1 Annex 1 3.2-AAR</u>
		<u>Management company</u>	<u>SYSC 1 Annex 1 3.2AG</u>
		<u>Full-scope UK AIFM of an authorised AIF</u>	<u>SYSC 1 Annex 1 3.2BR</u>
		<u>Article 3 MiFID firm</u>	<u>SYSC 1 Annex 1 3.2CR</u>
		<u>Third country firm</u>	<u>SYSC 1 Annex 1 3.2CR</u>
		<u>All other firms (apart from insurers, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, article 3 MiFID firms and third country firms)</u>	<u>SYSC 1 Annex 1.3.3R</u>
		<u>Common platform firm</u>	
3.2	G	For a <i>common platform firm</i> (other than a <i>dormant account fund operator</i> not subject to <i>MiFID</i> ):	
		(1)	<u>SYSC 4 to SYSC 10</u> they apply in accordance with Column A in the table <u>Table A</u> below ; and
		(2)	articles 1(2), 21 to 25, 30 to 35 (save in the case of article 34(4) in respect of <i>collective portfolio management investment firms</i> ) and 72 of the <i>MiFID Org Regulation</i> are directly applicable to the <i>firm</i> .
<u>3.2-AAA</u>	<u>R</u>	For a <i>common platform firm</i> (other than a <i>dormant account fund operator</i> not subject to <i>MiFID</i> ), articles 1(2), 21 to 25, 30 to 35 and 72 of the <i>MiFID Org Regulation</i> apply to the <i>firm's</i> business other than <i>MiFID business</i> as if the <i>MiFID Org Regulation</i> applied to the <i>firm</i> as rules in accordance with <u>SYSC 1 Annex 1 2.8R</u> and <u>SYSC 1 Annex 1 2.8AR</u> .	
<u>3.2-AA</u>	<u>R</u>	For a <i>common platform firm</i> that is a <i>dormant account fund operator</i> and is not subject to <i>MiFID</i> :	
		(1)	<u>SYSC 4 to SYSC 10</u> apply in accordance with Column A in <u>Table A</u> below; and
		(2)	articles 1(2), 21 to 25, 30 to 35 and 72 of the <i>MiFID Org Regulation</i> apply as if the <i>MiFID Org Regulation</i> applied to the <i>firm</i> as rules in accordance with <u>SYSC 1 Annex 1 2.8R</u> and <u>SYSC 1 Annex 1 2.8AR</u> .
		<u>Management company</u>	

3.2A	G	For a <i>management company</i> , <del>they</del> <u>the common platform requirements in SYSC 4 to SYSC 10</u> apply in accordance with Column A+ in <del>the table</del> <u>Table A</u> below.	
<u>Full-scope UK AIFM of an authorised AIF</u>			
3.2B	R	For a <i>full-scope UK AIFM of an authorised AIF</i> , <del>they</del> <u>the common platform requirements in SYSC 4 to SYSC 10</u> apply in <del>the</del> <u>accordance</u> with Column A++ in <del>the table</del> <u>Table A</u> below.	
<u>Article 3 MiFID firm and a third country firm</u>			
<u>3.2C</u>	<u>R</u>	<u>For an <i>article 3 MiFID firm</i> and a <i>third country firm</i>:</u>	
		(1)	<u>SYSC 4 to SYSC 10 apply as <i>rules</i> or as <i>guidance</i> in accordance with Table B below in the following way:</u>
		(a)	<u>where a <i>rule</i> is shown modified as 'Guidance', it should be read as <i>guidance</i> (as if "should" appeared in that rule instead of "must"); and</u>
		(b)	<u>the provision should be applied in a proportionate manner, taking into account the nature, scale and complexity of the <i>firm's</i> business; and</u>
		(2)	<u>articles 1(2), 21 to 25, 30 to 35 and 72 of the <i>MiFID Org Regulation</i> apply as if the <i>MiFID Org Regulation</i> applied to the <i>firm</i> as <i>rules</i> (in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR) or as <i>guidance</i> in accordance with Part 1 of Table C below. Part 2 of Table C sets out those articles of the <i>MiFID Org Regulation</i>.</u>
<u>3.2D</u>	<u>R</u>	(1)	<u>Subject to (2), SYSC 4.3A.6R, SYSC 4.3A.8R and SYSC 7.1.18R apply to an <i>article 3 MiFID firm</i> and a <i>third country firm</i> that is 'significant' as a <i>rule</i> or as <i>guidance</i> in accordance with SYSC 1 Annex 1 3.2CR.</u>
		(2)	<u>In (1), 'significant' means an <i>article 3 MiFID firm</i> or a <i>third country firm</i> that meets one of more of the conditions in paragraphs (1) to (5) of IFPRU 1.2.3R and related <i>rules</i> and <i>guidance</i>.</u>
<u>Other firms</u>			
<u>3.3-A</u>	<u>R</u>	<u>SYSC 1 Annex 1 3.3R does not apply to the following:</u>	
		(1)	<u><i>insurers</i>;</u>
		(2)	<u><i>managing agents</i>;</u>

		(3)	<u>the Society;</u>
		(4)	<u>full-scope UK AIFMs of unauthorised AIFs;</u>
		(5)	<u>article 3 MiFID firms; and</u>
		(6)	<u>third country firms.</u>
3.3	<b>G R</b>		For all other <i>firms</i> <del>apart from insurers, managing agents, the Society and full-scope UK AIFMs of unauthorised AIFs, they :</del>
		(1)	<u>SYSC 4 to SYSC 10 apply as rules or as guidance in accordance with Column B in the table Table A below in the following way:</u>
		(a)	<del>For these firms,</del> where a <i>rule</i> is shown modified in Column B as 'Guidance', it should be read as <i>guidance</i> (as if "should" appeared in that rule instead of "must") ; and
		(b)	<u>the provision</u> should be applied in a proportionate manner, taking into account the nature, scale and complexity of the <del>firm's</del> <u>firm's</u> business; and
		(2)	<u>articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation do not apply.</u>

Table A: Application of the common platform requirements in SYSC 4 to SYSC 10

Provision SYSC 4	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, managing agents the Society, <del>and</del> full-scope UK AIFMs of unauthorised AIFs, <u>article 3 MiFID firms and third country firms</u>
<u>SYSC 4.1.1-AAG</u>	<u>Guidance</u>	<u>Not applicable</u>	<u>Not</u>	<u>Not</u>

		<u>save in relation to a UCITS investment firm and its MiFID business</u>	<u>applicable</u>	<u>applicable</u>
<u>SYSC 4.1.1-AG</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
...				
SYSC 4.1.1CR	Rule for a <i>BIPRU firm</i>	Rule for a <i>BIPRU firm</i> that is a <i>UCITS investment firm</i>	Not applicable	<u>Third country BIPRU firms: Rule</u> <u>Other firms: Not applicable</u>
...				
SYSC 4.1.4R	<u>Rule Not applicable</u>	Rule	Not applicable	(1) and (3): Guidance; (2): Rule
...				
SYSC 4.1.5R	<u>Rule applies only to a MiFID investment firm</u> <u>Not applicable</u>	Rule	Not applicable	Not applicable
...				
SYSC 4.1.7R	<u>Rule for a CRR firm only</u>	Rule	Not applicable	Guidance
...				
SYSC 4.1.8G	Guidance	Guidance	Guidance	Guidance
SYSC 4.1.9R	<u>Rule Not applicable</u>	Rule	Not applicable	Not applicable
SYSC 4.1.10R	<u>Rule Not applicable</u>	Rule	Not applicable	Guidance - except reference to <u>SYSC SYSC 4.1.9R</u> which

				does not apply to these firms
...				
SYSC 4.2.1R	Rule	Rule	Rule	<del>UK branch of non-EEA bank rule applies.</del> <del>Other firms</del> Guidance
...				
SYSC 4.2.2R	Rule	Rule	Rule	<del>UK branch of a non-EEA bank Rule applies</del> <del>Other firms</del> <del>this provision does not apply</del> <u>Not applicable</u>
SYSC 4.2.3G - 4.2.5G	Guidance	Guidance	Guidance	<del>UK branch of a non-EEA bank</del> <del>Guidance</del> <del>Other firms</del> <del>this provisions do not apply</del> <u>Not applicable</u>
SYSC 4.2.6R	Rule	Rule for a <u>UCITS investment firm</u> ; otherwise not applicable	Not applicable	<del>UK branch of a non-EEA bank Rule applies</del> <del>Other firms</del> <del>this provision does not apply</del> <u>Not</u>

				<u>applicable</u>
...				
SYSC 4.3.1R	<u>Rule Not applicable</u>	Rule	Not applicable	Rule (but not applicable to <i>incoming EEA firms, incoming Treaty firms or UCITS qualifiers</i> )
SYSC 4.3.2R	<u>Rule Not applicable</u>	Rule	Not applicable	Guidance (but not applicable to <i>incoming EEA firms, incoming Treaty firms or UCITS qualifiers</i> )
...				
SYSC 4.3A.-1R	Rule <u>applicable to <del>CRR firms</del></u>	Rule for a <i>CRR firm</i> that is a <i>UCITS investment firm</i>	Not applicable	Not applicable
SYSC 4.3A.1R	Rule <u>applicable to <del>CRR firms</del></u>	Rule for a <i>CRR firm</i> that is a <i>UCITS investment firm</i>	Not applicable	Not applicable
<u>SYSC 4.3A.1AR</u>	<u>Rule</u>	<u>Rule for a <i>CRR firm</i> that is a <i>UCITS investment firm</i></u>	<u>Not applicable</u>	<u>Not applicable</u>
SYSC 4.3A.2R	Rule <u>applicable to <del>CRR firms</del></u>	Rule for a <i>CRR firm</i> that is a <i>UCITS investment firm</i>	Not applicable	Not applicable
<u>SYSC 4.3A.2AG</u>	<u>Guidance</u>	<u>Guidance for a <i>CRR firm</i> that is a <i>UCITS investment firm</i></u>	<u>Not applicable</u>	<u>Not applicable</u>

SYSC 4.3A.3R	Rule applicable to <del>CRR firms</del>	Rule for a CRR firm that is a UCITS investment firm	Not applicable	Not applicable
SYSC 4.3A.4R	Rule applicable to <del>CRR firms</del>	Rule for a CRR firm that is a UCITS investment firm	Not applicable	Not applicable
SYSC 4.3A.5R	Rule applicable to <del>CRR firms</del>	Rule for a CRR firm that is a UCITS investment firm	Not applicable	Not applicable
SYSC 4.3A.6R	Rule applicable to <del>CRR firms</del>	Rule for a CRR firm that is a UCITS investment firm	Not applicable	Not applicable
SYSC 4.3A.7R	Rule applicable to <del>CRR firms</del>	Rule for a CRR firm that is a UCITS investment firm	Not applicable	Not applicable
SYSC 4.3A.8R	Rule applicable to <del>CRR firms</del>	Rule for a CRR firm that is a UCITS investment firm	Not applicable	Not applicable
SYSC 4.3A.9R	Rule applicable to <del>CRR firms</del>	Rule for a CRR firm that is a UCITS investment firm	Not applicable	Not applicable
SYSC 4.3A.10R	Rule applicable to <del>CRR firms</del>	Rule for a CRR firm that is a UCITS investment firm	Not applicable	Not applicable
...				

Provision SYSC 5	COLUMN A Application to a common platform firm other than to a	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK	COLUMN B Application to all other firms apart from insurers,
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	UCITS investment firm		AIFM of an authorised AIF	managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs, <u>article 3 MiFID firms and third country firms</u>
<u>SYSC 5.1.1-AAG</u>	<u>Guidance</u>	<u>Not applicable save in relation to a UCITS investment firm and its MiFID business</u>	<u>Not applicable</u>	<u>Not applicable</u>
<u>SYSC 5.1.1-AG</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
SYSC 5.1.1R	<u>Rule Not applicable</u>	Rule	Not applicable	Rule
...				
SYSC 5.1.6R	<u>Rule Not applicable</u>	Rule	Guidance	Guidance
...				
SYSC 5.1.12R	<u>Rule Not applicable</u>	Rule	Not applicable	Guidance
...				
SYSC 5.1.13R	<u>Rule Not applicable</u>	Rule	Not applicable	Rule
SYSC 5.1.14R	<u>Rule Not applicable</u>	Rule	Not applicable	Guidance
...				
SYSC 5.2	Whole section applies to <i>relevant authorised</i>	Not applicable	Not applicable	<del>Whole section applies to</del> <i>relevant authorised</i>

	<i>persons only.</i> All <i>rules</i> apply as <i>rules</i> and not as <i>guidance</i> .			<del><i>persons only.</i></del> <del>All <i>rules</i> apply as <i>rules</i> and not as <i>guidance</i>.</del> <u>Not applicable</u>
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Provision SYSC 6	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, managing agents, the Society and <sup>2</sup> full-scope UK AIFMs of unauthorised AIFs, article 3 <u>MiFID firms and third country firms</u>
<u>SYSC 6.1.1-AAG</u>	<u>Guidance</u>	<u>Not applicable save in relation to a UCITS investment firm and its MiFID business</u>	<u>Not applicable</u>	<u>Not applicable</u>
<u>SYSC 6.1.1-AG</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
...				
SYSC 6.1.2R	<del>Rule</del> <u>Not applicable</u>	Rule	Not applicable	Guidance
...				
SYSC 6.1.3R	<del>Rule</del> <u>Not applicable</u>	Rule	Not applicable	- Guidance This provision shall be read with the following additional

				<p>sentence at the start.</p> <p>"Depending on the nature, scale and complexity of its business, it may be appropriate for a <i>firm</i> to have a separate compliance function.</p> <p>Where a <i>firm</i> has a separate compliance function, the <i>firm</i> should also take into account <u>SYSC 6.1.3R</u> and <u>SYSC 6.1.4R</u> as guidance."</p>
...				
SYSC 6.1.4R	<u>Rule Not applicable</u>	Rule	Not applicable	<p>(1), (3) and (4) ; Guidance ;</p> <p>(2) ;</p> <p>- Rule for <i>firms</i> which carry on <i>designated investment business</i> with or for <i>retail clients</i> or <i>professional clients</i>.</p> <p>- Guidance for all other <i>firms</i>.</p>
SYSC 6.1.4-AG	<u>Not applicable Guidance</u>	Not applicable	Rule	Guidance
...				
<u>SYSC 6.1.4-CG</u>	<u>Guidance applies</u>	<u>Not applicable</u>	<u>Not</u>	<u>Not applicable</u>

	<u>to relevant authorised persons only</u>		<u>applicable</u>	
...				
SYSC 6.1.5R	<u>Not applicable</u>	Rule	Not applicable	- Guidance - " <i>investment services and activities</i> " shall be read as " <i>financial services and activities</i> "
...				
SYSC 6.2.1R	<u>Rule Not applicable</u>	Rule	Not applicable	Guidance
...				
<u>SYSC 6.2.1BG</u>	<u>Guidance applies to relevant authorised persons only</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
...				

Provision SYSC 7	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs, <u>article 3 MiFID firms and third country firms</u>
<u>SYSC 7.1.1-</u>	<u>Guidance</u>	<u>Not applicable save in</u>	<u>Not</u>	<u>Not applicable</u>

<u>AAG</u>		relation to a <u>UCITS investment firm</u> and its <u>MiFID business</u>	<u>applicable</u>	
<u>SYSC 7.1.1-AG</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
...				
<u>SYSC 7.1.2R</u>	<u>Rule Not applicable</u>	Rule for a <u>UCITS investment firm in relation to its non-MiFID business</u> ; otherwise guidance	Not applicable	Guidance
...				
<u>SYSC 7.1.3R</u>	<u>Rule Not applicable</u>	Rule for a <u>UCITS investment firm in relation to its non-MiFID business</u> ; otherwise guidance	Not applicable	Guidance
...				
<u>SYSC 7.1.4AG</u>	<u>Not applicable</u> <u>Guidance</u>	Rule for a <u>UCITS investment firm</u> ; otherwise guidance	Not applicable	Guidance
...				
<u>SYSC 7.1.5R</u>	<u>Rule Not applicable</u>	Rule for a <u>UCITS investment firm in relation to its non-MiFID</u>	Not applicable	Guidance

		<i>business</i> ; otherwise guidance		
SYSC 7.1.6R	<del>Rule</del> <u>Not applicable</u>	Rule for a <i>UCITS investment firm in relation to its non-MiFID business</i> ; otherwise guidance	Not applicable	Guidance
SYSC 7.1.7R	<del>Rule</del> <u>Not applicable</u>	Rule for a <i>UCITS investment firm in relation to its non-MiFID business</i> ; otherwise guidance	Not applicable	Guidance
...				
SYSC 7.1.8G	<del>[deleted]</del> <u>Guidance</u>	<del>[deleted]</del> <u>Guidance</u>	<del>[deleted]</del> <u>Guidance</u>	<del>[deleted]</del> <u>Guidance</u>
...				
SYSC 7.1.16AG	<u>Guidance applies to a BIPRU firm</u> <del>[deleted]</del>	<u>Guidance for a UCITS investment firm otherwise not applicable</u> <del>[deleted]</del>	Not applicable <del>[deleted]</del>	Not applicable <del>[deleted]</del>
SYSC 7.1.16BG	<u>Guidance applies to a BIPRU firm</u> <del>[deleted]</del>	<u>Guidance for a UCITS investment firm otherwise not applicable</u> <del>[deleted]</del>	Not applicable <del>[deleted]</del>	Not applicable <del>[deleted]</del>
...				
SYSC 7.1.18AAG	<del>Guidance</del> <u>Guidance applies to a CRR</u>	Guidance for a <i>UCITS</i>	Not applicable	Not applicable

	<i>firm</i>	<i>investment firm that is a CRR firm, otherwise not applicable</i>		
...				
<u>SYSC 7.1.23G</u>	<u>Guidance applies to UK relevant authorised persons and third country relevant authorised persons only</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>

Provision SYSC 8	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs, article 3 MiFID firms and third country firms
<u>SYSC 8.1.1-AAG</u>	<u>Guidance</u>	<u>Not applicable save in relation to a UCITS investment firm and its MiFID business</u>	<u>Not applicable</u>	<u>Not applicable</u>
<u>SYSC 8.1.1-AG</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>

...				
SYSC 8.1.4R	<u>Rule Not applicable</u>	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance
SYSC 8.1.5R	<u>Rule Not applicable</u>	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance
...				
SYSC 8.1.6R	<u>Rule Not applicable</u>	Rule <u>for a <i>UCITS investment firm in relation to its non-MiFID business</i></u> ; otherwise guidance	Not applicable	Rule
SYSC 8.1.7R	<u>Rule Not applicable</u>	Rule for a <i>UCITS investment firm in relation to its non-MiFID business</i> ; otherwise guidance	Not applicable	Guidance
SYSC 8.1.8R	<u>Rule Not applicable</u>	Rule for a <i>UCITS investment firm in relation to its non-MiFID business</i> ; otherwise guidance	Not applicable	Guidance
SYSC 8.1.9R	<u>Rule Not</u>	Rule for a	Not	Guidance

	<u>applicable</u>	<i>UCITS investment firm in relation to its non-MiFID business; otherwise guidance</i>	applicable	
SYSC 8.1.10R	<u>Rule Not applicable</u>	Rule for a <i>UCITS investment firm in relation to its non-MiFID business; otherwise guidance</i>	Not applicable	Guidance
SYSC 8.1.11R	<u>Rule Not applicable</u>	Rule for a <i>UCITS investment firm in relation to its non-MiFID business; otherwise guidance</i>	Not applicable	Guidance
...				
SYSC 8.2	<i>MiFID investment firms only</i> [deleted]	<i>UCITS investment firms only</i> [deleted]	Not applicable [deleted]	Not applicable [deleted]
SYSC 8.3	<i>MiFID investment firms only</i> [deleted]	<i>UCITS investment firms only</i> [deleted]	Not applicable [deleted]	Not applicable [deleted]

Provision SYSC 9	COLUMN A Application to a common platform firm other than to a UCITS	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an	COLUMN B Application to all other firms apart from insurers, managing
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	investment firm		authorised AIF	agents, the Society, and full-scope UK AIFMs of unauthorised AIFs, <u>article 3 MiFID firms and third country firms</u>
<u>SYSC 9.1.1-AAG</u>	<u>Guidance</u>	<u>Not applicable save in relation to a UCITS investment firm and its MiFID business</u>	<u>Not applicable</u>	<u>Not applicable</u>
<u>SYSC 9.1.1-AG</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
SYSC 9.1.1R	<del>Rule</del> <u>Not applicable</u>	Rule	Rule but only for the requirement to arrange for orderly records to be kept of its business and internal organisation which do not relate to portfolio transactions and subscription and redemptions orders	Rule
<u>SYSC 9.1.1AR</u>	<u>Rule</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
SYSC 9.1.2R	Rule applies only in relation to <i>MiFID business</i>	Rule applies only in relation to <i>MiFID</i>	Rule but only for records specified by	Not applicable

		<i>business of a UCITS investment firm</i>	the modified application of SYSC 9.1.1R	
SYSC 9.1.3R	<del>Rule applies only in relation to <i>MiFID business</i></del> [deleted]	<del>Rule applies only in relation to <i>MiFID business of a UCITS investment firm</i></del> [deleted]	Not applicable [deleted]	Not applicable [deleted]
...				
SYSC 9.1.7G	<del>Guidance applies only in relation to <i>MiFID business</i></del> Not applicable	Guidance applies only in relation to <i>MiFID business of a UCITS investment firm</i>	Not applicable	Not applicable

Provision	Column A	COLUMN A+	COLUMN A++	COLUMN B
SYSC 10	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, managing agents, the Society, <del>and</del> full-scope UK AIFMs of unauthorised AIFs, <u>article 3 MiFID firms and third country firms</u>
...				
SYSC 10.1.4R	<del>Rule</del> Not applicable	Rule	Not applicable	Guidance – but applies as a rule in relation to the

				production or arrangement of investment research in accordance with <i>COBS</i> 12.2, or the production or dissemination of non-independent research in accordance with <i>COBS</i> 12.3
...				
<i>SYSC</i> 10.1.6R	<del>Rule</del> <u>Not applicable</u>	Rule	Not applicable	Guidance – but applies as a rule in relation to the production or arrangement of investment research in accordance with <i>COBS</i> 12.2, or the production or dissemination of non-independent research in accordance with <i>COBS</i> 12.3
<i>SYSC</i> 10.1.6AG	Not applicable	<del>Not applicable</del> <u>Guidance</u>	<del>Not applicable</del> <u>Guidance</u>	Guidance
<i>SYSC</i> 10.1.6BG	<u>Not applicable</u>	<u>Guidance</u>	<u>Guidance</u>	<u>Guidance</u>
...				
<i>SYSC</i> 10.1.8R	<del>Rule</del> <u>Not applicable</u>	Rule	Not applicable	Rule

SYSC 10.1.8AR	<del>Rule</del> <u>Not applicable</u>	Rule	Not applicable	Rule
SYSC 10.1.9G	<del>Guidance</del> <u>Not applicable</u>	Guidance	Not applicable	Guidance
<u>SYSC 10.1.9AR</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Rule</u>
SYSC 10.1.10R	<del>Rule</del> <u>Not applicable</u>	Rule	Not applicable	Guidance – but applies as a rule in relation to the production or arrangement of investment research in accordance with <i>COBS</i> 12.2, or the production or dissemination of non-independent research in accordance with <i>COBS</i> 12.3.
SYSC 10.1.11R	<del>Rule</del> <u>Not applicable</u>	Rule	Not applicable	Guidance – but applies as a rule in relation to the production or arrangement of investment research in accordance with <i>COBS</i> 12.2, or the production or dissemination of non-independent research in accordance with <i>COBS</i>

				12.3
<i>SYSC</i> 10.1.11AG	Not applicable	<del>Not applicable</del> <u>Guidance</u>	<del>Not applicable</del> <u>Guidance</u>	Guidance
<u><i>SYSC</i> 10.1.11BG</u>	<u>Not applicable</u>	<u>Guidance</u>	<u>Guidance</u>	<u>Guidance</u>
...				
<i>SYSC</i> 10.1.12G - <del>10.1.15G</del>	<del>Guidance</del> <u>Not applicable</u>	Guidance for <i>SYSC</i> 10.1.12G; not applicable for <i>SYSC</i> 10.1.13G – <i>SYSC</i> 10.1.15G	Guidance for <i>SYSC</i> 10.1.12G; not applicable for <i>SYSC</i> 10.1.13G to <i>SYSC</i> 10.1.15G	Guidance
<u><i>SYSC</i> 10.1.13- 10.1.15G</u>	<u>[deleted]</u>	<u>[deleted]</u>	<u>[deleted]</u>	<u>[deleted]</u>

Insert the following new Tables B and C after Table A. All the text is new and is not underlined.

Table B: Application of the common platform requirements in SYSC 4 to 10 to article 3 MiFID firms and third country firms

Provision	COLUMN A Article 3 MiFID firms	COLUMN B Third country firms
<i>SYSC</i> 4		
<i>SYSC</i> 4.1.1-AAG	Not applicable	Not applicable
<i>SYSC</i> 4.1.1-AG	Guidance	Guidance
<i>SYSC</i> 4.1.1R	Rule	Rule
<i>SYSC</i> 4.1.1AR	Not applicable	Not applicable
<i>SYSC</i> 4.1.1BR	Not applicable	Not applicable
<i>SYSC</i> 4.1.1CR	Not applicable	Rule
<i>SYSC</i> 4.1.1DR	Not applicable	Not applicable

<i>SYSC 4.1.1ER</i>	Not applicable	Not applicable
<i>SYSC 4.1.1FG</i>	Not applicable	Not applicable
<i>SYSC 4.1.2R</i>	Rule	Guidance
<i>SYSC 4.1.2AG</i>	Not applicable	Not applicable
<i>SYSC 4.1.2AAR</i>	Not applicable	Not applicable
<i>SYSC 4.1.2BR</i>	Not applicable	Not applicable
<i>SYSC 4.1.2CR</i>	Not applicable	Not applicable
<i>SYSC 4.1.2DR</i>	Not applicable	Not applicable
<i>SYSC 4.1.4R</i>	Not applicable	Not applicable
<i>SYSC 4.1.4AG</i>	Not applicable	Not applicable
<i>SYSC 4.1.5R</i>	Not applicable	Not applicable
<i>SYSC 4.1.6R</i>	Rule	Guidance
<i>SYSC 4.1.7R</i>	Rule	Guidance
<i>SYSC 4.1.7AG</i>	Not applicable	Not applicable
<i>SYSC 4.1.8G</i>	Guidance	Guidance
<i>SYSC 4.1.9R</i>	Not applicable	Not applicable
<i>SYSC 4.1.10R</i>	Not applicable	Not applicable
<i>SYSC 4.1.10AG</i>	Not applicable	Not applicable
<i>SYSC 4.1.11G</i>	Guidance	Guidance
<i>SYSC 4.1.13G</i>	Guidance	Guidance
<i>SYSC 4.1.14G</i>	Guidance	Guidance
<i>SYSC 4.2.1R</i>	Rule	Rule
<i>SYSC 4.2.1AG</i>	Not applicable	Not applicable
<i>SYSC 4.2.2R</i>	Rule	Rule
<i>SYSC 4.2.3G - 4.2.5G</i>	Guidance	Guidance

<i>SYSC 4.2.6R</i>	Rule	Rule
<i>SYSC 4.2.7R</i>	Not applicable	Not applicable
<i>SYSC 4.2.8G</i>	Not applicable	Not applicable
<i>SYSC 4.3.1R</i>	Not applicable	Not applicable
<i>SYSC 4.3.2R</i>	Not applicable	Not applicable
<i>SYSC 4.3.2AG</i>	Not applicable	Not applicable
<i>SYSC 4.3.3G</i>	Guidance	Guidance
<i>SYSC 4.3A.-1R</i>	Rule	Not applicable
<i>SYSC 4.3A.1R</i>	Rule	Not applicable
<i>SYSC 4.3A.1AR</i>	Rule	Not applicable
<i>SYSC 4.3A.2R</i>	Rule	Not applicable
<i>SYSC 4.3A.2AG</i>	Guidance	Not applicable
<i>SYSC 4.3A.3R</i>	Rule	Not applicable
<i>SYSC 4.3A.4R</i>	Rule	Not applicable
<i>SYSC 4.3A.5R</i>	Rule	Not applicable
<i>SYSC 4.3A.6R</i>	Rule	Not applicable
<i>SYSC 4.3A.7R</i>	Rule	Not applicable
<i>SYSC 4.3A.8R</i>	Rule	Not applicable
<i>SYSC 4.3A.9R</i>	Rule	Not applicable
<i>SYSC 4.3A.10R</i>	Rule	Not applicable
<i>SYSC 4.3A.11R</i>	Not applicable	Not applicable
<i>SYSC 4.4.1AR</i>	Not applicable	Not applicable
<i>SYSC 4.4.2G</i>	Not applicable	Not applicable
<i>SYSC 4.4.3R</i>	Not applicable	Not applicable
<i>SYSC 4.4.5R</i>	Not applicable	Not applicable

SYSC 4.4.6G	Not applicable	Not applicable
SYSC 4.5	Not applicable	Not applicable
SYSC 4.6	Not applicable	<i>Third country relevant authorised person: each provision applies as rule or guidance as shown in SYSC 4.6</i>
SYSC 4.7	Not applicable	Not applicable
SYSC 4.8	Not applicable	<i>Third country relevant authorised person: each provision applies as rule or guidance as shown in SYSC 4.8</i>
SYSC 4.9	Not applicable	<i>Third country relevant authorised person: each provision applies as rule or guidance as shown in SYSC 4.9</i>
SYSC 5		
SYSC 5.1.1-AAG	Not applicable	Not applicable
SYSC 5.1.1-AG	Guidance	Guidance
SYSC 5.1.1R	Not applicable	Not applicable
SYSC 5.1.2G	Guidance	Guidance
SYSC 5.1.3G	Guidance	Guidance
SYSC 5.1.4G	Guidance	Guidance
SYSC 5.1.4AG	Guidance	Guidance
SYSC 5.1.5G	Guidance	Guidance
SYSC 5.1.5AG	Guidance	Guidance
SYSC 5.1.6R	Not applicable	Not applicable
SYSC 5.1.7R	Rule	Rule
SYSC 5.1.7AG	Not applicable	Not applicable

SYSC 5.1.8G	Guidance	Guidance
SYSC 5.1.9G	Guidance	Guidance
SYSC 5.1.10G	Guidance	Guidance
SYSC 5.1.11G	Guidance	Guidance
SYSC 5.1.12R	Not applicable	Not applicable
SYSC 5.1.12AG	Not applicable	Not applicable
SYSC 5.1.13R	Not applicable	Not applicable
SYSC 5.1.14R	Not applicable	Not applicable
SYSC 5.1.15G	Not applicable	Not applicable
SYSC 5.2	Not applicable	<i>Third country relevant authorised person: each provision applies as rule or guidance as shown in SYSC 5.2</i>
SYSC 6		
SYSC 6.1.1-AAG	Not applicable	Not applicable
SYSC 6.1.1-AG	Guidance	Guidance
SYSC 6.1.1R	Rule	Rule
SYSC 6.1.1AG	Guidance	Guidance
SYSC 6.1.2R	Not applicable	Not applicable
SYSC 6.1.2AG	Not applicable	Not applicable
SYSC 6.1.3R	Not applicable	Not applicable
SYSC 6.1.3AG	Not applicable	Not applicable
SYSC 6.1.4R	Not applicable	Not applicable
SYSC 6.1.4-AG	Guidance	Guidance
SYSC 6.1.4AR	Not applicable	Not applicable
SYSC 6.1.4-BG	Not applicable	Not applicable

SYSC 6.1.4CR	Not applicable	Not applicable
SYSC 6.1.4-CG	Not applicable	Guidance for <i>third country relevant authorised person</i>
SYSC 6.1.5R	Not applicable	Not applicable
SYSC 6.1.6G	Not applicable	Not applicable
SYSC 6.1.7R	Not applicable	Not applicable
SYSC 6.2.1R	Not applicable	Not applicable
SYSC 6.2.1AG	Not applicable	Not applicable
SYSC 6.2.1BG	Not applicable	Guidance for <i>third country relevant authorised person</i>
SYSC 6.2.2G	Guidance	Guidance
SYSC 6.3.1R	Rule	Rule
SYSC 6.3.2G	Guidance	Guidance
SYSC 6.3.3R	Rule	Rule
SYSC 6.3.4G	Guidance	Guidance
SYSC 6.3.5G	Guidance	Guidance
SYSC 6.3.6G	Guidance	Guidance
SYSC 6.3.7G	Guidance	Guidance
SYSC 6.3.8R	Rule	Rule
SYSC 6.3.9R	Rule	Rule
SYSC 6.3.10G	Guidance	Guidance
SYSC 6.3.11G	Guidance	Guidance
SYSC 7		
SYSC 7.1.1-AAG	Not applicable	Not applicable
SYSC 7.1.1-AG	Guidance	Guidance
SYSC 7.1.1G	Guidance	Guidance

<i>SYSC 7.1.2R</i>	Not applicable	Not applicable
<i>SYSC 7.1.2AG</i>	Not applicable	Not applicable
<i>SYSC 7.1.2BG</i>	Not applicable	Not applicable
<i>SYSC 7.1.3R</i>	Not applicable	Not applicable
<i>SYSC 7.1.4R</i>	Rule	Guidance
<i>SYSC 7.1.4AG</i>	Guidance	Guidance
<i>SYSC 7.1.4BG</i>	Not applicable	Not applicable
<i>SYSC 7.1.5R</i>	Not applicable	Not applicable
<i>SYSC 7.1.6R</i>	Not applicable	Not applicable
<i>SYSC 7.1.7R</i>	Not applicable	Not applicable
<i>SYSC 7.1.7AG</i>	Not applicable	Not applicable
<i>SYSC 7.1.7BG</i>	Not applicable	Not applicable
<i>SYSC 7.1.7BAG</i>	Not applicable	Not applicable
<i>SYSC 7.1.7BBG</i>	Not applicable	Not applicable
<i>SYSC 7.1.7CG</i>	Guidance	Guidance
<i>SYSC 7.1.8G</i>	Guidance	Guidance
<i>SYSC 7.1.9R</i>	Not applicable	Not applicable
<i>SYSC 7.1.10R</i>	Not applicable	Not applicable
<i>SYSC 7.1.11R</i>	Not applicable	Not applicable
<i>SYSC 7.1.12G</i>	Not applicable	Not applicable
<i>SYSC 7.1.13R - 7.1.16R</i>	Not applicable	Not applicable
<i>SYSC 7.1.16AG</i>	Not applicable	Not applicable
<i>SYSC 7.1.16BG</i>	Not applicable	Not applicable
<i>SYSC 7.1.16CR</i>	Not applicable	Not applicable
<i>SYSC 7.1.17R</i>	Guidance	Not applicable

SYSC 7.1.18R	Guidance	Not applicable
SYSC 7.1.18AAG	Guidance	Not applicable
SYSC 7.1.18BR	Guidance	Not applicable
SYSC 7.1.19R	Guidance	Not applicable
SYSC 7.1.20R	Guidance	Not applicable
SYSC 7.1.21R	Guidance	Not applicable
SYSC 7.1.22R	Guidance	Not applicable
SYSC 7.1.23G	Not applicable	Guidance for <i>third country relevant authorised person</i>
SYSC 8		
SYSC 8.1.1-AAG	Not applicable	Not applicable
SYSC 8.1.1-AG	Guidance	Guidance
SYSC 8.1.1R	Rule	Guidance
SYSC 8.1.1AG	Not applicable	Not applicable
SYSC 8.1.2G	Guidance	Guidance
SYSC 8.1.3G	Guidance	Guidance
SYSC 8.1.4R	Not applicable	Not applicable
SYSC 8.1.5R	Not applicable	Not applicable
SYSC 8.1.5AG	Not applicable	Not applicable
SYSC 8.1.6R	Not applicable	Not applicable
SYSC 8.1.7R	Not applicable	Not applicable
SYSC 8.1.8R	Not applicable	Not applicable
SYSC 8.1.9R	Not applicable	Not applicable
SYSC 8.1.10R	Not applicable	Not applicable
SYSC 8.1.11R	Not applicable	Not applicable
SYSC 8.1.11AG	Not applicable	Not applicable

<i>SYSC 8.1.12G</i>	Not applicable	Not applicable
<i>SYSC 8.1.13R</i>	Not applicable	Not applicable
<i>SYSC 8.1.14G</i>	Not applicable	Not applicable
<i>SYSC 9</i>		
<i>SYSC 9.1.1-AAG</i>	Not applicable	Not applicable
<i>SYSC 9.1.1-AG</i>	Guidance	Guidance
<i>SYSC 9.1.1R</i>	Not applicable	Not applicable
<i>SYSC 9.1.1AR</i>	Rule	Rule
<i>SYSC 9.1.2R</i>	Rule	Not applicable
<i>SYSC 9.1.4G</i>	Guidance	Guidance
<i>SYSC 9.1.5G</i>	Guidance	Guidance
<i>SYSC 9.1.6G</i>	Guidance	Guidance
<i>SYSC 9.1.7G</i>	Not applicable	Not applicable
<i>SYSC 10</i>		
<i>SYSC 10.1.1R</i>	Rule	Rule
<i>SYSC 10.1.1AR</i>	Not applicable	Not applicable
<i>SYSC 10.1.2G</i>	Guidance	Guidance
<i>SYSC 10.1.3R</i>	Rule	Rule
<i>SYSC 10.1.4R</i>	Rule	Guidance
<i>SYSC 10.1.4AG</i>	Not applicable	Guidance
<i>SYSC 10.1.5G</i>	Guidance	Guidance
<i>SYSC 10.1.6R</i>	Rule	Guidance
<i>SYSC 10.1.6AG</i>	Not applicable	Guidance
<i>SYSC 10.1.6BG</i>	Not applicable	Guidance
<i>SYSC 10.1.7R</i>	Rule	Rule

<i>SYSC 10.1.8R</i>	Rule	Rule
<i>SYSC 10.1.8AR</i>	Rule	Rule
<i>SYSC 10.1.9G</i>	Guidance	Guidance
<i>SYSC 10.1.9AR</i>	Not applicable	Not applicable
<i>SYSC 10.1.9AR</i>	Not applicable	Not applicable
<i>SYSC 10.1.10R</i>	Rule	Guidance
<i>SYSC 10.1.11R</i>	Rule	Guidance
<i>SYSC 10.1.11AG</i>	Not applicable	Guidance
<i>SYSC 10.1.11BG</i>	Not applicable	Guidance
<i>SYSC 10.1.12G</i>	Guidance	Guidance
<i>SYSC 10.1.16R</i>	Not applicable	Not applicable
<i>SYSC 10.1.17R</i>	Not applicable	Not applicable
<i>SYSC 10.1.18G</i>	Not applicable	Not applicable
<i>SYSC 10.1.19R</i>	Not applicable	Not applicable
<i>SYSC 10.1.20R</i>	Not applicable	Not applicable
<i>SYSC 10.1.21R</i>	Not applicable	Not applicable
<i>SYSC 10.1.22R</i>	Not applicable	Not applicable
<i>SYSC 10.1.23R</i>	Not applicable	Not applicable
<i>SYSC 10.1.24R</i>	Not applicable	Not applicable
<i>SYSC 10.1.25R</i>	Not applicable	Not applicable
<i>SYSC 10.1.26R</i>	Not applicable	Not applicable
<i>SYSC 10.1.27G</i>	Not applicable	Not applicable
<i>SYSC 10.2.1R</i>	Rule	Rule
<i>SYSC 10.2.2R</i>	Rule	Rule
<i>SYSC 10.2.3G</i>	Guidance	Guidance

SYSC 10.2.4R	Rule	Rule
SYSC 10.2.5G	Guidance	Guidance

Table C:

Part 1: Application of the requirements in articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation to article 3 MiFID firms and third country firms

Provision MiFID Org Regulation		Text of the MiFID Org Regulation as of:	Article 3 MiFID firm	Third country firm
Article 1 – Subject-matter and scope	(2)	[xx/xx/2016]	Not applicable	Not applicable
Article 21 – General organisational requirements	(1)		Rule	(a), (b) and (g): Guidance; (c), (d), (e), (f) and final paragraph: Rule
	(2)		Rule	Rule
	(3)		Rule	Guidance
	(4)		Rule	Guidance
	(5)		Rule	Guidance
Article 22 - Compliance	(1)		Guidance	Guidance
	(2)		Guidance	Guidance
	(3)		Guidance	(a), (c), (d) and (e): Guidance; (b): Rule
	(4)		Guidance	Guidance
Article 23 – Risk management			Guidance	Guidance
Article 24 – Internal audit			Guidance	Guidance

Article 25 – Responsibility of senior management		Guidance	(1): Rule; (2), (3) and (4): Guidance
Article 30 – Scope of critical and important operational functions		Guidance	Guidance
Article 31 – Outsourcing critical or important operational functions		(1): Rule; (2), (3), (4) and (5): Guidance	(1): Rule; (2), (3), (4) and (5): Guidance
Article 32(1) and (2) – Service providers located in third countries		Rule	Guidance
Article 33 – Conflicts of interest potentially detrimental to clients		Rule	Guidance
Article 34 – Conflicts of interest policy	(1)	Rule	Guidance
	(2)	Rule	Guidance
	(3)	Rule	Guidance
	(4)	Rule	Rule
	(5)	Rule	Guidance
Article 35 – Record of services or activities giving rise to detrimental conflict of interest		Rule	Guidance
Article 72 – Retention of records		Rule	Guidance

Part 2: Articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation

[**Note:** References to articles in the *MiFID Org Regulation* correspond to the version published on 25 April 2016 available at:

<http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-2398-EN-F1-1.PDF> and

<http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-2398-EN-F1-1-ANNEX-1.PDF>. Once published in the Official Journal of the European Union, either the references or

the text may need to be updated.]

<b>EU</b>	<b>Article 1 - Subject-matter and scope</b>	
	2	References to investment firms shall encompass credit institutions and references to financial instruments shall encompass structured deposits in relation to all the requirements referred to in Article 1(3) and 1(4) of Directive 2014/65/EU and their implementing provisions as set out under this Regulation.
<b>EU</b>	<b>Article 21 - General organisational requirements</b>	
	1	Investment firms shall comply with the following organisational requirements:
	(a)	establish, implement and maintain decision-making procedures and an organisational structure which clearly and in documented manner specifies reporting lines and allocates functions and responsibilities;
	(b)	ensure that their relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities;
	(c)	establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the investment firm;
	(d)	employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them;
	(e)	establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the investment firm;
	(f)	maintain adequate and orderly records of their business and internal organisation;
	(g)	ensure that the performance of multiple functions by their relevant persons does not and is not likely to prevent those persons from discharging any particular function soundly, honestly, and professionally.
		When complying with the requirements set out in the this paragraph, investment firms shall take into account the nature, scale and complexity of the business of the firm, and the nature and range of investment services and activities undertaken in the course of that business.
	2	Investment firms shall establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.

	3	Investment firms shall establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to their systems and procedures, the preservation of essential data and functions, and the maintenance of investment services and activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of their investment services and activities.
	4	Investment firms shall establish, implement and maintain accounting policies and procedures that enable them, at the request of the competent authority, to deliver in a timely manner to the competent authority financial reports which reflect a true and fair view of their financial position and which comply with all applicable accounting standards and rules.
	5	Investment firms shall monitor and, on a regular basis, evaluate the adequacy and effectiveness of their systems, internal control mechanisms and arrangements established in accordance with paragraphs 1 to 4, and take appropriate measures to address any deficiencies.
<b>EU</b>	<b>Article 22 – Compliance</b>	
	1	Investment firms shall establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the firm to comply with its obligations under Directive 2014/65/EU, as well as the associated risks, and put in place adequate measures and procedures designed to minimise such risk and to enable the competent authorities to exercise their powers effectively under that Directive.  Investment firms shall take into account the nature, scale and complexity of the business of the firm, and the nature and range of investment services and activities undertaken in the course of that business.
	2	Investment firms shall establish and maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:
	(a)	to monitor on a permanent basis and to assess, on a regular basis, the adequacy and effectiveness of the measures, policies and procedures put in place in accordance with the first subparagraph of paragraph 1, and the actions taken to address any deficiencies in the firm's compliance with its obligations;
	(b)	to advise and assist the relevant persons responsible for carrying out investment services and activities to comply with the firm's obligations under Directive 2014/65/EU;
	(c)	to report to the management body, on at least an annual basis, on the implementation and effectiveness of the overall control environment for investment services and activities, on the risks that have been identified and on the complaints-handling reporting as well as

		remedies undertaken or to be undertaken;
	(d)	to monitor the operations of the complaints-handling process and consider complaints as a source of relevant information in the context of its general monitoring responsibilities.
		In order to comply with points (a) and (b) of this paragraph, the compliance function shall conduct an assessment on the basis of which it shall establish a risk-based monitoring programme that takes into consideration all areas of the investment firm's investment services, activities and any relevant ancillary services, including relevant information gathered in relation to the monitoring of complaints handling. The monitoring programme shall establish priorities determined by the compliance risk assessment ensuring that compliance risk is comprehensively monitored.
	3	In order to enable the compliance function referred to in paragraph 2 to discharge its responsibilities properly and independently, investment firms shall ensure that the following conditions are satisfied:
	(a)	the compliance function has the necessary authority, resources, expertise and access to all relevant information;
	(b)	a compliance officer is appointed and replaced by the management body and is responsible for the compliance function and for any reporting as to compliance required by Directive 2014/65/EU and Article 25(2) of this Regulation;
	(c)	the compliance function reports on an ad-hoc basis directly to the management body where it detects a significant risk of failure by the firm to comply with its obligations under Directive 2014/65/EU;
	(d)	the relevant persons involved in the compliance function are not involved in the performance of services or activities they monitor;
	(e)	the method of determining the remuneration of the relevant persons involved in the compliance function does not compromise their objectivity and is not likely to do so.
	4	An investment firm shall not be required to comply with point (d) or point (e) of paragraph 3 where it is able to demonstrate that in view of the nature, scale and complexity of its business, and the nature and range of investment services and activities, the requirements under point (d) or (e) are not proportionate and that its compliance function continues to be effective. In that case, the investment firm shall assess whether the effectiveness of the compliance function is compromised. The assessment shall be reviewed on a regular basis.
<b>EU</b>	<b>Article 23 - Risk management</b>	

	1	Investment firms shall take the following actions relating to risk management:	
		(a)	establish, implement and maintain adequate risk management policies and procedures which identify the risks relating to the firm's activities, processes and systems, and where appropriate, set the level of risk tolerated by the firm;
		(b)	adopt effective arrangements, processes and mechanisms to manage the risks relating to the firm's activities, processes and systems, in light of that level of risk tolerance;
		(c)	monitor the following:
		(i)	the adequacy and effectiveness of the investment firm's risk management policies and procedures;
		(ii)	the level of compliance by the investment firm and its relevant persons with the arrangements, processes and mechanisms adopted in accordance with point (b);
		(iii)	the adequacy and effectiveness of measures taken to address any deficiencies in those policies, procedures, arrangements, processes and mechanisms, including failures by the relevant persons to comply with such arrangements, processes and mechanisms or follow such policies and procedures.
	2	Investment firms shall, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of the investment services and activities undertaken in the course of that business, establish and maintain a risk management function that operates independently and carries out the following tasks:	
		(a)	implementation of the policy and procedures referred to in paragraph 1;
		(b)	provision of reports and advice to senior management in accordance with Article 25(2).
		Where an investment firm does not establish and maintain a risk management function under the first sub-paragraph, it shall be able to demonstrate upon request that the policies and procedures which it has adopted in accordance with paragraph 1 satisfy the requirements therein.	
<b>EU</b>	<b>Article 24 - Internal audit</b>		
	Investment firms shall, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of investment services and activities undertaken in the course of that business, establish and		

	maintain an internal audit function which is separate and independent from the other functions and activities of the investment firm and which has the following responsibilities:	
	(a)	establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the investment firm's systems, internal control mechanisms and arrangements;
	(b)	issue recommendations based on the result of work carried out in accordance with point (a) and verify compliance with those recommendations;
	(c)	report in relation to internal audit matters in accordance with Article 25(2).
<b>Article 25 - Responsibility of senior management</b>		
	1	Investment firms shall, when allocating functions internally, ensure that senior management, and, where applicable, the supervisory function, are responsible for ensuring that the firm complies with its obligations under Directive 2014/65/EU. In particular, senior management and, where applicable, the supervisory function shall be required to assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations under Directive 2014/65/EU and to take appropriate measures to address any deficiencies.  The allocation of significant functions among senior managers shall clearly establish who is responsible for overseeing and maintaining the firm's organisational requirements. Records of the allocation of significant functions shall be kept up-to-date.
	2	Investment firms shall ensure that their senior management receive on a frequent basis, and at least annually, written reports on the matters covered by Articles 22, 23 and 24 indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies.
	3	Investment firms shall ensure that where there is a supervisory function, it receives written reports on the matters covered by Articles 22, 23 and 24 on a regular basis.
	4	For the purposes of this Article, the supervisory function shall be the function within an investment firm responsible for the supervision of its senior management.
<b>EU</b>	<b>Article 30 - Scope of critical and important operational functions</b>	
	1	For the purposes of the first subparagraph of Article 16(5) of Directive 2014/65/EU, an operational function shall be regarded as critical or important where a defect or failure in its performance would materially impair the continuing compliance of an investment firm with the conditions

		and obligations of its authorisation or its other obligations under Directive 2014/65/EU, or its financial performance, or the soundness or the continuity of its investment services and activities.
	2	Without prejudice to the status of any other function, the following functions shall not be considered as critical or important for the purposes of paragraph 1:
	(a)	the provision to the firm of advisory services, and other services which do not form part of the investment business of the firm, including the provision of legal advice to the firm, the training of personnel of the firm, billing services and the security of the firm's premises and personnel;
	(b)	the purchase of standardised services, including market information services and the provision of price feeds.
<b>EU</b>	<b>Article 31 - Outsourcing critical or important operational functions</b>	
	1	Investment firms outsourcing critical or important operational functions shall remain fully responsible for discharging all of their obligations under Directive 2014/65/EU and shall comply with the following conditions:
	(a)	the outsourcing does not result in the delegation by senior management of its responsibility;
	(b)	the relationship and obligations of the investment firm towards its clients under the terms of Directive 2014/65/EU is not altered;
	(c)	the conditions with which the investment firm must comply in order to be authorised in accordance with Article 5 of Directive 2014/65/EU, and to remain so, are not undermined;
	(d)	none of the other conditions subject to which the firm's authorisation was granted is removed or modified.
	2	Investment firms shall exercise due skill, care and diligence when entering into, managing or terminating any arrangement for the outsourcing to a service provider of critical or important operational functions and shall take the necessary steps to ensure that the following conditions are satisfied:
	(a)	the service provider has the ability, capacity, sufficient resources, appropriate organisational structure supporting the performance of the outsourced functions, and any authorisation required by law to perform the outsourced functions, reliably and professionally;
	(b)	the service provider carries out the outsourced services effectively and in compliance with applicable law and regulatory requirements, and to this end the firm has established methods and procedures for assessing the standard of performance of the service provider and for

		reviewing on an ongoing basis the services provided by the service provider;
	(c)	the service provider properly supervises the carrying out of the outsourced functions, and adequately manage the risks associated with the outsourcing;
	(d)	appropriate action is taken where it appears that the service provider may not be carrying out the functions effectively or in compliance with applicable laws and regulatory requirements;
	(e)	the investment firm effectively supervises the outsourced functions or services and manage the risks associated with the outsourcing and to this end the firm retains the necessary expertise and resources to supervise the outsourced functions effectively and manage those risks;
	(f)	the service provider has disclosed to the investment firm any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable laws and regulatory requirements;
	(g)	the investment firm is able to terminate the arrangement for outsourcing where necessary, with immediate effect when this is in the interests of its clients, without detriment to the continuity and quality of its provision of services to clients;
	(h)	the service provider cooperates with the competent authorities of the investment firm in connection with the outsourced functions;
	(i)	the investment firm, its auditors and the relevant competent authorities have effective access to data related to the outsourced functions, as well as to the relevant business premises of the service provider, where necessary for the purpose of effective oversight in accordance with this article, and the competent authorities are able to exercise those rights of access;
	(j)	the service provider protects any confidential information relating to the investment firm and its clients;
	(k)	the investment firm and the service provider have established, implemented and maintained a contingency plan for disaster recovery and periodic testing of backup facilities, where that is necessary having regard to the function, service or activity that has been outsourced;
	(l)	the investment firm has ensured that the continuity and quality of the outsourced functions or services are maintained also in the event of termination of the outsourcing either by transferring the outsourced functions or services to another third party or by performing them

		itself.
	3	The respective rights and obligations of the investment firms and of the service provider shall be clearly allocated and set out in a written agreement. In particular, the investment firm shall keep its instruction and termination rights, its rights of information, and its right to inspections and access to books and premises. The agreement shall ensure that outsourcing by the service provider only takes place with the consent, in writing, of the investment firm.
	4	Where the investment firm and the service provider are members of the same group, the investment firm may, for the purposes of complying with this Article and Article 32, take into account the extent to which the firm controls the service provider or has the ability to influence its actions.
	5	Investment firms shall make available on request to the competent authority all information necessary to enable the authority to supervise the compliance of the performance of the outsourced functions with the requirements of Directive 2014/65/EU and its implementing measures.
<b>EU</b>	<b>Article 32 - Service providers located in third countries</b>	
	1	In addition to the requirements set out in Article 31, where an investment firm outsources functions related to the investment service of portfolio management provided to clients to a service provider located in a third country, that investment firm ensures that the following conditions are satisfied:
	(a)	the service provider is authorised or registered in its home country to provide that service and is effectively supervised by a competent authority in that third country;
	(b)	there is an appropriate cooperation agreement between the competent authority of the investment firm and the supervisory authority of the service provider.
	2	The cooperation agreement referred to in point (b) of paragraph 1 shall ensure that the competent authorities of the investment firm are able, at least, to:
	(a)	obtain on request the information necessary to carry out their supervisory tasks pursuant to Directive 2014/65/EU and Regulation (EU) No 600/2014;
	(b)	obtain access to the documents relevant for the performance of their supervisory duties maintained in the third country;
	(c)	receive information from the supervisory authority in the third country as soon as possible for the purpose of investigating apparent breaches of the requirements of Directive 2014/65/EU and its

		implementing measures and Regulation (EU) No 600/2014;
	(d)	cooperate with regard to enforcement, in accordance with the national and international law applicable to the supervisory authority of the third country and the competent authorities in the Union in cases of breach of the requirements of Directive 2014/65/EU and its implementing measures and relevant national law.
	3	<p>Competent authorities shall publish on their website a list of the supervisory authorities in third countries with which they have a cooperation agreement referred to in point (b) of paragraph 1.</p> <p>Competent authorities shall update cooperation agreements concluded before the date of entry into application of this Regulation within six months from that date.</p>
<b>EU</b>	<b>Article 33 - Conflicts of interest potentially detrimental to a client</b>	
		For the purposes of identifying the types of conflict of interest that arise in the course of providing investment and ancillary services or a combination thereof and whose existence may damage the interests of a client, investment firms shall take into account, by way of minimum criteria, whether the investment firm or a relevant person, or a person directly or indirectly linked by control to the firm, is in any of the following situations, whether as a result of providing investment or ancillary services or investment activities or otherwise:
	(a)	the firm or that person is likely to make a financial gain, or avoid a financial loss, at the expense of the client;
	(b)	the firm or that person has an interest in the outcome of a service provided to the client or of a transaction carried out on behalf of the client, which is distinct from the client's interest in that outcome;
	(c)	the firm or that person has a financial or other incentive to favour the interest of another client or group of clients over the interests of the client;
	(d)	the firm or that person carries on the same business as the client;
	(e)	the firm or that person receives or will receive from a person other than the client an inducement in relation to a service provided to the client, in the form of monetary or non-monetary benefits or services.
<b>EU</b>	<b>Article 34 - Conflicts of interest policy</b>	
	1	Investment firms shall establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to the size and

		<p>organisation of the firm and the nature, scale and complexity of its business.</p> <p>Where the firm is a member of a group, the policy shall also take into account any circumstances, of which the firm is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.</p>
	2	The conflicts of interest policy established in accordance with paragraph 1 shall include the following content:
	(a)	it must identify, with reference to the specific investment services and activities and ancillary services carried out by or on behalf of the investment firm, the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage to the interests of one or more clients;
	(b)	it must specify procedures to be followed and measures to be adopted in order to prevent or manage such conflicts.
	3	<p>The procedures and measures referred to in paragraph 2(b) shall be designed to ensure that relevant persons engaged in different business activities involving a conflict of interest of the kind specified in paragraph 2(a) carry on those activities at a level of independence appropriate to the size and activities of the investment firm and of the group to which it belongs, and to the risk of damage to the interests of clients.</p> <p>For the purposes of paragraph 2(b), the procedures to be followed and measures to be adopted shall include at least those items in the following list that are necessary for the firm to ensure the requisite degree of independence:</p>
	(a)	effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;
	(b)	the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, clients whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the firm;
	(c)	the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
	(d)	measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out

		investment or ancillary services or activities;
	(e)	measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate investment or ancillary services or activities where such involvement may impair the proper management of conflicts of interest.
	4	<p>Investment firms shall ensure that disclosure to clients, pursuant to Article 23(2) of Directive 2014/65/EU, is a measure of last resort that shall be used only where the effective organisational and administrative arrangements established by the investment firm to prevent or manage its conflicts of interest in accordance with Article 23 of Directive 2014/65/EU are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the client will be prevented.</p> <p>The disclosure shall clearly state that the organisational and administrative arrangements established by the investment firm to prevent or manage that conflict are not sufficient to ensure, with reasonable confidence, that the risks of damage to the interests of the client will be prevented. The disclosure shall include specific description of the conflicts of interest that arise in the provision of investment and/or ancillary services, taking into account the nature of the client to whom the disclosure is being made. The description shall explain the general nature and sources of conflicts of interest, as well as the risks to the client that arise as a result of the conflicts of interest and the steps undertaken to mitigate these risks, in sufficient detail to enable that client to take an informed decision with respect to the investment or ancillary service in the context of which the conflicts of interest arise.</p>
	5	Investment firms shall assess and periodically review, on an at least annual basis, the conflicts of interest policy established in accordance with paragraphs 1 to 4 and shall take all appropriate measures to address any deficiencies. Over-reliance on disclosure of conflicts of interest shall be considered a deficiency in the investment firm's conflicts of interest policy.
<b>EU</b>	<b>Article 35 - Record of services or activities giving rise to detrimental conflict of interest</b>	
	<p>Investment firms shall keep and regularly update a record of the kinds of investment or ancillary service or investment activity carried out by or on behalf of the firm in which a conflict of interest entailing a risk of damage to the interests of one or more clients has arisen or, in the case of an ongoing service or activity, may arise.</p> <p>Senior management shall receive on a frequent basis, and at least annually, written reports on situations referred to in this Article.</p>	
<b>EU</b>	<b>Article 72 - Retention of records</b>	
	1	The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the competent

		authority, and in such a form and manner that the following conditions are met:
	(a)	the competent authority is able to access them readily and to reconstitute each key stage of the processing of each transaction;
	(b)	it is possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained;
	(c)	it is not possible for the records otherwise to be manipulated or altered;
	(d)	it allows IT or any other efficient exploitation when the analysis of the data cannot be easily carried out due to the volume and the nature of the data; and
	(e)	the firm's arrangements comply with the record keeping requirements irrespective of the technology used.
	2	Investment firms shall keep at least the records identified in Annex I to this Regulation depending upon the nature of their activities.  The list of records identified in Annex I to this Regulation is without prejudice to any other record-keeping obligations arising from other legislation.
	3	Investment firms shall also keep records of any policies and procedures they are required to maintain pursuant to Directive 2014/65/EU, Regulation (EU) No 600/2014, Directive 2014/57/EU and Regulation (EU) No 596/2014 and their respective implementing measures in writing.  Competent authorities may require investment firms to keep additional records to the list identified in Annex I to this Regulation.

## 4 General organisational requirements

### 4.1 General requirements

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#### Application to a common platform firm

##### 4.1.1-AA G For a common platform firm:

- (1) the MiFID Org Regulation applies, as summarised in SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2-AAAR and SYSC 1 Annex 1 3.2-AAR; and

(2) the rules and guidance apply as set out in the table below:

<u>Subject</u>	<u>Applicable rule or guidance</u>
<u>General requirements</u>	<u>SYSC 4.1.1R, SYSC 4.1.1CR, SYSC 4.1.2R, SYSC 4.1.2AAR</u>
<u>Business continuity</u>	<u>SYSC 4.1.6R, SYSC 4.1.7R, SYSC 4.1.8G</u>
<u>Audit committee</u>	<u>SYSC 4.1.11G, SYSC 4.1.13G, SYSC 4.1.14G</u>
<u>Persons who effectively direct the business</u>	<u>SYSC 4.2.1R, SYSC 4.2.2R, SYSC 4.2.3G, SYSC 4.2.4G, SYSC 4.2.5G, SYSC 4.2.6R</u>
<u>Responsibility of senior personnel</u>	<u>SYSC 4.3.3G</u>
<u>Management body</u>	<u>SYSC 4.3A-1R to SYSC 4.3A.7R</u>
<u>Nominations committee</u>	<u>SYSC 4.3A.8R to SYSC 4.3A.11R</u>
<u>Management responsibilities maps for UK relevant authorised persons</u>	<u>SYSC 4.5</u>
<u>Management responsibilities maps for non-UK relevant authorised persons</u>	<u>SYSC 4.6</u>
<u>Senior management responsibilities for UK relevant authorised persons</u>	<u>SYSC 4.7</u>
<u>Handover procedures and material</u>	<u>SYSC 4.9</u>

Application to an article 3 MiFID firm and to a third country firm

4.1.1-A G For an article 3 MiFID firm and a third country firm:

(a) the rules and guidance in this chapter apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(1); and

- (b) those articles of the *MiFID Org Regulation* in SYSC 1 Annex 1 2.8AR and 3.2CR apply to them as if they were *rules* or as *guidance* in accordance with SYSC 1 Annex 1 3.2CR(2).

#### General requirements

- 4.1.1 R (1) A *firm* must have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and internal control mechanisms, including sound administrative and accounting procedures and effective control and safeguard arrangements for information processing systems.

...

[**Note:** article 74 (1) of *CRD*, article ~~13~~ 16(5) second paragraph of *MiFID*, article 12(1)(a) of the *UCITS Directive*, and article 18(1) of *AIFMD*]

- (3) Without prejudice to the ability of the *FCA* or any other relevant *competent authority* to require access to communications in accordance with *MiFID* and *MiFIR*, a *common platform firm* must have sound security mechanisms in place for the following, while maintaining the confidentiality of the data at all times:

- (a) to guarantee the security and authentication of the means of transfer of information;
- (b) to minimise the risk of data corruption and unauthorised access; and
- (c) to prevent information leakage.

[**Note:** article 16(5) third paragraph of *MiFID*]

...

- 4.1.2 R For a *common platform firm*, the arrangements, processes and mechanisms referred to in SYSC 4.1.1R must be comprehensive and proportionate to the nature, scale and complexity of the risks inherent in the business model and of the *common platform firm's* activities and must take into account the specific technical criteria described in ~~SYSC 4.1.7R~~ article 21(3) of the *MiFID Org Regulation*, SYSC 5.1.7R, SYSC 7 and whichever of the following as applicable:

- (1) (for a *firm* to which SYSC 19A applies) SYSC 19A (IFPRU Remuneration Code);

- (2) (for a *full-scope UK AIFM*) SYSC 19B (AIFM Remuneration Code);
- (3) (for a *firm* to which SYSC 19C applies) SYSC 19C (BIPRU Remuneration Code);
- (4) (for a *firm* to which SYSC 19D applies) SYSC 19D (Dual-regulated firms Remuneration Code);
- (5) (for a *firm* to which the remuneration part of the *PRA Rulebook* applies) the remuneration part of the *PRA Rulebook*.

[Note: article 74(2) of *CRD*]

- 4.1.2A G Other *firms* should take account of the comprehensiveness and proportionality *rule* (SYSC 4.1.2R) as if it were *guidance* (and as if "should" appeared in that rule instead of "must") as explained in SYSC 1 Annex 1 3.3 ~~G~~ R(1).

...

#### Mechanisms and procedures for a firm

- 4.1.4 R A *firm* (with the exception of a *common platform firm* and a *sole trader* - who does not employ any *person* who is required to be approved under section 59 of the *Act* (Approval for particular arrangements)) must, taking into account the nature, scale and complexity of the business of the *firm*, and the nature and range of the financial services and activities undertaken in the course of that business:
- (1) (if it is a ~~common platform firm~~ or a *management company*) establish, implement and maintain decision-making procedures and an organisational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;
  - (2) establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the *firm*;
  - (3) ~~(if it is a common platform firm)~~ establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the *firm*; and
  - (4) (if it is a *management company*) establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the *management company* as well as effective information flows with any third party involved.

[~~Note: articles 5(1) final paragraph, 5(1)(a), 5(1)(c) and 5(1)(e) of the MiFID implementing Directive and articles 4(1) final paragraph, 4(1)(a), 4(1)(c) and 4(1)(d) of the UCITS implementing Directive~~]

4.1.4A G A *firm* that is not a *common platform firm* or a *management company* should take into account decision-making procedures and effective internal reporting *rules* (SYSC 4.1.4R (1), (3) and (4)) as if they were *guidance* (and as if "should" appeared in those rules instead of "must") as explained in SYSC 1 Annex 1 3.3G R(1).

4.1.5 R A ~~MiFID investment firm~~ and a *management company* must establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.

[~~Note: article 5(2) of the MiFID implementing Directive and article 4(2) of the UCITS implementing Directive~~]

#### Business continuity

4.1.6 R A *common platform firm* must take reasonable steps to ensure continuity and regularity in the performance of its *regulated activities*. To this end the *common platform firm* must employ appropriate and proportionate systems, resources and procedures.

[~~Note: article 13 16(4) of MiFID~~]

4.1.7 R A ~~common platform firm~~ *CRR firm* and a *management company* must establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to its systems and procedures, that any losses are limited, the preservation of essential data and functions, and the maintenance of its *regulated activities*, or, in the case of a *management company*, its *collective portfolio management* activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of those activities.

[~~Note: article 5(3) of the MiFID implementing Directive, annex V paragraph 13 of the Banking Consolidation Directive, article 4(3) of the UCITS implementing Directive and article 85(2) of the CRD~~]

4.1.7A G Other *firms* should take account of the business continuity *rules* (SYSC 4.1.6R and 4.1.7R) as if they were *guidance* (and as if "should" appeared in those rules instead of "must") as explained in SYSC 1 Annex 1 3.3G R(1).

4.1.8 G The matters dealt with in a business continuity policy should include:

(1) resource requirements such as people, systems and other assets, and arrangements for obtaining these resources;

- (2) the recovery priorities for the *firm's* operations;
- (3) communication arrangements for internal and external concerned parties (including the ~~appropriate regulator~~ FCA, *clients* and the press);
- (4) escalation and invocation plans that outline the processes for implementing the business continuity plans, together with relevant contact information;
- (5) processes to validate the integrity of information affected by the disruption; and
- (6) regular testing of the business continuity policy in an appropriate and proportionate manner in accordance with SYSC 4.1.10R and for a *common platform firm* in article 21(5) of the MiFID Org Regulation.

...

Accounting policies: management company

- 4.1.9 R A ~~common platform firm~~ and a *management company* must establish, implement and maintain accounting policies and procedures that enable it, at the request of the ~~appropriate regulator~~ FCA, to deliver in a timely manner to the ~~appropriate regulator~~ FCA financial reports which reflect a true and fair view of its financial position and which comply with all applicable accounting standards and rules.

[~~Note: article 5(4) of the MiFID implementing Directive~~ and article 4(4) of the *UCITS implementing Directive*]

Regular monitoring: management company

- 4.1.10 R A ~~common platform firm~~ and a *management company* must monitor and, on a regular basis, evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with SYSC 4.1.4R to SYSC 4.1.9R and take appropriate measures to address any deficiencies.

[~~Note: article 5(5) of the MiFID implementing Directive~~ and article 4(5) of the *UCITS implementing Directive*]

Regular monitoring: other firms

- 4.1.10A G Other *firms* should take account of the regular monitoring *rule* (SYSC 4.1.10R) as if it were *guidance* (and as if "should" appeared in that rule instead of "must") as explained in SYSC 1 Annex 1 3.3G ~~R(1)~~, but ignoring the cross-reference to SYSC 4.1.5R and 4.1.9R.

...

## 4.2 Persons who effectively direct the business

### General requirement

- 4.2.1 R The *senior personnel* of a *common platform firm*, a *management company* a *full-scope UK AIFM*, or of the *UK branch* of a *non-EEA bank* must be of sufficiently good repute and sufficiently experienced as to ensure the sound and prudent management of the *firm*.

[**Note:** article 9(1)(4) of *MiFID*, article 7(1)(b) of the *UCITS Directive*, article 8(1)(c) of *AIFMD*, ~~article 11(1) second paragraph of the *Banking Consolidation Directive*~~ and article 13(1) 91(1) of the *CRD*]

- 4.2.1A G Other *firms* should take account of the senior personnel *rule* (SYSC 4.2.1R) as if it were *guidance* (and as if "should" appeared in that rule instead of "must") as explained in SYSC 1 Annex 1 3.3 ~~R(1)~~.

...

### Composition of management

- 4.2.2 R A *common platform firm*, a *management company*, a *full-scope UK AIFM* and the *UK branch* of a *non-EEA bank* must ensure that its management is undertaken by at least two persons meeting the requirements laid down in SYSC 4.2.1R and:

(a) for a *full-scope UK AIFM*, SYSC 4.2.7R; or

(b) for a *common platform firm*, SYSC 4.3A.3R.

[**Note:** article 9 (4) (6) first paragraph of *MiFID*, article 7(1)(b) of the *UCITS Directive*, article 8(1)(c) of *AIFMD* and article 13(1) of *CRD*]

...

- 4.2.4 G At least two independent minds should be applied to the formulation and implementation of the policies of a *common platform firm*, a *management company*, a *full-scope UK AIFM* and the *UK branch* of a *non-EEA bank*. Where a *firm* nominates just two individuals to direct its business, the ~~appropriate regulator~~ FCA will not regard them as both effectively directing the business where one of them makes some, albeit significant, decisions relating to only a few aspects of the business. Each should play a part in the decision-making process on all significant decisions. Both should demonstrate the qualities and application to influence strategy, day-to-day policy and its implementation. This does not require their day-to-day involvement in the execution and implementation of policy. It does, however, require involvement in strategy and general direction, as well as knowledge of, and influence

on, the way in which strategy is being implemented through day-to-day policy.

- 4.2.5 G Where there are more than two individuals directing the business of a *common platform firm*, a *management company*, a *full-scope UK AIFM* or the *UK branch of a non-EEA bank*, the ~~appropriate regulator~~ FCA does not regard it as necessary for all of these individuals to be involved in all decisions relating to the determination of strategy and general direction. However, at least two individuals should be involved in all such decisions. Both individuals' judgement should be engaged so that major errors leading to difficulties for the *firm* are less likely to occur. Similarly, each individual should have sufficient experience and knowledge of the business and the necessary personal qualities and skills to detect and resist any imprudence, dishonesty or other irregularities by the other individual. Where a single individual, whether a chief executive, managing *director* or otherwise, is particularly dominant in such a *firm* this will raise doubts about whether SYSC 4.2.2R is met.

#### Alternative arrangements

- 4.2.6 R If a *common platform firm*, (other than a *credit institution* or *AIFM investment firm*) or the *UK branch of a non-EEA bank*, is:
- (1) a natural person; or
  - (2) a legal person managed by a single natural person;
- then:
- (3) it must have alternative arrangements in place which ensure:
    - (a) sound and prudent management of the *firm*; and
    - (b) adequate consideration of the interest of clients and the integrity of the market;
  - (4) the natural persons concerned must be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties.

[**Note:** article 9(4) (6) second paragraph of *MiFID*]

...

### **4.3 Responsibility of senior personnel**

- 4.3.1 R A *firm* (with the exception of a *common platform firm* and a *sole trader* who does not employ any *person* who is required to be approved under section 59 of the *Act* (Approval for particular arrangements)), when allocating functions internally, must ensure that *senior personnel* and, where appropriate, the *supervisory function*, are responsible for ensuring

that the *firm* complies with its obligations under the *regulatory system*. In particular, *senior personnel* and, where appropriate, the *supervisory function* must assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the *firm's* obligations under the *regulatory system* and take appropriate measures to address any deficiencies.

[~~Note: article 9(1) of the MiFID implementing Directive~~ and articles 9(1) and 9(3) of the UCITS implementing Directive]

- 4.3.2 R A ~~common platform firm~~ (with the exception of a ~~sole trader who does not employ any person who is required to be approved under section 59 of the Act (Approval for particular arrangements))~~ and a *management company* ; must ensure that:
- (1) its *senior personnel* receive on a frequent basis, and at least annually, written reports on the matters covered by SYSC 6.1.2R to SYSC 6.1.5R, SYSC 6.2.1R and SYSC 7.1.2R, SYSC 7.1.3R and SYSC 7.1.5R to SYSC 7.1.7R, indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies; and
  - (2) the *supervisory function*, if any, receives on a regular basis written reports on the same matters.

[~~Note: article 9(2) and article 9(3) of the MiFID implementing Directive~~ and articles 9(4) and 9(6) of the UCITS implementing Directive]

- 4.3.2A G Other *firms* should take account of the written reports rule (SYSC 4.3.2R) as if it were *guidance* (and as if "should" appeared in that rule instead of "must") as explained in SYSC 1 Annex 1 3.3G R(1).

...

#### 4.3A ~~CRR firms~~ Management body and nomination committee

Management body

- 4.3A.-1 R In SYSC 4.3A.6R and SYSC 4.3A.8R a '~~CRR firm~~ common platform firm that is ~~significant~~ significant means a *significant IFPRU firm*.
- 4.3A.1 R A ~~CRR firm~~ common platform firm must ensure that the *management body* defines, oversees and is accountable for the implementation of governance arrangements that ensure effective and prudent management of the *firm*, including the segregation of duties in the organisation and the prevention of conflicts of interest, and in a manner that promotes the integrity of the market and the interest of clients. The *firm* must ensure that the *management body*:

- (1) has overall responsibility for the *firm*;
- (2) approves and oversees implementation of the *firm's* strategic objectives, risk strategy and internal governance;
- (3) ensures the integrity of the *firm's* accounting and financial reporting systems, including financial and operational controls and compliance with the *regulatory system*.
- (4) oversees the process of disclosure and communications;
- (5) has responsibility for providing effective oversight of *senior management* - ;
- (6) monitors and periodically assesses:
  - (i) the adequacy and the implementation of the *firm's* strategic objectives in the provision of *investment services and activities* and *ancillary services*;
  - (ii) the effectiveness of the *firm's* governance arrangements;  
and
  - (iii) the adequacy of the policies relating to the provision of services to *clients*, and  
  
takes appropriate steps to address any deficiencies-; and
- (7) has adequate access to information and documents which are needed to oversee and monitor management decision-making.

[**Note:** article 88(1) of *CRD* and articles 9(1) and 9(3) of *MiFID*]

- 4.3A.1A      R      Without prejudice to SYSC 4.3A.1R, a *common platform firm* must ensure that the *management body* defines, approves and oversees:
- (1) the organisation of the *firm* for the provision of *investment services and activities* and *ancillary services*, including the skills, knowledge and expertise required by personnel, the resources, the procedures and the arrangements for the provision of services and activities, taking into account the nature, scale and complexity of its business and all the requirements the *firm* has to comply with;
  - (2) a policy as to services, activities, products and operations offered or provided, in accordance with the risk tolerance of the *firm* and the characteristics and needs of the *firm's clients* to whom they will be offered or provided, including carrying out appropriate stress testing, where appropriate; and

- (3) a remuneration policy of persons involved in the provision of services to *clients* aiming to encourage responsible business conduct, fair treatment of *clients* as well as avoiding conflict of interest in the relationships with *clients*.

**[Note: article 9(3) of *MiFID*]**

- 4.3A.2 R A ~~*CRR firm*~~ *common platform firm* must ensure that the chairman of the *firm's management body* does not exercise simultaneously the *PRA's* Chief Executive function *controlled function* (SMF1) or *chief executive function* within the same *firm*, ~~unless justified by the *firm* and authorised by the *FCA*.~~

**[Note: article 88(1)(e) of *CRD* and article 9(1) of *MiFID*]**

- 4.3A.2A G A *firm* may apply to the *FCA* under section 138A of the *Act* to waive *SYSC 4.3A.2R*.

- 4.3A.3 R A ~~*CRR firm*~~ *common platform firm* must ensure that the members of the *management body* of the *firm*:
- (1) are of sufficiently good repute;
  - (2) possess sufficient knowledge, skills and experience to perform their duties;
  - (3) possess adequate collective knowledge, skills and experience to understand the *firm's* activities, including the main risks;
  - (4) reflect an adequately broad range of experiences;
  - (5) commit sufficient time to perform their functions in the *firm*; and
  - (6) act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of *senior management* where necessary and to effectively oversee and monitor management decision-making.

**[Note: article 91(1)-(2) and (7)-(8) of ~~the~~ *CRD* and article 9(1) and 9(4) of *MiFID*]**

- 4.3A.4 R A ~~*CRR firm*~~ *common platform firm* must devote adequate human and financial resources to the induction and training of members of the *management body*.

**[Note: article 91(~~3~~) (9) of ~~the~~ *CRD* and article 9(1) of *MiFID*]**

- 4.3A.5 R A ~~*CRR firm*~~ *common platform firm* must ensure that the members of the *management body* of the *firm* do not hold more directorships than is

appropriate taking into account individual circumstances and the nature, scale and complexity of the *firm's* activities.

[**Note:** article 91(3) of ~~the~~ *CRD* and article 9(1) of *MiFID*]

- 4.3A.6 R (1) A ~~*CRR firm*~~ *common platform firm* that is significant must ensure that the members of the *management body* of the *firm* do not hold more than one of the following combinations of directorship in any organisation at the same time:
- (a) one executive directorship with two non-executive directorships; and
  - (b) four non-executive directorships.
- (2) Paragraph (1) does not apply to members of the *management body* that represent the *United Kingdom*.

[**Note:** article 91(3) of ~~the~~ *CRD* and article 9(1) of *MiFID*]

- 4.3A.7 R For the purposes of SYSC 4.3A.5R and SYSC 4.3A.6R:
- (1) directorships in organisations which do not pursue predominantly commercial objectives shall not count; and
  - (2) the following shall count as a single directorship:
    - (a) executive or non-executive directorships held within the same *group*; or
    - (b) executive or non-executive directorships held within:
      - (i) *firms* that are members of the same institutional protection scheme provided that the conditions set out in article 113(7) of the *CRR* are fulfilled; or
      - (ii) *undertakings* (including non-financial entities) in which the *firm* holds a *qualifying holding*.

[**Note:** article 91(4) and (5) of ~~the~~ *CRD* and article 9(1) of *MiFID*]

#### Nomination Committee

- 4.3A.8 R A ~~*CRR firm*~~ *common platform firm* that is significant must:
- (1) establish a nomination committee composed of members of the *management body* who do not perform any executive function in the *firm*;
  - (2) ensure that the nomination committee is able to use any forms of resources the nomination committee deems

appropriate, including external advice; and

- (3) ensure that the nomination committee receives appropriate funding.

[**Note:** article 88(2) of ~~the~~ *CRD* and article 9(1) of *MiFID*]

- 4.3A.9 R A ~~CRR firm~~ common platform firm that has a nomination committee must ensure that the nomination committee:
- (1) ~~engage~~ engages a broad set of qualities and competences when recruiting members to the *management body* and for that purpose puts in place a policy promoting diversity on the *management body*;
  - (2) identifies and recommends for approval, by the *management body* or by general meeting, candidates to fill *management body* vacancies, having evaluated the balance of knowledge, skills, diversity and experience of the *management body*;
  - (3) prepares a description of the roles and capabilities for a particular appointment, and assesses the time commitment required;
  - (4) decides on a target for the representation of the underrepresented gender in the *management body* and prepares a policy on how to increase the number of the underrepresented gender in the *management body* in order to meet that target;
  - (5) periodically, and at least annually, assesses the structure, size, composition and performance of the *management body* and makes recommendations to the *management body* with regard to any changes;
  - (6) periodically, and at least annually, assesses the knowledge, skills and experience of individual members of the *management body* and of the *management body* collectively, and reports this to the *management body*;
  - (7) periodically reviews the policy of the *management body* for selection and appointment of *senior management* and makes recommendations to the *management body*; and
  - (8) in performing its duties, and to the extent possible, on an ongoing basis, takes account of the need to ensure that the *management body's* decision making is not dominated by any one individual or small group of individuals in a manner that is detrimental to the interest of the *firm* as a whole ;

[**Note:** article 88(2) and article 91(10) of ~~the~~ *CRD* and article 9(1) of

MiFID]

- 4.3A.10 R A ~~CRR firm~~ common platform firm that does not have a nomination committee must engage a broad set of qualities and competences when recruiting members to the *management body*. For that purpose a ~~CRR firm~~ common platform firm that does not have a nomination committee must put in place a policy promoting diversity on the *management body*.

[**Note:** article 91(10) of ~~the CRD~~ and article 9(1) of MiFID]

...

#### 4.7 Senior management responsibilities for UK relevant authorised persons: allocation of responsibilities

...

#### Allocation of FCA-prescribed senior management responsibilities

- 4.7.7 R Table: FCA-prescribed senior management responsibilities

FCA-prescribed senior management responsibility	Explanation	Equivalent PRA-prescribed senior management responsibility
...		
Part Two (applies to all firms except for small CRR firms and credit unions)		
...		
(7) Responsibility for: (a) safeguarding the independence of; and (b) oversight of the performance of; the internal audit function, in accordance with SYSC 6.2 (Internal Audit) <u>or article 24 of the MiFID Org Regulation.</u>	This responsibility includes responsibility for: (a) safeguarding the independence of; and (b) oversight of the performance of; a person approved to perform the PRA's Head of Internal Audit <i>designated senior management function</i> for the firm.	<i>PRA-prescribed senior management responsibility</i> 4.1(15)
(8) Responsibility for: (a) safeguarding the	This responsibility includes responsibility	<i>PRA-prescribed senior management</i>

independence of; and (b) oversight of the performance of; the compliance function in accordance with SYSC 6.1(Compliance) or article 22 of the <i>MiFID Org Regulation</i> .	for: (a) safeguarding the independence of; and (b) oversight of the performance of; the person performing the <i>compliance oversight function</i> for the firm.	<i>responsibility</i> 4.1(16)
...		

...

## 5 Employees, agents and other relevant persons

### 5.1 Skills, knowledge and expertise

...

#### Application to a common platform firm

##### 5.1.1-AA G For a common platform firm:

- (1) the *MiFID Org Regulation* applies, as summarised in SYSC 1 Annex 1 3.2G, SYSC Annex 1 3.2-AAAR and SYSC 1 Annex 1 3.2-AAR; and
- (2) the rules and guidance apply as set out in the table below:

<u>Subject</u>	<u>Applicable rule or guidance</u>
<u>Segregation of functions</u>	<u>SYSC 5.1.2G to SYSC 5.1.5AG, SYSC 5.1.7R, SYSC 5.1.8G to SYSC 5.1.11G</u>
<u>Certification regime</u>	<u>SYSC 5.2</u>

#### Application to an article 3 MiFID firm and to a third country firm

##### 5.1.1-A G For an article 3 MiFID firm and a third country firm:

- (a) the rules and guidance in this chapter apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(1); and

- (b) those articles of the *MiFID Org Regulation* in SYSC 1 Annex 1 2.8AR and SYSC 1 Annex 1 3.2CR apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(2).

Segregation of functions

- 5.1.1 R A *firm* (other than a *common platform firm*) must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.
- [**Note:** ~~article 5(1)(d) of the *MiFID implementing Directive*, articles 12(1)(a) and 14(1)(c) of the *UCITS Directive* and article 5(1) of the *UCITS implementing Directive*]~~

...

- 5.1.5A G If a *firm* requires *employees* who are not subject to a qualification requirement in *TC* to pass a relevant examination from the list of recommended examinations maintained by the Financial Skills Partnership, the ~~appropriate regulator~~ *FCA* will take that into account when assessing whether the *firm* has ensured that the *employee* satisfies the knowledge component of the *competent employees rule*.

Segregation of functions

- 5.1.6 R A ~~*common platform firm*~~ and a *management company* must ensure that the performance of multiple functions by its *relevant persons* does not and is not likely to prevent those persons from discharging any particular functions soundly, honestly and professionally.

[**Note:** ~~article 5(1)(g) of the *MiFID implementing Directive* and article 5(3) of the *UCITS implementing Directive*]~~

- 5.1.7 R The *senior personnel* of a *common platform firm* must define arrangements concerning the segregation of duties within the *firm* and the prevention of conflicts of interest.

[**Note:** article 88 of the *CRD* and ~~annex V paragraph 1 of the *Banking Consolidation Directive*~~ article 9(1) of *MiFID*]

- 5.1.7A G Other *firms* should take account of the segregation of functions *rules* (SYSC 5.1.6R and SYSC 5.1.7R) as if they were *guidance* (and as if “should” appeared in those rules instead of “must”) as explained in SYSC 1 Annex 1 3.3G R(1).

Segregation of functions: additional guidance

...

- 5.1.11 G Where a ~~*common platform firm*~~ outsources its internal audit function, it

should take reasonable steps to ensure that every individual involved in the performance of this service is independent from the individuals who perform its external audit. This should not prevent services from being undertaken by a *firm's* external auditors provided that:

- (1) the work is carried out under the supervision and management of the *firm's* own internal staff; and
- (2) potential conflicts of interest between the provision of external audit services and the provision of internal audit are properly managed.

Awareness of procedures: management company

- 5.1.12 R A ~~common platform firm and a management company~~ must ensure that its *relevant persons* are aware of the procedures which must be followed for the proper discharge of their responsibilities.

[~~Note: article 5(1)(b) of the MiFID implementing Directive and article 4(1)(b) of the UCITS implementing Directive~~]

Awareness of procedures: other firms

- 5.1.12A G Other *firms* should take account of the *rule* concerning awareness of procedures (SYSC 5.1.12R) as if it were *guidance* (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex 1 3.3G R(1).

General

- 5.1.13 R The systems, internal control mechanisms and arrangements established by a *firm* (other than a common platform firm) in accordance with this chapter must take into account the nature, scale and complexity of its business and the nature and range of financial services and activities undertaken in the course of that business.

[~~Note: article 5(1) final paragraph of the MiFID implementing Directive and articles 4(1) final paragraph and 5(4) of the UCITS implementing Directive~~]

- 5.1.14 R A ~~common platform firm and a management company~~ must monitor and, on a regular basis, evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with this chapter, and take appropriate measures to address any deficiencies.

[~~Note: article 5(5) of the MiFID implementing Directive and articles article 4(5) of the UCITS implementing Directive~~]

- 5.1.15 G Other *firms* should take account of the *rule* requiring monitoring and evaluation of the adequacy and effectiveness of systems (SYSC 5.1.14R) as if it were *guidance* (and as if “should” appeared in that rule instead of

“must”) as explained in SYSC 1 Annex 1 3.3G R(1).

## 6 Compliance, internal audit and financial crime

### 6.1 Compliance

...

#### Application to a common platform firm

##### 6.1.1-AA G For a common platform firm:

- (1) the MiFID Org Regulation applies, as summarised in SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2-AAAR and SYSC 1 Annex 1 3.2-AAR; and
- (2) the rules and guidance apply as set out in the table below:

<u>Subject</u>	<u>Applicable rule or guidance</u>
<u>Adequate policy and procedures</u>	<u>SYSC 6.1.1R, SYSC 6.1.1AG</u>
<u>Compliance function</u>	<u>SYSC 6.1.4-AG, SYSC 6.1.7R</u>
<u>Internal audit</u>	<u>SYSC 6.2.2G</u>
<u>Financial crime</u>	<u>SYSC 6.3.1R to SYSC 6.3.11G</u>

#### Application to an article 3 MiFID firm and to a third country firm

##### 6.1.1-A G For an article 3 MiFID firm and a third country firm:

- (a) the rules and guidance in this chapter apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(1); and
- (b) those articles of the MiFID Org Regulation in SYSC 1 Annex 1 2.8AR and 3.2CR apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(2).

#### Adequate policy and procedures

- 6.1.1 R A firm must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the firm including its managers, employees and appointed representatives (or where applicable, tied agents) with its obligations under the regulatory system and for countering the risk that the firm might be used to further financial crime.

[Note: article 43 16(2) of MiFID and article 12(1)(a) of the UCITS Directive]

...

- 6.1.2 R A ~~common platform firm and a management company~~ must, taking into account the nature, scale and complexity of its business, and the nature and range of financial services and activities undertaken in the course of that business, establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the *firm* to comply with its obligations under the *regulatory system*, as well as associated risks, and put in place adequate measures and procedures designed to minimise such risks and to enable the ~~appropriate regulator~~ FCA to exercise its powers effectively under the *regulatory system* and to enable any other *competent authority* to exercise its powers effectively under ~~MiFID~~ or the *UCITS Directive*.

[~~Note: article 6(1) of the MiFID implementing Directive~~ and article 10(1) of the *UCITS implementing Directive*]

- 6.1.2A G Other *firms* should take account of the adequate policies and procedures *rule* (SYSC 6.1.2R) as if it were *guidance* (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex 1 3.3G R(1).

#### Compliance function

- 6.1.3 R A ~~common platform firm and a management company~~ must maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:
- (1) to monitor and, on a regular basis, to assess the adequacy and effectiveness of the measures and procedures put in place in accordance with SYSC 6.1.2R, and the actions taken to address any deficiencies in the *firm's* compliance with its obligations; and
  - (2) to advise and assist the *relevant persons* responsible for carrying out *regulated activities* to comply with the *firm's* obligations under the *regulatory system*.

[~~Note: article 6(2) of the MiFID implementing Directive~~ and article 10(2) of the *UCITS implementing Directive*]

- 6.1.3A G (1) Other *firms* should take account of the compliance function *rule* (SYSC 6.1.3R) as if it were *guidance* (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex 1 3.3G R(1).
- (2) ...

- 6.1.4 R In order to enable the compliance function to discharge its responsibilities properly and independently, a ~~common platform firm and a management company~~ must ensure that the following conditions are satisfied:

- (1) the compliance function must have the necessary authority, resources, expertise and access to all relevant information;

- (2) a compliance officer must be appointed and must be responsible for the compliance function and for any reporting as to compliance required by SYSC 4.3.2R;
- (3) the *relevant persons* involved in the compliance functions must not be involved in the performance of services or activities they monitor;
- (4) the method of determining the remuneration of the *relevant persons* involved in the compliance function must not compromise their objectivity and must not be likely to do so.

[~~Note: article 6(3) first paragraph of the MiFID implementing Directive and article 10(3) of the UCITS implementing Directive~~]

- 6.1.4-A G In setting the method of determining the *remuneration of relevant persons* involved in the compliance function:
- (1) *firms* that SYSC 19A applies to will also need to comply with the *Remuneration Code*;
  - (2) ~~BIPRU firms~~ that SYSC 19C applies to will also need to comply with the *BIPRU Remuneration Code*;
  - (3) *firms* that SYSC 19D applies to will also need to comply with the *dual-regulated firms Remuneration Code*; and
  - (4) *firms* that the remuneration part of the ~~PRA Rulebook~~ *Rulebook* applies to will also need to comply with it.

...

- 6.1.4-C G (1) This *guidance* is relevant to a *relevant authorised person* required to appoint a compliance officer under SYSC 6.1.4R or article 22(3) of the MiFID Org Regulation –as applicable.

...

- 6.1.5 R A ~~common platform firm and a management company~~ need not comply with SYSC 6.1.4R(3) or SYSC 6.1.4R(4) if it is able to demonstrate that in view of the nature, scale and complexity of its business, and the nature and range of financial services and activities, the requirements under those *rules* are not proportionate and that its compliance function continues to be effective.

[~~Note: article 6(3) second paragraph of the MiFID implementing Directive and article 10(3) second paragraph of the UCITS implementing Directive~~]

- 6.1.6 G Other *firms* should take account of the proportionality *rule* (SYSC 6.1.5R) as if it were *guidance* (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex 1 3.3G ~~R(1)~~.

- 6.1.7 R (1) ...
- (2) References to the *regulatory system* in SYSC 6.1.1R, SYSC 6.1.2R and SYSC 6.1.3R apply in respect of a *firm's branch* as if *regulatory system* includes a *Host State's* requirements under *MiFID* and the ~~*MiFID implementing Directive*~~ *MiFID Org Regulation* which are applicable to the *investment services and activities* conducted from the *firm's branch*.

[**Note:** article ~~13(2)~~ 16 of *MiFID*]

## 6.2 Internal audit

- 6.2.1 R A ~~*common platform firm*~~ and a *management company* must, where appropriate and proportionate in view of the nature, scale and complexity of its business and the nature and range of its financial services and activities, undertaken in the course of that business, establish and maintain an internal audit function which is separate and independent from the other functions and activities of the *firm* and which has the following responsibilities:
- (1) to establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the *firm's* systems, internal control mechanisms and arrangements;
  - (2) to issue recommendations based on the result of work carried out in accordance with (1);
  - (3) to verify compliance with those recommendations;
  - (4) to report in relation to internal audit matters in accordance with SYSC 4.3.2R.

[**Note:** ~~article 8 of the *MiFID implementing Directive*~~ and article 11 of the *UCITS implementing Directive*]

- 6.2.1A G Other *firms* should take account of the internal audit *rule* (SYSC 6.2.1R) as if it were *guidance* (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex 1 3.3G ~~R(1)~~.
- 6.2.1B G (1) This *guidance* is relevant to a *relevant authorised person* required to establish and maintain an internal audit function under ~~SYSC 6.2.1R~~ article 24 of the *MiFID Org Regulation*.
- 6.2.2 G (1) The term 'internal audit function' in SYSC 6.2.1R (and SYSC 4.1.11G), and for a *common platform firm* in article 24 of the *MiFID Org Regulation*, refers to the generally understood concept of internal audit within a *firm*, that is, the function of assessing adherence to and the effectiveness of internal systems and controls, procedures and policies.

...

...

**7 Risk control****7.1 Risk control**

...

Application to a common platform firm7.1.1-AA G For a common platform firm:

- (1) the MiFID Org Regulation applies, as summarised in SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2-AAAR and SYSC 1 Annex 1 3.2-AAR; and
- (2) the rules and guidance apply as set out in the table below:

<u>Subject</u>	<u>Applicable rule or guidance</u>
<u>Risk assessment</u>	<u>SYSC 7.1.1G</u>
<u>Risk management</u>	<u>SYSC 7.1.4R, SYSC 7.1.4AG</u>
<u>Risk control: remuneration</u>	<u>SYSC 7.1.7BG, SYSC 7.1.7BBG</u>
<u>Risk control: additional provisions</u>	<u>SYSC 7.1.7CG, SYSC 7.1.8G, SYSC 7.1.9R to SYSC 7.1.16R</u>
<u>Additional rules for CCR firms</u>	<u>SYSC 7.1.16CR to SYSC 7.1.22R</u>

Application to an article 3 MiFID firm and to a third country firm7.1.1-A G For an article 3 MiFID firm and a third country firm:

- (a) the rules and guidance in this chapter apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(1); and
- (b) those articles of the MiFID Org Regulation in SYSC 1 Annex 1 2.8AR and 3.2CR apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(2).

Risk assessment

- 7.1.1 G SYSC 4.1.1R requires a firm to have effective processes to identify, manage, monitor and report the risks it is or might be exposed to.

- 7.1.2 R A ~~common platform firm~~ UCITS investment firm must establish, implement and maintain adequate risk management policies and procedures, including effective procedures for risk assessment, which identify the risks relating to the *firm's* activities, processes and systems, and where appropriate, set the level of risk tolerated by the *firm*.

~~[Note: article 7(1)(a) of the MiFID implementing Directive, article 13(5) second paragraph of MiFID]~~

- 7.1.2A G Other *firms* should take account of the risk management policies and procedures *rule* (SYSC 7.1.2R) as if it were *guidance* (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex 1 3.3G R(1).

...

### Risk management

- 7.1.3 R A ~~common platform firm~~ UCITS investment firm must adopt effective arrangements, processes and mechanisms to manage the risk relating to the *firm's* activities, processes and systems, in light of that level of risk tolerance.

~~[Note: article 7(1)(b) of the MiFID implementing Directive]~~

...

- 7.1.4B G Other *firms* should take account of the risk management *rules* (SYSC 7.1.3R and SYSC 7.1.4R) as if they were *guidance* (and as if “should” appeared in those rules instead of “must”) as explained in SYSC 1 Annex 1 3.3G R(1).

- 7.1.5 R A ~~common platform firm~~ UCITS investment firm must monitor the following:

- (1) the adequacy and effectiveness of the *firm's* risk management policies and procedures;
- (2) the level of compliance by the *firm* and its *relevant persons* with the arrangements, processes and mechanisms adopted in accordance with SYSC 7.1.3R;
- (3) the adequacy and effectiveness of measures taken to address any deficiencies in those policies, procedures, arrangements, processes and mechanisms, including failures by the *relevant persons* to comply with such arrangements or processes and mechanisms or follow such policies and procedures.

~~[Note: article 7(1)(c) of the MiFID implementing Directive]~~

- 7.1.6 R A ~~common platform firm~~ UCITS investment firm must, where appropriate and proportionate in view of the nature, scale and complexity of its business and the nature and range of the *investment services and activities* undertaken in

the course of that business, establish and maintain a risk management function that operates independently and carries out the following tasks:

- (1) implementation of the policies and procedures referred to in SYSC 7.1.2R to SYSC 7.1.5R; and
- (2) provision of reports and advice to *senior personnel* in accordance with SYSC 4.3.2R.

~~[Note: MiFID implementing Directive Article 7(2) first paragraph]~~

- 7.1.7 R Where a ~~common platform firm~~ *UCITS investment firm* is not required under SYSC 7.1.6R to maintain a risk management function that functions independently, it must nevertheless be able to demonstrate that the policies and procedures which it has adopted in accordance with SYSC 7.1.2R to SYSC 7.1.5R satisfy the requirements of those *rules* and are consistently effective.

~~[Note: article 7(2) second paragraph of the MiFID implementing Directive]~~

- 7.1.7A G Other *firms* should take account of the risk management *rules* (SYSC 7.1.5R to SYSC 7.1.7R) as if they were *guidance* (and as if “should” appeared in those rules instead of “must”) as explained in SYSC 1 Annex 1 3.3G ~~R(1)~~.

...

#### Risk control: additional provisions

...

- 7.1.8 G ...
- (2) The term 'risk management function' in SYSC 7.1.6R and SYSC 7.1.7R<sub>1</sub> and for a *common platform firm* in article 23(2) of the *MiFID Org Regulation*, refers to the generally understood concept of risk assessment within a *firm*, that is, the function of setting and controlling risk exposure.

...

...

#### Additional rules for CRR firms

...

- 7.1.21 R (1) A *CRR firm's* risk management function (~~SYSC 7.1.6R~~ article 23 of the *MiFID Org Regulation*) must be independent from the operational functions and have sufficient authority, stature, resources and access to the *management body*.

...

## 8 Outsourcing

### 8.1 General outsourcing requirements

...

#### Application to a common platform firm

#### 8.1.1-AA G For a common platform firm:

- (1) the MiFID Org Regulation applies, as summarised in SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2-AAAR and SYSC 1 Annex 1 3.2-AAR; and
- (2) the rules and guidance apply as set out in the table below:

<u>Subject</u>	<u>Applicable rule or guidance</u>
<u>General requirements</u>	<u>SYSC 8.1.1R, SYSC 8.1.2G, SYSC 8.1.3G, SYSC 8.1.12G</u>

#### Application to an article 3 MiFID firm and to a third country firm

#### 8.1.1-A G For an article 3 MiFID firm and a third country firm:

- (a) the rules and guidance in this chapter apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(1); and
- (b) those articles of the MiFID Org Regulation in SYSC 1 Annex 1 2.8AR and 3.2CR apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(2).

#### General requirements

#### 8.1.1 R A common platform firm must:

- (1) when relying on a third party for the performance of operational functions which are critical for the performance of *regulated activities*, *listed activities* or *ancillary services* (in this chapter "relevant services and activities") on a continuous and satisfactory basis, ensure that it takes reasonable steps to avoid undue additional operational risk;
- (2) not undertake the *outsourcing* of important operational functions in such a way as to impair materially:

- (a) the quality of its internal control; and
- (b) the ability of the ~~appropriate regulator~~ FCA to monitor the *firm's* compliance with all obligations under the *regulatory system* and, if different, of a *competent authority* to monitor the *firm's* compliance with all obligations under *MiFID*.

[~~Note:~~ article ~~13~~ 16(5) first paragraph of *MiFID*]

- 8.1.1A G Other *firms* should take account of the outsourcing *rule* (SYSC 8.1.1R) as if it were *guidance* (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex 1 3.3G R(1).

...

- 8.1.3 G SYSC 4.1.1R requires a *firm* to have effective processes to identify, manage, monitor and report risks and internal control mechanisms. Except in relation to those functions described in SYSC 8.1.5R and (for a *common platform firm*) in article 30 of the *MiFID Org Regulation*, where a *firm* relies on a third party for the performance of operational functions which are not critical or important for the performance of relevant services and activities (see SYSC 8.1.1R(1)) on a continuous and satisfactory basis, it should take into account, in a manner that is proportionate given the nature, scale and complexity of the *outsourcing*, the *rules* in this section in complying with that requirement.

- 8.1.4 R For the purposes of this chapter an operational function is regarded as critical or important if a defect or failure in its performance would materially impair the continuing compliance of a *firm* (other than a *common platform firm*) with the conditions and obligations of its *authorisation* or its other obligations under the *regulatory system*, or its financial performance, or the soundness or the continuity of its relevant services and activities.

[~~Note:~~ article 13(1) of the *MiFID implementing Directive*]

- 8.1.5 R ~~Without~~ For a *UCITS investment firm* and without prejudice to the status of any other function, the following functions will not be considered as critical or important for the purposes of this chapter:

- (1) the provision to the *firm* of advisory services, and other services which do not form part of the relevant services and activities of the *firm*, including the provision of legal advice to the *firm*, the training of personnel of the *firm*, billing services and the security of the *firm's* premises and personnel;
- (2) the purchase of standardised services, including market information services and the provision of price feeds;

[~~Note:~~ article 13(2) of the *MiFID implementing Directive*]

- (3) the recording and retention of relevant telephone conversations or

electronic communications subject to *COBS* 11.8.

- 8.1.5A G Other *firms* should take account of the critical functions *rules* (*SYSC* 8.1.4R and *SYSC* 8.1.5R) as if they were *guidance* (and as if “should” appeared in those rules instead of “must”) as explained in *SYSC* 1 Annex 1 3.3G R(1).
- 8.1.6 R If a *firm* (other than a *common platform firm*) *outsources* critical or important operational functions or any relevant services and activities, it remains fully responsible for discharging all of its obligations under the *regulatory system* and must comply, in particular, with the following conditions:
- (1) the *outsourcing* must not result in the delegation by *senior personnel* of their responsibility;
  - (2) the relationship and obligations of the *firm* towards its *clients* under the *regulatory system* must not be altered;
  - (3) the conditions with which the *firm* must comply in order to be *authorised*, and to remain so, must not be undermined;
  - (4) none of the other conditions subject to which the *firm's authorisation* was granted must be removed or modified.

~~[Note: article 14(1) of the *MiFID implementing Directive*]~~

- 8.1.7 R A ~~*common platform firm*~~ *UCITS investment firm* must exercise due skill and care and diligence when entering into, managing or terminating any arrangement for the *outsourcing* to a service provider of critical or important operational functions or of any relevant services and activities.

~~[Note: article 14(2) first paragraph of the *MiFID implementing Directive*]~~

- 8.1.8 R A ~~*common platform firm*~~ *UCITS investment firm* must in particular take the necessary steps to ensure that the following conditions are satisfied:

...

- (8) the service provider must co-operate with the ~~*appropriate regulator*~~ *FCA* and any other relevant *competent authority* in connection with the *outsourced* activities;
- (9) the *firm*, its auditors, the ~~*appropriate regulator*~~ *FCA* and any other relevant *competent authority* must have effective access to data related to the *outsourced* activities, as well as to the business premises of the service provider; and the ~~*appropriate regulator*~~ *FCA* and any other relevant *competent authority* must be able to exercise those rights of access;

...

~~[Note: article 14(2) second paragraph of the MiFID implementing Directive]~~

- 8.1.9 R A *common platform firm UCITS investment firm* must ensure that the respective rights and obligations of the *firm* and of the service provider are clearly allocated and set out in a written agreement.

~~[Note: article 14(3) of the MiFID implementing Directive]~~

- 8.1.10 R If a *common platform firm UCITS investment firm* and the service provider are members of the same *group*, the *firm* may, for the purpose of complying with SYSC 8.1.7R to SYSC 8.1.11R and SYSC 8.2 and SYSC 8.3, take into account the extent to which the *common platform firm UCITS investment firm* controls the service provider or has the ability to influence its actions.

~~[Note: article 14(4) of the MiFID implementing Directive]~~

- 8.1.11 R A *firm* (other than a *common platform firm*) must make available on request to the ~~appropriate regulator~~ FCA and any other relevant *competent authority* all information necessary to enable the ~~appropriate regulator~~ FCA and any other relevant *competent authority* to supervise the compliance of the performance of the *outsourced* activities with the requirements of the *regulatory system*.

~~[Note: article 14(5) of the MiFID implementing Directive]~~

- 8.1.11A G Other *firms* should take account of the outsourcing of important operational functions *rules* (SYSC 8.1.7R to SYSC 8.1.11R) as if they were *guidance* (and as if “should” appeared in those rules instead of “must”) as explained in SYSC 1 Annex 1 3.3G R(1).

- 8.1.12 G As SUP 15.3.8G explains, a *firm* should notify the ~~appropriate regulator~~ FCA when it intends to rely on a third party for the performance of operational functions which are critical or important for the performance of relevant services and activities on a continuous and satisfactory basis.

~~[Note: recital 20 44 of the MiFID implementing Directive MiFID Org Regulation]~~

...

SYSC 8.2 and SYSC 8.3 are deleted in their entirety. The deleted text is not shown.

Amend the following as shown.

## 9 Record-keeping

## 9.1 General rules on record-keeping

### Application to a common platform firm

#### 9.1.1-AA G For a common platform firm:

- (1) the MiFID Org Regulation applies, as summarised in SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2-AAAR and SYSC 1 Annex 1 3.2-AAR; and
- (2) the rules and guidance apply as set out in the table below:

<u>Subject</u>	<u>Applicable rule or guidance</u>
<u>General requirements</u>	<u>SYSC 9.1.1AR</u>
<u>Guidance on record-keeping</u>	<u>SYSC 9.1.4G, SYSC 9.1.5G, SYSC 9.1.6G</u>

### Application to an article 3 MiFID firm and to a third country firm

#### 9.1.1-A G For an article 3 MiFID firm and a third country firm:

- (a) the rules and guidance in this chapter apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(1); and
- (b) those articles of the MiFID Org Regulation in SYSC 1 Annex 1 2.8AR and 3.2CR apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(2).

### General requirements

- 9.1.1 R A firm (other than a common platform firm) must arrange for orderly records to be kept of its business and internal organisation, including all services and transactions undertaken by it, which must be sufficient to enable the ~~appropriate regulator~~ FCA or any other relevant competent authority under ~~MiFID~~ or the UCITS Directive to monitor the firm's compliance with the requirements under the regulatory system, and in particular to ascertain that the firm has complied with all obligations with respect to clients.

[Note: article 13(6) of MiFID, article 5(1)(f) of the MiFID implementing Directive, article 12(1)(a) of the UCITS Directive and article 4(1)(e) of the UCITS implementing Directive]

- 9.1.1A R (1) A common platform firm must arrange for records to be kept of all services, activities and transactions undertaken by it.
- (2) The records in (1) must be sufficient to enable the FCA to fulfil its supervisory tasks and to perform the enforcement actions under the

regulatory system including MiFID, MiFIR and the Market Abuse Regulation, and in particular to ascertain that the common platform firm has complied with all obligations including those with respect to clients or potential clients and to the integrity of the market.

[**Note:** article 16(6) of *MiFID*]

- 9.1.2 R A common platform firm must retain all records kept by it under this chapter in relation to its *MiFID* business for a period of at least five years.

[**Note:** article 51 (1) of the *MiFID implementing Directive*]

- 9.1.3 R ~~In relation to its *MiFID* business, a common platform firm must retain records in a medium that allows the storage of information in a way accessible for future reference by the appropriate regulator or any other relevant competent authority under *MiFID*, and so that the following conditions are met:~~

- (1) ~~the appropriate regulator or any other relevant competent authority under *MiFID* must be able to access them readily and to reconstitute each key stage of the processing of each transaction;~~
- (2) ~~it must be possible for any corrections or other amendments, and the contents of the records prior to such corrections and amendments, to be easily ascertained;~~
- (3) ~~it must not be possible for the records otherwise to be manipulated or altered. [deleted]~~

[**Note:** article 51(2) of the *MiFID implementing Directive*]

Guidance on record-keeping

...

- 9.1.6 G Schedule 1 to each module of the *Handbook* sets out a list summarising the record-keeping requirements of that module. A common platform firm should also refer to the record-keeping requirements in the *MiFID Org Regulation*.

[**Note:** article 51(3) of *MiFID implementing Directive*]

...

## 10 Conflicts of interest

### 10.1 Application

#### Application to a common platform firm

- 10.1.1-  
AA G For a common platform firm:

- (1) the *MiFID Org Regulation* applies, as summarised in SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2-AAAR and SYSC 1 Annex 1 3.2-AAR; and
- (2) the *rules and guidance* in the table below apply:

<u>Subject</u>	<u>Applicable rule or guidance</u>
<u>Provision of services</u>	<u>SYSC 10.1.2G</u>
<u>Identifying conflicts</u>	<u>SYSC 10.1.3R</u>
<u>Types of conflicts</u>	<u>SYSC 10.1.5G</u>
<u>Managing conflicts</u>	<u>SYSC 10.1.7R</u>
<u>Conflicts policy</u>	<u>SYSC 10.1.12G</u>

Application to an article 3 MiFID firm and to a third-country firm

- 10.1.1-A G For an *article 3 MiFID firm* and a *third country firm*:
- (a) the *rules and guidance* in this chapter apply to them as if they were *rules* or as *guidance* in accordance with SYSC 1 Annex 1 3.2CR(1); and
- (b) those articles of the *MiFID Org Regulation* in SYSC 1 Annex 1 2.8AR and 3.2CR apply to them as if they were *rules* or as *guidance* in accordance with SYSC 1 Annex 1 3.2CR(2).

General application

- 10.1.1 R (1) This section applies to a *firm* which provides services to its *clients* in the course of carrying on *regulated activities* or *ancillary activities* or providing *ancillary services* (but only where the *ancillary services* constitute *MiFID business*).
- (2) This section also applies to a *management company*.

[Note: The provisions in SYSC 10.1 also implement articles 74(1) and 88 of the *CRD* and as applied under the discretion in the third paragraph of article 95(2) of the *EU CRR*, *BCD* article 22 and *BCD* Annex V paragraph 1]

- 10.1.1A R This section also applies to:

- (1) a *full-scope UK AIFM* of:
  - (i) a *UK AIF*;
  - (ii) an *EEA AIF* managed or *marketed* from an establishment in the *UK*; and
  - (iii) a *non-EEA AIF*; and
- (2) an *incoming EEA AIFM* branch which manages or *markets* a *UK AIF*.

Requirements only apply if a service is provided

- 10.1.2 G The requirements in this section only apply where a service is provided by a *firm*. The status of the *client* to whom the service is provided (as a *retail client*, *professional client* or *eligible counterparty*) is irrelevant for this purpose.

[**Note:** ~~recital 25 of MiFID implementing Directive~~ recital 46 of the MiFID Org Regulation]

Identifying conflicts

- 10.1.3 R A *firm* must take all ~~reasonable~~ appropriate steps to identify and to prevent or manage conflicts of interest between:
- (1) the *firm*, including its managers, employees and *appointed representatives* (or where applicable, *tied agents*), or any *person* directly or indirectly linked to them by *control*, and a *client* of the *firm*; or
  - (2) one *client* of the *firm* and another *client*;
- that arise or may arise in the course of the *firm* providing any service referred to in SYSC 10.1.1R including those caused by the receipt of inducements from third parties or by the *firm's* own remuneration and other incentive structures.

[**Note:** ~~article 18~~ 23(1) of *MiFID*]

Types of conflicts

- 10.1.4 R For the purposes of identifying the types of conflict of interest that arise, or may arise, in the course of providing a service and whose existence may ~~entail a material risk of damage to~~ the interests of a *client*, ~~a common platform firm and~~ a *management company* must take into account, as a minimum, whether the *firm* or a *relevant person*, or a *person* directly or indirectly linked by *control* to the *firm*:

- (1) is likely to make a financial gain, or avoid a financial loss, at the expense of the *client*;
- (2) has an interest in the outcome of a service provided to the *client* or of a transaction carried out on behalf of the *client*, which is distinct from the *client's* interest in that outcome;
- (2A) in the case of a *management company* providing *collective portfolio management* services for a *UCITS scheme*, (2) also applies where the service is provided to, or the transaction is carried out on behalf of, a *client* other than the *UCITS scheme*;
- (3) has a financial or other incentive to favour the interest of another *client* or group of *clients* over the interests of the *client*;
- (4) carries on the same business as the *client*; or in the case of a *management company*, carries on the same activities for the *UCITS scheme* and for another *client* or *clients* which are not *UCITS schemes*; or
- (5) receives or will receive from a *person* other than the *client* an inducement in relation to a service provided to the *client*, in the form of monies, goods or services, other than the standard commission or fee for that service.

The conflict of interest may result from the *firm* or *person* providing a service referred to in SYSC 10.1.1R or engaging in any other activity or, in the case of a *management company*, whether as a result of providing *collective portfolio management* services or otherwise.

[**Note:** ~~article 21 of MiFID implementing Directive~~ and article 17(1) of the *UCITS implementing Directive*]

- 10.1.4A G Other *firms* (~~except *common platform firms*~~) should take account of the rule on the types of conflicts (see SYSC 10.1.4R) ~~as if it were guidance (and as if "should" appeared in that rule instead of "must") as explained in SYSC 1 Annex 1 3.3G, except when they produce or arrange the production of *investment research* in accordance with COBS 12.2, or produce or disseminate *non-independent research* in accordance with COBS 12.3 (see SYSC 10.1.16 R) in accordance with SYSC 1 Annex 1 3.2BR, SYSC 1 Annex 1 3.2CR and SYSC 1 Annex 1 3.3R.~~
- 10.1.5 G The circumstances which should be treated as giving rise to a conflict of interest cover cases where there is a conflict between the interests of the *firm* or certain *persons* connected to the *firm* or the *firm's group* and the duty the *firm* owes to a *client*; or between the differing interests of two or more of its *clients*, to whom the *firm* owes in each case a duty. It is not enough that the *firm* may gain a benefit if there is not also a possible disadvantage to a *client*, or that one *client* to whom the *firm* owes a duty may make a gain or avoid a loss without there being a concomitant

possible loss to another such *client*.

[**Note:** recital 24 45 of ~~MiFID implementing Directive~~ the MiFID Org Regulation]

#### Record of conflicts

- 10.1.6 R A ~~common platform firm and a management company~~ must keep and regularly update a record of the kinds of service or activity carried out by or on behalf of that *firm* in which a conflict of interest entailing a material risk of damage to the interests of one or more *clients* has arisen or, in the case of an ongoing service or activity, may arise.

[**Note:** ~~article 23 of MiFID implementing Directive~~ and article 20(1) of the *UCITS implementing Directive*]

- 10.1.6A G Other *firms* (other than common platform firms) should also take account of the *rule* on records of conflicts (see SYSC 10.1.6R) ~~as if it were guidance (and as if "should" appeared in that rule instead of "must", (as explained in SYSC 1 Annex 1 3.3G), except when they produce or arrange the production of investment research in accordance with COBS 12.2, or produce or disseminate non-independent research in accordance with COBS 12.3 (see SYSC 10.1.16R) in accordance with SYSC 1 Annex 1 3.2BR, SYSC 1 Annex 1 3.2CR and SYSC 1 Annex 1 3.3R).~~

- 10.1.6B G A firm (other than a common platform firm) should ensure that its management body receives on a frequent basis, and at least annually, written reports on all situations referred to in SYSC 10.1.6R.

#### Managing conflicts

- 10.1.7 R A *firm* must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps to prevent conflicts of interest as defined in SYSC 10.1.3R ~~from constituting or giving rise to a material risk of damage to~~ adversely affecting the interests of its *clients*.

[**Note:** ~~article 13~~ 16(3) of *MiFID*]

#### Disclosure of conflicts

- 10.1.8 R (1) If arrangements made by a *firm* under SYSC 10.1.7R ~~to manage conflicts of interest~~ are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a *client* will be prevented, the *firm* must clearly disclose the ~~general nature and/or sources of conflicts of interest~~ following to the *client* before undertaking business for the *client*:
- (a) the general nature or sources of conflicts of interest, or both;  
and

- (b) the steps taken to mitigate those risks.
- (2) The disclosure must:
- (a) be made in a *durable medium*; ~~and~~
  - (b) clearly state that the organisational and administrative arrangements established by the *firm* to prevent or manage that conflict are not sufficient to ensure, with reasonable confidence, that the risks of damage to the interests of the *client* will be prevented;
  - (c) include specific description of the conflicts of interest that arise in the provision of *investment services* or *ancillary services*;
  - (d) explain the risks to the *client* that arise as a result of the conflicts of interest; and
  - (e) include sufficient detail, taking into account the nature of the *client*, to enable that *client* to take an informed decision with respect to the service in the context of which the conflict of interest arises.
- (3) This *rule* does not apply to the extent that SYSC 10.1.21R applies.

[~~Note: article 1823(2) and (3) of MiFID and Article 22(4) of MiFID implementing Directive~~]

- 10.1.8A R The obligation in SYSC 10.1.8R(2)(a) does not apply to a *firm* when carrying on *insurance mediation activity*.
- 10.1.9 G *Firms* should aim to identify and manage the conflicts of interest arising in relation to their various business lines and their *group's* activities under a comprehensive *conflicts of interest policy*. In particular, the disclosure of conflicts of interest by a *firm* should not exempt it from the obligation to maintain and operate the effective organisational and administrative arrangements under SYSC 10.1.7R. While disclosure of specific conflicts of interest is required by SYSC 10.1.8R, an over-reliance on disclosure without adequate consideration as to how conflicts may appropriately be managed is not permitted.

[~~Note: recital 27 of MiFID implementing Directive~~]

- 10.1.9A R A *firm* must treat disclosure of conflicts pursuant to SYSC 10.1.8R as a measure of last resort to be used only where the effective organisational and administrative arrangements established by the *firm* to prevent or manage its conflicts of interest in accordance with SYSC 10.1.7R are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the *client* will be prevented.

## Conflicts policy

- 10.1.10 R (1) A ~~common platform firm~~ and a management company must establish, implement and maintain an effective ~~conflicts of interest policy~~ *conflicts of interest policy* that is set out in writing and is appropriate to the size and organisation of the *firm* and the nature, scale and complexity of its business.
- (2) Where the ~~common platform firm~~ or the management company is a member of a *group*, the policy must also take into account any circumstances, of which the *firm* is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the *group*.

[~~Note: article 22(1) of MiFID implementing Directive~~ and article 18(1) of the UCITS implementing Directive]

## Contents of policy

- 10.1.11 R (1) The *conflicts of interest policy* must include the following content:
- (a) it must identify in accordance with SYSC 10.1.3R and SYSC 10.1.4R, by reference to the specific services and activities carried out by or on behalf of the ~~common platform firm~~ or management company, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more *clients*; and
- (b) it must specify procedures to be followed and measures to be adopted in order to manage such conflicts.
- (2) The procedures and measures provided for in paragraph (1)(b) must:
- (a) be designed to ensure that *relevant persons* engaged in different business activities involving a conflict of interest of the kind specified in paragraph (1)(a) carry on those activities at a level of independence appropriate to the size and activities of the ~~common platform firm~~ or the management company and of the *group* to which either of them respectively belongs, and to the materiality of the risk of damage to the interests of *clients*; and
- (b) include such of the following as are necessary and appropriate for the ~~common platform firm~~ or the management company to ensure the requisite degree of independence:
- (i) effective procedures to prevent or control the exchange of information between *relevant persons* engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests

of one or more *clients*;

- (ii) the separate supervision of *relevant persons* whose principal functions involve carrying out activities on behalf of, or providing services to, *clients* whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the *firm*;
  - (iii) the removal of any direct link between the remuneration of *relevant persons* principally engaged in one activity and the remuneration of, or revenues generated by, different *relevant persons* principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
  - (iv) measures to prevent or limit any *person* from exercising inappropriate influence over the way in which a *relevant person* carries out services or activities; and
  - (v) measures to prevent or *control* the simultaneous or sequential involvement of a *relevant person* in separate services or activities where such involvement may impair the proper management of conflicts of interest.
- (3) If the adoption or the practice of one or more of those measures and procedures does not ensure the requisite level of independence, a ~~*common platform firm*~~ and a *management company* must adopt such alternative or additional measures and procedures as are necessary and appropriate for the purposes of paragraph (1)(b).

[~~Note: article 22(2) and (3) of MiFID implementing Directive~~ and articles 18(2), 19(1) and 19(2) of the *UCITS implementing Directive*]

- 10.1.11A G Other *firms* (~~except *common platform firms*~~) should take account of the *rules* relating to *conflicts of interest policies* (see SYSC 10.1.10R and SYSC 10.1.11R) ~~as if they were *guidance* (and as if "should" appeared in those rules instead of "must", as explained in SYSC 1 Annex 1.3.3G), except when they produce or arrange the production of *investment research* in accordance with COBS 12.2, or produce or disseminate *non-independent research* in accordance with COBS 12.3 (see SYSC 10.1.16R) in accordance with SYSC 1 Annex 1.3.2BR, SYSC 1 Annex 1 3.2CR and SYSC 1 Annex 1 3.3R.~~
- 10.1.11B G A *firm* (other than a *common platform firm*) should assess and periodically review, on an at least an annual basis, the *conflicts of interest policy* established in accordance with SYSC 10.1.10R and SYSC 10.1.11R and should take all appropriate measures to address any deficiencies (such as over reliance on disclosure of conflicts of interest).
- 10.1.12 G In drawing up a *conflicts of interest policy* which identifies circumstances

which constitute or may give rise to a conflict of interest, a *firm* should pay special attention to the activities of investment research and advice, proprietary trading, portfolio management and corporate finance business, including underwriting or selling in an offering of securities and advising on mergers and acquisitions. In particular, such special attention is appropriate where the *firm* or a *person* directly or indirectly linked by *control* to the *firm* performs a combination of two or more of those activities.

[**Note:** recital 26 of *MiFID implementing Directive 47* of the *MiFID Org Regulation*]

#### Corporate finance

- 10.1.13 G ~~This section is relevant to the management of a *securities* offering by any *firm*. [deleted]~~
- 10.1.14 G ~~A *firm* will wish to note that when carrying on a mandate to manage an offering of *securities*, the *firm's* duty for that business is to its corporate finance *client* (in many cases, the corporate issuer or seller of the relevant *securities*), but that its responsibilities to provide services to its investment *clients* are unchanged. [deleted]~~
- 10.1.15 G ~~Measures that a *firm* might wish to consider in drawing up its *conflicts of interest policy* in relation to the management of an offering of *securities* include: [deleted]~~
- (1) ~~at an early stage agreeing with its corporate finance *client* relevant aspects of the offering process such as the process the *firm* proposes to follow in order to determine what recommendations it will make about allocations for the offering; how the target investor group will be identified; how recommendations on allocation and pricing will be prepared; and whether the *firm* might place *securities* with its investment *clients* or with its own proprietary book, or with an associate, and how conflicts arising might be managed; and~~
  - (2) ~~agreeing allocation and pricing objectives with the corporate finance *client*; inviting the corporate finance *client* to participate actively in the allocation process; making the initial recommendation for allocation to *retail clients* of the *firm* as a single block and not on a named basis; having internal arrangements under which senior personnel responsible for providing services to *retail clients* make the initial allocation recommendations for allocation to *retail clients* of the *firm*; and disclosing to the *issuer* details of the allocations actually made.~~

[**Note:** The provisions in SYSC 10.1 also implement articles 74(1) and 88 of the *CRD* and as applied under the discretion in the third paragraph of article 95(2) of the *EU CRR*, *BCD Article 22* and *BCD Annex V* paragraph

⌘

...

Amend SYSC 18.1 (Application and Purpose) as shown. Underlining indicates new text and striking though indicates deleted text.

## 18.1 Application and Purpose

### Application

18.1.1A R This chapter applies to:

- (1) a *firm*;
- (2) in relation to the *guidance* in SYSC 18.3.9G ~~to every firm~~;
- (3) in relation to SYSC 18.6.1R to SYSC 18.6.3G (Whistleblowing obligations under MiFID):
  - (a) a UK MiFID investment firm, except a collective portfolio management firm; and
  - (b) a third country investment firm; and
- (4) in relation to SYSC 18.6.4G to SYSC 18.6.5G (Whistleblowing obligations under other EU legislation), a person within the scope of the identified EU sectoral and cross-sectoral legislation.

18.1.1AA G *Firms* are reminded that for the purpose of SYSC 18 (except for SYSC 18.3.9G and SYSC 18.6) “*firm*” has the specific meaning set out in paragraph (8) of that definition in the *Glossary*, namely:

- “(8) (in SYSC 18, with the exception of SYSC 18.3.9G and SYSC 18.6):
- “(a) a *relevant authorised person* except a *small deposit taker*; and
  - (b) a firm as referred to Chapter 1.1 of the PRA Rulebook: Solvency II Firms: Whistleblowing Instrument 2015.”

...

### Purpose

18.1.2 G (1) The purposes of the chapter are to:

...

(c) ...

- (ca) implement the whistleblowing obligation under article 73(2) of MiFID, which requires MiFID investment firms (except collective portfolio management firms) to have in place appropriate procedures for their employees to report potential or actual infringements of MiFID and MiFIR (SYSC 18.6);
- (cb) outline other EU-derived whistleblowing obligations similar to those in article 73(2) of MiFID, some of which may also be applicable to MiFID investment firms (SYSC 18.6);

...

Insert the following new section after SYSC 18.5 (Settlement agreements with workers). All the text is new and not underlined.

## 18.6 Whistleblowing obligations under MiFID and other EU legislation

### Whistleblowing obligations under MiFID

- 18.6.1 R (1) A UK MiFID investment firm (except a *collective portfolio management investment firm*) must have appropriate procedures in place for its employees to report a potential or actual breach of:
- (a) any rule implementing *MiFID*; or
  - (b) a requirement imposed by *MiFIR* or any *EU regulation* adopted under *MiFID* or *MiFIR*.
- (2) The procedures in (1) must enable employees to report internally through a specific, independent and autonomous channel.
- (3) The channel referred to in (2) may be provided through arrangements made by social partners, subject to the Public Interest Disclosure Act 1998 and the Employment Rights Act 1996 to the extent that they apply.

[Note: article 73(2) of *MiFID*]

- 18.6.2 R SYSC 18.6.1R applies to a *third country investment firm* as if it were a UK *MiFID investment firm* (unless it is a *collective portfolio management investment firm*) when the following conditions are met:
- (1) it carries on *MiFID* or *equivalent third country business*; and
  - (2) it carries on the business in (1) from an establishment in the *United Kingdom*.

- 18.6.3 G When considering what procedures may be appropriate for the purposes of SYSC 18.6.1R(1), a *firm* may wish to consider the arrangements in SYSC 18.3.1R(2).

Whistleblowing obligations under other EU legislation

- 18.6.4 G In addition to obligations under *MiFID*, similar whistleblowing obligations apply to miscellaneous *persons* subject to regulation by the *FCA* under the following non-exhaustive list of *EU* legislation:

- (1) article 32(3) of the *Market Abuse Regulation*, as implemented in section 131AA of the *Act*;
- (2) article 71(3) of the *CRD* (see *IFPRU* 2.4.1R in respect of *IFPRU investment firms*);
- (3) article 99d(5) of the *UCITS Directive* (see *SYSC* 4.1.1ER in respect of *UK UCITS management companies*, and *COLL* 6.6B.30R in respect of *depositories*);
- (4) article 24(3) of the *securities financing transactions regulation*; and
- (5) article 65(3) of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012.

- 18.6.5 G Depending on the nature of its business, in addition to SYSC 18.6.1R, a *MiFID investment firm* may, for example, be subject to one or more of the requirements in SYSC 18.6.4G.

...

## 19A IFPRU Remuneration Code

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### 19A.3 Remuneration principles for IFPRU investment firms

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Remuneration Principle 5: Control functions

...

- 19A.3.17 G ...

- (3) The ~~appropriate regulator~~ *FCA* would generally expect the ratio of the potential variable component of *remuneration* to the fixed component of *remuneration* to be significantly lower for *employees* in risk

management and compliance functions than for *employees* in other business areas whose potential bonus is a significant proportion of their *remuneration*. Firms should nevertheless ensure that the total *remuneration* package offered to those *employees* is sufficient to attract and retain staff with the skills, knowledge and expertise to discharge those functions. The requirement that the method of determining the *remuneration of relevant persons* involved in the compliance function must not compromise their objectivity or be likely to do so also applies (see ~~SYSC 6.1.4 R (4)~~ article 22(3) of the MiFID Org Regulation).

...

## 19C BIPRU Remuneration Code

### 19C.3 Remuneration principles

...

Remuneration Principle 5: Control functions

...

#### 19C.3.17 G ...

- (3) The *FCA* would generally expect the ratio of the potential variable component of *remuneration* to the fixed component of *remuneration* to be significantly lower for *employees* in risk management and compliance functions than for *employees* in other business areas whose potential bonus is a significant proportion of their *remuneration*. Firms should nevertheless ensure that the total *remuneration* package offered to those *employees* is sufficient to attract and retain staff with the skills, knowledge and expertise to discharge those functions. The requirement that the method of determining the *remuneration of relevant persons* involved in the compliance function must not compromise their objectivity or be likely to do so also applies (see ~~SYSC 6.1.4 R (4)~~ article 22(3) of the MiFID Org Regulation).

...

## 19D Dual-regulated firms Remuneration Code

### 19D.3 Remuneration principles

...

Remuneration Principle 5: Control functions

...

#### 19D.3.18 G ...

- (3) The *FCA* would generally expect the ratio of the potential variable component of *remuneration* to the fixed component of *remuneration* to be significantly lower for *employees* in risk management and compliance functions than for *employees* in other business areas whose potential bonus is a significant proportion of their *remuneration*. *Firms* should nevertheless ensure that the total *remuneration* package offered to those *employees* is sufficient to attract and retain staff with the skills, knowledge and expertise to discharge those functions. The requirement that the method of determining the *remuneration* of *relevant persons* involved in the compliance function must not compromise their objectivity or be likely to do so also applies (see ~~SYSC 6.1.4 R (4)~~ article 22(3) of the *MiFID Org Regulation*).

...

Insert the following new section after SYSC 19E (UCITS Remuneration Code). All the text is new and not underlined.

## **19F Remuneration and performance management of sales staff**

### **19F.1 MiFID remuneration incentives**

#### Application

- 19F.1.1 R (1) SYSC 19F.1 applies to:
- (a) a *common platform firm*, unless it is a *collective portfolio management investment firm*;
  - (b) an *article 3 MiFID firm*; and
  - (c) a *third country firm*.
- (2) In relation to a *firm* that falls under (1)(c), SYSC 19F.1 applies only in relation to activities carried on from an establishment in the *United Kingdom*.

#### Purpose

- 19F.1.3 G This chapter contains *rules* implementing article 24(10) of *MiFID* and on remuneration policies and practices.

#### MiFID requirement on remuneration incentives

- 19F.1.4 R A *firm* which provides *investment services and activities* to *clients* must ensure that it does not remunerate or assess the performance of its staff in a way that conflicts with its duty to act in the best interests of its *clients*. In particular, a *firm* must not make any arrangement by way of *remuneration*,

sales targets or otherwise that could provide an incentive to its staff to recommend a particular *financial instrument* to a *retail client* when the *firm* could offer a different *financial instrument* which would better meet that *client's* needs.

[**Note:** article 24(10) of *MiFID*]

#### Remuneration policies and practices

- 19F.1.5 R (1) A *dormant account fund operator* in respect of its *investment services* and *ancillary services*, an *article 3 MiFID firm* in respect of its *investment services* and *ancillary services* and a *third country firm* in respect of its *MiFID* or *equivalent third country business* must:
- (a) define and implement *remuneration* policies and practices under appropriate internal procedures taking into account the interests of all the *clients* of the *firm*, with a view to ensuring that *clients* are treated fairly and their interests are not impaired by the *remuneration* practices adopted by the *firm* in the short, medium or long term. *Remuneration* policies and practices must be designed in such a way so as not to create a conflict of interest or incentive that may lead *relevant persons* to favour their own interests or the *firm's* interests to the potential detriment of any *client*; and
  - (b) ensure that their *remuneration* policies and practices apply to all *relevant persons* with an impact, directly or indirectly, on *investment services* and *ancillary services* provided by the *firm* or on its corporate behaviour, regardless of the type of *clients*, to the extent that the *remuneration* of such persons and similar incentives may create a conflict of interest that encourages them to act against the interests of any of the *firm's clients*.
  - (c) ensure that its *management body* approves, after taking advice from the compliance function, the *firm's remuneration* policy. The *senior management* of the *firm* must be responsible for the day-to-day implementation of the *remuneration* policy and the monitoring of compliance risks related to the policy.
- (2) (a) *Remuneration* and similar incentives must not be solely or predominantly based on quantitative commercial criteria, and must take fully into account appropriate qualitative criteria reflecting compliance with the applicable regulations, the fair treatment of *clients* and the quality of services provided to *clients*.
- (b) A balance between fixed and variable components of *remuneration* must be maintained at all times, so that the *remuneration* structure does not favour the interests of the *firm* or its *relevant persons* against the interests of any *client*.

19F.1.6 G A *firm* should also be aware of:

- (1) in the case of a *common platform firm* (but excluding a *collective portfolio management investment firm*), the requirements on *remuneration* in article 27 of the *MiFID Org Regulation* applying to it;
- (2) the requirements in relation to remuneration policies (SYSC 4.3A.1AR) and conflicts of interest (SYSC 10.1.7R);
- (3) the Finalised Guidance 13/01 entitled ‘Risks to customers from financial incentives’ published in January 2013; and
- (4) the Finalised Guidance 15/10 entitled ‘Risks to customers from performance management at firms’ published in July 2015.

Amend the following as shown.

### Sch 1 Record keeping requirements

Sch 1.1G The aim of the guidance in the following table is to give the reader a quick overall view of the relevant record keeping requirements.

It is not a complete statement of those requirements and should not be relied on as if it were.

Sch 1.2G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<u>SYSC 9.1.1AR</u>	<u>Business and internal organisation</u>	<u>Details of the <i>firm's</i> orderly records of services and transactions undertaken</u>	<u>Within a reasonable time</u>	<u>Adequate</u>
...				

## Annex C

### Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 1.1 Application and Purpose

- 1.1.1 G (1) ...
- ...
- (3) *FEES 3 (Application, Notification and Vetting Fees) covers one-off fees payable on a particular event for example various application fees (including those in relation to authorisation, variation of Part 4A permission, registration as a CBTL firm, authorisation of a data reporting services provider, listing and the Basel Capital Accord) and fees relating to certain notifications and document vetting requests.*
- ...
- ...

#### Application

- 1.1.2 R This manual applies in the following way:
- (1) ...
- (2) *FEES 1, 2 and 4 apply to:*
- ...
- (o) each of the following that makes transactions reports directly to the FCA under SUP 17 (Transaction reporting):
- (i) a *firm*;
  - (ii) a third party acting on a *firm's* behalf;
  - (iii) an *approved reporting mechanism*;
  - (iv) an operator of a *regulated market*; ~~and~~
  - (v) an operator of an *MTF or OTF*; and
- (p) a *data reporting services provider*.

...

## 2.1 Introduction

...

### Purpose

...

2.1.5 G (1) The following enable the *FCA* to charge fees to cover its costs and expenses in carrying out its functions:

- (a) paragraph 23 of Schedule 1ZA of the *Act*;
- (b) regulation 92 of the *Payment Services Regulations*;
- (c) regulation 59 of the *Electronic Money Regulations*;
- (d) article 25(a) of the *MCD Order*;
- (e) regulation 21 of the *Small and Medium Sized Businesses (Credit Information) Regulations*;
- (f) regulation 20 of the *DRS Regulations*; and
- (g) regulation 20 of the *MiFI Regulations*.

...

...

2.1.5C G (1) The *FCA* also has a fee-raising power as a result of regulation 21 of the *Small and Medium Sized Businesses (Credit Information) Regulations* and regulation 20 of the *DRS Regulations*.

(2) The *FCA*'s functions under these regulations are treated as functions conferred on the *FCA* under the *Act* for the purposes of its fee-raising power in paragraph 23 of Schedule 1ZA to the *Act*.

...

## 3 Application, Notification and Vetting Fees

### 3.1 Introduction

...

3.1.1A R A reference to *firm* in this chapter includes a reference to a *fee-paying payment service provider*, a *CBTL firm*, a *fee-paying electronic money issuer*, a *designated credit reference agency* and a *data reporting services*

*provider.*

3.1.2 G This chapter does not apply to:

- (1) an *EEA firm* that wishes to exercise an *EEA right*; unless it is:
  - (a) an *incoming data reporting service provider* connecting to the *market data processing system*; or
  - (b) an *EEA firm* connecting to the *market data processing system*; or

...

...

3.1.6D G (1) ...

...

(3) Application fees for authorisation under regulation 7 of the *DRS Regulations* and for operators of trading venues seeking verification of their compliance with Title V *MiFID* are set out in the table at *FEES 3.2.7R*.

(4) The fee depends on the number of *data reporting services* for which the *firm* is making an application.

...

## 3.2 Obligation to pay fees

...

3.2.7 R Table of application, notification, vetting and other fees payable to the FCA

Part 1: Application, notification and vetting fees		
(1) Fee payer	(2) Fee payable (£)	Due date
...		
(p) A <i>firm</i> applying for a variation of its <i>Part 4A permission</i> whose fee is not payable pursuant to subparagraph (ga) of this table	(1) Unless (2), (2A), (3), (3A), (3B), (3C) or (3D) applies, if the proposed new business of the <i>firm</i> would fall within one or more activity groups specified in Part 1 of <i>FEES 4 Annex 1AR</i>	On or before the date the application is made

	<p>not applicable before the application, the fee is 50% of the highest of the tariffs set out in <i>FEES 3 Annex 1R</i> which apply to that application.</p> <p>...</p> <p><u>(3E) The fee is 12,500 if the <i>firm</i> applying:</u></p> <p><u>(i) is an <i>MTF</i> operator and the proposed new business of the <i>firm</i> is to be an <i>OTF</i> operator;</u> <u>or</u></p> <p><u>(ii) is an <i>OTF</i> operator and the proposed new business of the <i>firm</i> is to be an <i>MTF</i> operator;</u></p> <p>...</p>	
...		
(t) A <i>firm</i> , a third party acting on a <i>firm</i> 's behalf, an operator of a <i>regulated market</i> or an operator of an <i>MTF</i> or an <i>OTF</i> applying to the <i>FCA</i> to report <i>transaction reports</i> directly to the <i>FCA</i> .	...	...
...		
[(zv)] Any <i>person</i> to which the Designated Credit Reference Agencies Fee applies under <i>FEES 3 Annex 10B</i> .	...	...
[(zw)] An applicant for authorisation under regulation 7 of the <i>DRS Regulations</i> , or the operator of a <i>trading</i>	<p>Either (1) or (2) as set out below:</p> <p>(1) If the applicant is applying for permission to operate one <i>data</i></p>	On or before the application is made.

<p>venue seeking verification of their compliance with Title V of <i>MiFID</i>.</p>	<p><i>reporting service</i>, 5,000.</p> <p>(2) If the applicant is applying for permission to operate more than one <i>data reporting services</i>, 50% of the fee at (1) for each additional service plus the fee at (1).</p>	
<p>[(zx)] (1) <u>Unless (2) applies any person applying to connect to the <i>market data processing system</i> to report <i>transaction reports</i> directly to the FCA under <i>MiFIR</i>;</u></p> <p><u>(2) If a person has previously applied as stated in (zx)(1) above and has been connected then no further fee is payable for any further such applications.</u></p>	<p>(1) Unless (2) applies, <u>20,000.</u></p> <p>(2) Any <i>incoming data reporting services provider</i> authorised by another <i>EEA State</i> will pay 80% of the fee at (1).</p>	<p>On or before the application is made.</p>
<p>[(zy)] (1) <u>Subject to (2) and (3) below any person applying to connect to the <i>market data processing system</i> to provide <i>markets data</i> under <i>MiFID</i> and <i>MiFIR</i>;</u></p> <p><u>(2) If a person has previously applied as stated in (zy)(1) above and has been connected then no further fee is payable for any further such applications in relation to reporting the same data;</u></p> <p><u>(3) If a person has previously applied as stated in (zy)(1) above</u></p>	<p>(1) Unless (2) applies, 10,000.</p> <p>(2) Any <i>incoming data reporting services provider</i> authorised by another <i>EEA State</i> will pay 80% of the fee at (1).</p>	<p>On or before the application is made.</p>

<u>and makes a further application in relation to the provision of different data then a separate fee is payable for such application.</u>		
...		

### 3 Annex Authorisation fees payable 1R

...

<b>Part 2 Complexity Groupings not relating to <i>credit-regulated activities</i></b>	
...	
...	
<b>Complex cases</b>	
<b>Activity grouping</b>	<b>Description</b>
...	...
B	<i>MTF operators and <u>OTF operators</u></i>

...

## 4 Periodic fees

...

### 4.2 Obligation to pay periodic fees

...

4.2.7 R A *firm* (other than an *AIFM qualifier*, *ICVC*, or *UCITS qualifier*) which becomes authorised or registered, or whose *permission* and/or *payment service* activities are extended, during the course of the *fee year* must pay a fee which is calculated by:

...

- (6) modifying the result in accordance with the formula set out in *FEES* 4.2.6R (except that *FEES* 4 Annex 10R (Periodic fees for MTF and OTF operators) deals with a *firm* that receives *permission* for

*operating a multilateral or organised trading facility* or has its *permission* extended to include this activity during the course of the relevant *fee year* and *FEES* 4.2.6R does not apply).

...

4.2.11 R Table of periodic fees payable to the *FCA*

1 Fee payer	2 Fee payable	3 Due date	4 Events occurring during the period leading to modified periodic fee
Any <i>firm</i> (except an <i>AIFM</i> <i>qualifier</i> , <i>ICVC</i> or a <i>UCITS</i> <i>qualifier</i> )	(1) Unless (2) applies, as specified in <i>FEES</i> 4.3.1R in relation to <i>FEES</i> 4 Annex 2AR and <i>FEES</i> 4 Annex 11R.  (2) Where a <i>firm</i> is paying a <i>ring-fencing implementation fee</i> , as specified in <i>FEES</i> 4 Annex 2BR.	(1) Unless (2) or (3) apply, on or before the relevant dates specified in <i>FEES</i> 4.3.6R.  ...  (3) Where the <i>permission</i> is for <i>operating a multilateral trading facility or organised trading facility</i> , the date specified in <i>FEES</i> 4 Annex 10R (Periodic fees for MTF and OTF operators).	...
...	...	...	...
Each of the following that makes <i>transaction reports</i> directly to the <i>FCA</i> under <i>SUP</i> 17 (Transaction reporting):  ...  (5) an operator of	...	...	...

an <i>MTF</i> or <i>OTF</i> .			
-------------------------------	--	--	--

### 4.3 Periodic fee payable by firms (other than AIFM qualifiers, ICVCs and UCITS qualifiers)

...

Calculation of periodic fee (excluding fee-paying payment service providers, data reporting services providers and fee-paying electronic money issuers)

#### 4.3.3 R ...

...

Time of payment

#### 4.3.6 R ...

[**Note:** If the *firm* is a *PRA-authorised person* that meets the condition at *FEES* 4.3.6R(1)(D)(b), the *firm* will also pay its *PRA* periodic fees in two tranches as specified in the Fees Part of the *PRA Rulebook* *Rulebook*. The *FCA*, acting as the *PRA*'s collection agent, will collect these fees.]

(2) If the *firm*'s, *designated professional body*'s, *recognised investment exchange*'s, or *regulated covered bond issuer*'s periodic fee for the previous *fee year* was less than £50,000, it must pay the periodic fee due in full by 1 August or, if later, within 30 *days* of the date of the invoice in the *fee year* to which that sum relates.

...

(6) Paragraphs (1) and (2) do not apply to any periodic fee in relation to a *firm*'s *permission for operating a multilateral trading facility* or *organised trading facility* and such a fee is not taken into account for the purposes of the split in (1). Instead any fee for this *permission* is payable on the date specified in *FEES* 4 Annex 10R (Periodic fees for *MTF* and *OTF* operators).

...

#### 4.3.12 R For an *incoming EEA firm* (excluding *MTF* and *OTF* operators), or an *incoming Treaty firm*, the calculation required by *FEES* 4.3.3R is modified as follows:

...

...

## Firms Applying to Cancel or Vary Permission Before Start of Period

- 4.3.13 R (1) If:
- (a) a *firm*:
    - (i) makes an application to vary its *permission* (by reducing its scope), or cancel it, in the way set out in *SUP* 6.3.15D(3) (Variation of permission) and *SUP* 6.4.5D (Cancellation of permission); ;
    - (ii) or applies to vary (by reducing its scope) or cancel its authorisation or registration (regulation 8 and 10(1) of the *Payment Services Regulations* including as applied by regulation 14 of the *Payment Services Regulations*) ; or
    - (iii) applies to cancel its authorisation or registration (regulation 10 and 12 of the *Electronic Money Regulations* including as applied by regulation 15 of the *Electronic Money Regulations*) ; or
    - (iv) applies for revocation of its registration under article 13(c) of the *MCD Order*; or
    - (v) applies to vary (by reducing its scope) or cancel its authorisation as a *data reporting services provider* under regulations 11 and 10 of the *DRS Regulations*; or
    - (vi) an *issuer* makes an application for de-listing; or a *sponsor* notifies the *FCA* of its intention to be removed from the list of approved *sponsors*; and
  - (b) the *firm*, *issuer* or *sponsor* makes the application or notification referred to in (a) before the start of the *fee year* to which the fee relates;

*FEES* 4.2.1R applies to the *firm* as if the relevant variation or cancellation of the *firm's permission* or authorisation or registration under the *Payment Services Regulations*, *MCD Order*, *DRS Regulations* or the *Electronic Money Regulations*, de-listing or removal from the list of approved *sponsors*, took effect immediately before the start of the *fee year* to which the fee relates.

- (2) But (1) does not apply if, due to the continuing nature of the business, the variation, cancellation, de-listing or removal is not to take effect on or before 30 June of the *fee year* to which the fee relates.

- 4.3.14 G ~~Where~~ The due dates for payment of periodic fees are modified by FEES 4.3.6R(3), FEES 4.3.6R(4) and FEES 4.3.6R(4A) respectively where:
- (1) a *firm* has applied to cancel its *Part 4A permission*; ; or
  - (2) its authorisation or registration under the *Payment Services Regulations* or the *Electronic Money Regulations*; ; or
  - (3) its registration as a *CBTL firm* under article 13(c) of the MCD Order; ; or
  - (4) its authorisation under regulation 10 of the *DRS Regulations*; ; or
  - (5) the *FCA* has exercised its *own-initiative powers* to cancel a *firm's Part 4A permission* ; or
  - (6) the *FCA* has exercised its powers under regulation 10 (Cancellation of authorisation), including as applied by regulation 14 (Supplementary provisions) of the *Payment Services Regulations* to cancel a *firm's* authorisation or registration under the *Payment Services Regulations* ; or
  - (7) the *FCA* has exercised its powers under regulation 10 (Cancellation of authorisation), including as applied by regulation 15 (Supplementary provisions) of the *Electronic Money Regulations*, or regulation 10 of the *DRS Regulations*; or
  - (8) the *FCA* has exercised its powers under article 13 (Revocation of registration), excluding article 13(c), of the *MCD Order* ~~, the due dates for payment of periodic fees are modified by FEES 4.3.6R(3), FEES 4.3.6R(4) and FEES 4.3.6R(4A) respectively.~~

...

#### 4.4 Information on which fees are calculated

- 4.4.1 R A *firm* (other than the *Society* and an *MTF* and *OTF* operator in relation to its *MTF* and *OTF* business) must notify the *FCA* (in its own capacity and, if applicable, in its capacity as collection agent for the *PRA*) the value (as at the valuation date specified in Part 5 of *FEES 4 Annex 1AR*) of each element of business on which the periodic fee payable by the *firm* is to be calculated.

...

#### 4 Annex FCA Activity groups, tariff bases and valuation dates 1AR

Part 1

This table shows how the *FCA* links the *regulated activities* for which a *firm* has

<i>permission</i> to activity groups (fee-blocks). A <i>firm</i> can use the table to identify which fee-blocks it falls into based on its <i>permission</i> .	
Activity group	Fee payer falls in the activity group if :
...	...
<b>A.13 Advisors, arrangers, dealers or brokers</b>	<p>(1) It is an <i>authorised professional firm</i> and <b>ALL</b> the <i>regulated activities</i> in its <i>permission</i> are limited to non-mainstream regulated activities (a firm falling within this category is a <i>class (1) firm</i>);</p> <p><b>OR</b></p> <p>(2) its <i>permission</i>:</p> <p>(a) includes one or more of the following:</p> <p>...</p> <p>(ii) ...</p> <p><u>(iii) in relation to a structured deposit:</u></p> <p><u>dealing in investments as agent; or</u></p> <p><u>arranging (bringing about deals) in investments; or</u></p> <p><u>making arrangements with a view to transactions in investments; or</u></p> <p><u>advising on investments (except P2P agreements)(except pension transfers and pension opt-outs);</u></p> <p>...</p>
...	
<b>B. MTF <u>and</u> OTF operators</b>	its <i>permission</i> includes <i>operating a multilateral trading facility</i> <u>or</u> <i>operating an organised trading facility</i> .
...	
<p>Part 3</p> <p>This table indicates the tariff base for each fee-block set out in Part 1.</p> <p>The tariff base in this Part is the means by which the <i>FCA</i> measures the amount of business conducted by a <i>firm</i> for the purposes of calculating the annual periodic fees payable to the <i>FCA</i> by that <i>firm</i>.</p>	
Activity group	Tariff base

...	...
<b>A.10</b>	<p><b>NUMBER OF TRADERS</b></p> <p>Any <i>employee</i> or agent, who:</p> <p>ordinarily acts within the <i>United Kingdom</i> on behalf of an <i>authorised person</i> liable to pay fees to the <i>FCA</i> in its fee-block A.10 (firms dealing as principal); and who,</p> <p>as part of their duties in relation to those activities of the <i>authorised person</i>, commits the <i>firm</i> in market dealings or in transactions in <i>securities</i> or in other <i>specified investments</i> in the course of <i>regulated activities</i>.</p> <p>But not any <i>employees</i> or agents who work solely in the <i>firm's MTF or OTF</i> operation.</p> <p>...</p>
...	
<b>B. MTF <u>and</u> OTF operators</b>	<p><b>SUPERVISORY CATEGORY</b></p> <p>The general supervisory category to which the firm was assigned as at the start of the relevant <i>fee year</i>.</p>
...	
<p>Part 5</p> <p>This table indicates the valuation date for each fee-block. A <i>firm</i> can calculate its tariff data in respect of fees payable to the <i>FCA</i> by applying the tariff bases set out in Part 3 with reference to the valuation dates shown in this table.</p>	
Activity group	Valuation date
<p>IN THIS TABLE, REFERENCES TO SPECIFIC DATES OR MONTHS ARE REFERENCES TO THE LATEST ONE OCCURRING BEFORE THE START OF THE PERIOD TO WHICH THE FEE APPLIES, UNLESS OTHERWISE SPECIFIED - E.G. FOR 2013/14 FEES (1 APRIL 2013 TO 31 MARCH 2014), A REFERENCE TO DECEMBER MEANS DECEMBER 2012.</p>	
<p>Where a <i>firm's</i> tariff data is in a currency other than sterling, it should be converted into sterling at the exchange rate prevailing on the relevant valuation date.</p>	
...	
<b>B. <del>MTF</del> <u>MTF and OTF</u></b>	The start of the relevant <i>fee year</i> .

operators	
...	

**4 Annex 2AR FCA Fee rates and EEA/Treaty firm modifications for the period from 1 April 2016 to March 2017**

<p>Part 1</p> <p>This table shows the tariff rates applicable to each of the fee blocks set out in Part 1 of <i>FEES</i> 4 Annex 1AR.</p>		
...		
Activity group	Fee payable	
...		
B. <u>MTF and OTF</u> operators	As set out in <i>FEES</i> 4 Annex 10R (Periodic fees for <u>MTF and OTF</u> operators).	
...	...	
<p>Part 3</p> <p>This table shows the modifications to fee tariffs that apply in respect of the <i>FCA</i> to <i>incoming EEA firms</i> and <i>incoming Treaty firms</i> which have established branches in the UK.</p>		
Activity group	Percentage deducted from the tariff payable under Part 1 applicable to the <i>firm</i>	
...		
B. <del>MTF</del> <u>MTF</u> and <u>OTF</u> operators	Not applicable	
...		

**4 Annex 3AR Fees relating to the direct reporting of transactions to the FCA under SUP 17 for the period 1 April 2016 to 31 March 2017**

This table shows the fees payable by a *firm*, a third party acting on behalf of a *firm*, an *approved reporting mechanism*, an operator of a *regulated market* or an operator of an *MTF* or an *OTF* that makes *transaction reports* directly to the *FCA* under *SUP* 17 (Transaction reporting).

...

...

**4 Annex 10R** Periodic fees for MTF and OTF operators payable in relation to the period 1 April 2016 to 31 March 2017

General supervisory category of <i>MTF</i> or <i>OTF</i> operator (see Note below)	Fee payable (£)	Due date
		(i) 1 August 2016; or (ii) 30 days from the date of the invoice in the case of a <i>firm</i> which receives <i>permission</i> to be operating a <i>multilateral trading facility</i> or an <i>organised trading facility</i> or whose <i>permission</i> is extended to include this activity in the course of the relevant financial year.
<i>MTF</i> or <i>OTF</i> operator has a named individual fixed portfolio supervisor	...	
All other <i>MTF</i> or <i>OTF</i> operators (i.e. those supervised by a team of flexible portfolio supervisors)	...	
...		
Note: subject to FEES 4.3.13R, this table applies to all <i>MTF</i> or <i>OTF</i> operators with <i>permission</i> to operate an <i>MTF</i> or <i>OTF</i> as at 1 April of the applicable <i>fee year</i> , irrespective of whether, and if so when, their <i>permission</i> to operate an <i>MTF</i> or <i>OTF</i> was subsequently cancelled during that <i>fee year</i> .		

**4 Annex 11R** Periodic fees in respect of payment services carried on by fee-paying payment service providers under the Payment Services Regulations and electronic money issuance by fee-paying electronic money issuers under the Electronic Money Regulations and issuance of regulated covered bonds by issuers and , CBTL business carried on by CBTL firms under the MCD Order, and data reporting services providers under the DRS Regulations in relation to the period 1 April 2016 to 31 March 2017

...

Part 2C – Activity group relevant to data reporting services providers

Activity Group	Fee payer falls into this group if:
G.25 <i>DRSP</i>	it is a <i>data reporting services provider</i> .

## Part 3

This table indicates the tariff base for each fee-block. The tariff base is the means by which the *FCA* measures the amount of business conducted by *fee-paying payment service providers, fee-paying electronic money issuers, data reporting services providers and issuers of regulated covered bonds*.

Activity Group	Tariff base
...	
G.25	Not applicable

...

## Part 5 – Tariff rates

Activity group	Fees payable in relation to 2016/17	
...		
G.25	Flat fee (£) for first <i>data reporting service</i> plus 50% flat fee for each additional <i>data reporting service</i> for which the <i>data reporting services provider</i> has authorisation.	[TBC]

## Annex D

### Amendments to the Prudential sourcebook for Investment Firms (IFPRU)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 1.1 Application and Purpose

...

Types of IFPRU investment firm: IFPRU 125K firm

- 1.1.9 R An *IFPRU 125K firm* means an *IFPRU investment firm* that satisfies the following conditions:

...

- (5) it does not operate either a *multilateral trading facility* or an organised trading facility.

[Note: article 29(1) of *CRD*]

Types of IFPRU investment firm: IFPRU 50K firm

- 1.1.10 R An *IFPRU 50K firm* is a *IFPRU investment firm* that satisfies the following conditions:

...

- (4) it does not operate either a *multilateral trading facility* or an organised trading facility.

[Note: article 29(3) of *CRD*]

Types of IFPRU investment firm: IFPRU 730K firm

- 1.1.11 R ...

- (2) An *IFPRU investment firm* that operates either a *multilateral trading facility* or an organised trading facility is an *IFPRU 730K firm*.

[Note: article 28(2) of *CRD*]

...

Interpretation of the definition of types of firm and undertaking

- 1.1.13 G A *firm* whose head office is not in an *EEA State* is an *investment firm* if it would have been subject to the requirements imposed by MiFID (but it is not a *bank, building society, credit institution, local firm, exempt CAD firm* and

*BIPRU firm*) if:

...

...

## 2.3 Supervisory review and evaluation process: internal capital adequacy standards

...

A securities firm

- 2.3.65 G Counterparty risk requirements only partially capture the risk of settlement failure, as the quantification of risk is only based on mark-to-market values and does not take account of the volatility of the securities over the settlement period. A securities *firm's* assessment of its exposure to counterparty risk should take into account:

...

- (2) the types of execution venues which it uses - for example, the London Stock Exchange or a retail service provider (RSP) have more depth than *multilateral trading facilities* and *organised trading facilities*; and

...

## Annex E

**Amendments to the Interim Prudential sourcebook for Investment Businesses  
(IPRU(INV))**

In this Annex, underlining indicates new text and striking through indicates deleted text.

**3 Chapter 3: Financial resources for Securities and Futures Firms which are not MiFID Investment Firms or which are Exempt BIPRU Commodities Firms or Exempt IFPRU Commodities Firms**

...

**3-60 FIRMS TO WHICH RULES 3-61 TO 3-182 APPLY**

...

*Advisers ~~and locals/traded options market makers~~*

3-60(4) R Rules 3-61 to 3-182 do not apply to an *adviser* ~~or local/traded options market maker~~ which must instead comply with the following capital requirements at all times:

(a) *tangible net worth* must be positive; and

(b) ~~in the case of an adviser~~, net current assets must be positive; and .

~~(c) in the case of a local traded options market maker, the firm must be able to meet its liabilities as they fall due.~~

...

**3-173A DERIVATIVE TRANSACTIONS**

...

*Exposures to ~~locals~~ local firms*

3-173A(5) R A *firm* must calculate a 100% *CRR* for amounts of initial and variation margin not met with *acceptable collateral* or a positive *equity balance* owed to a *firm* by a local firm in respect of transactions in *derivatives* listed on an *exchange* or *approved exchange* from the date of any shortfall. However, a *firm* may use an alternative treatment if it:

(a) participates in the profits or losses of the local firm for 25% or more when the *firm* may include the local firm position in its own position which will then be subject to *PRR*; or

(b) calculates *PRR* for ~~locals~~ local firms in which case its requirement will be the sum of the following:

- (i) 10% of the *PRR* result for each *local firm*; and
- (ii) the excess over the “net liquidating balance” of the *PRR* applied to the positions of each *local firm*; and
- (c) for the purposes of (b) above, “net liquidating balance” means the cash amount which would remain in a *local firm* account if all positions were liquidated and there were added (1) cash balances (2) the value of *marketable investments*, and (3) letters of credit and guarantees issued by a *regulated banking institution* which is not the *counterparty* or an *associate* of the *counterparty* in the control of the *firm*; and there were deducted all loans and overdrafts from, and other liabilities to the *firm*; and to the extent that a *firm* includes an exposure in the net liquidating balance calculation, it does not also need to apply the liquidity adjustment in rule 3-75 or the *CRR* to those exposures.

...

**APPENDIX 1 - GLOSSARY OF TERMS FOR IPRU(INV) 3**

...

*broad scope firm* means any *firm* which is not an *adviser*, or an arranger of a local;

...

**9 Chapter 9: Financial resources requirements for an exempt CAD firm**

**9.2 GENERAL REQUIREMENTS**

...

*Initial capital and professional indemnity insurance requirements – exempt CAD firms that are not IMD insurance intermediaries*

9.2.4 R (1) An *exempt CAD firm* which is not an *IMD insurance intermediary* must have:

...

[Note: ~~Article 67(3) of MiFID~~ and article 31(1) of the *CRD*]

...

*Initial capital and professional indemnity insurance requirements – exempt CAD firms that are also IMD insurance intermediaries*

9.2.5 R (1) An *exempt CAD firm* that is also an *IMD insurance intermediary* must comply with the professional indemnity insurance requirements at least

equal to those set out in 9.2.4R(1)(b) (except that the minimum *limits of indemnity* are at least €1,120,200 for a single claim and €1,680,300 in aggregate) and in addition has to have:

...

[~~Note: Article 67(3) of MiFID and~~ article 31(2) of the *CRD*]

...

...

*Initial capital and ongoing capital requirements for local firms*

9.2.8 R A *local firm* must:

(a) have *initial capital* of €50,000; and

[~~Note: Article 67(2) of MiFID and~~ Article 30 of the *CRD*]

...

...

## Annex F

## Amendments to the Client Assets sourcebook (CASS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 1A CASS firm classification and operational oversight

...

### 1A.3 Responsibility for CASS operational oversight

...

- 1A.3.1 R (1) A CASS *small firm* must allocate to a single director or ~~a senior manager~~ of sufficient skill and authority responsibility for:

...

...

[Note: article 7 first paragraph of the MiFID Delegated Directive]

...

The approved persons regime and the certification regime

- 1A.3.1A R A CASS *medium firm* and a CASS *large firm* must allocate to a single director or senior manager of sufficient skill and authority the function of:

...

[Note: article 7, first paragraph of the MiFID Delegated Directive]

...

- 1A.3.2A R Where a firm allocates the responsibilities in CASS 1A.3.1R or CASS 1A.3.1AR (“the CASS oversight responsibilities”) to a director or senior manager (“P”), the firm must ensure that it does not allocate any other responsibilities to P, in addition to the CASS oversight responsibilities, unless the firm is satisfied that:

(1) P will still be able to discharge the CASS oversight responsibilities effectively; and

(2) the firm will remain in full compliance with CASS.

[Note: article 7, second paragraph of the MiFID Delegated Directive]

- 1A.3.2B G (1) The FCA would normally expect a firm not to allocate any additional responsibilities to the director or senior manager to whom it has allocated CASS oversight responsibilities.
- (2) However, the FCA recognises that, for some firms and in particular, small and non-complex firms, it may be appropriate to allocate additional responsibilities to that person. CASS 1A.3.2AR permits firms to do this where the conditions in that rule are met.
- 1A.3.2C R A firm may allow the CASS oversight responsibilities to be shared amongst one or more directors or senior managers where this is done as part of a job share between those persons.

...

## 6 Custody Rules

### 6.1 Application

- 6.1.1 R This chapter (the *custody rules*) applies to a *firm*:

...

- (1E) in respect of any arrangement for a *client* to transfer full ownership of a *safe custody asset* (or an asset which would be a *safe custody asset* but for the arrangement) to the *firm* which is:
- (a) in the course of, or in connection with, the *firm's designated investment business*; and
- (b) for the purpose of securing or otherwise covering present or future, actual or contingent or prospective obligations,

~~but~~ and the application of the *custody rules* to a *firm* under this paragraph is ~~limited to~~ set out in the *rules and guidance* in CASS 6.1.6R to CASS 6.1.9G; and

...

...

#### Title transfer collateral arrangements

- 6.1.6 R (1) ~~The *custody rules* do not apply where a *client* transfers full ownership of a *safe custody asset* to a *firm* for the purpose of securing or otherwise covering present or future, actual, contingent or prospective obligations. [deleted]~~

~~[Note: recital 27 to MiFID]~~

- (2) ~~Excepted from (1) is a transfer of the full ownership of a safe custody asset:~~
- (a) ~~belonging to a retail client;~~
  - (b) ~~whose purpose is to secure or otherwise cover that client's present or future, actual, contingent or prospective obligations under a contract for differences or a rolling spot forex contract that is a future, and in either case where that contract is entered into with a firm acting as market maker; and~~
  - (c) ~~which is made to that firm or to any other person arranging on its behalf. [deleted]~~
- (3) (a) A firm must not enter into a TTCA with a retail client.
- (b) Where a firm entered into a TTCA with a retail client before 3 January 2018, the firm must terminate that TTCA.

[Note: article 16(10) of MiFID and article 5(5) of the MiFID Delegated Directive]

- (4) Except for CASS 6.1.6BR to CASS 6.1.9G and provided that the TTCA is not with a retail client, the custody rules do not apply to a firm in respect of an asset which is subject to a TTCA and which would otherwise be a safe custody asset.

[Note: recital 52 to MiFID]

- 6.1.6A R (1) ~~Subject to (2), where a firm makes arrangements for the purpose of securing or otherwise covering present or future, actual, contingent or prospective obligations of a retail client those arrangements must not provide for the taking of a transfer of full ownership of any of that client's safe custody assets. [deleted]~~
- (2) ~~The application of (1) is confined to the taking of a transfer of full ownership:~~
- (a) ~~whose purpose is to secure or otherwise cover that retail client's obligations under a contract for differences or a rolling spot forex contract that is a future, and in either case where that contract is entered into with a firm acting as market maker; and~~
  - (b) ~~which is made to that firm or to any other person arranging on its behalf.~~
- 6.1.6B R (1) A firm must ensure that any arrangement relating to the transfer of full ownership of a client's safe custody asset to the firm for the

~~purposes set out in CASS 6.1.6R(1) and CASS 6.1.6AR(1) TTCA~~ is the subject of a written agreement made on a *durable medium* between the *firm* and the *client*.

...

...

- 6.1.6D R (1) A firm must properly consider and document the use of TTCAs in the context of:
- (a) the relationship between the client's obligation to the firm; and
  - (b) the safe custody assets subjected to TTCAs by the *firm*.
- (2) A firm must be able to demonstrate that it has complied with the requirement under (1).
- (3) When considering, and documenting, the appropriateness of the use of TTCAs, a *firm* must take into account the following factors:
- (a) whether there is only a very weak connection between the client's obligation to the firm and the use of TTCAs, including whether the likelihood of a *client's* liability to the *firm* is low or negligible;
  - (b) the extent by which the amount of safe custody assets subject to a TTCA is in excess of the client's obligations (including where the TTCA applies to all safe custody assets from the point of receipt by the firm) and whether the client might have no obligations at all to the firm; and
  - (c) whether all the client's safe custody assets are made subject to TTCAs, without consideration of what obligation the *client* has to the *firm*.
- (4) Where a firm uses a TTCA, it must highlight to the client the risks involved and the effect of any TTCA on the client's safe custody assets.

**[Note: article 6 of the MiFID Delegated Directive]**

- 6.1.7 G ~~A title transfer financial collateral arrangement under the *Financial Collateral Directive* is a type of transfer of instruments to cover obligations where the *financial instrument* will not be regarded as belonging to the *client*.~~ ~~[deleted]~~

...

## Termination of title transfer collateral arrangements

- 6.1.8A R (1) If a *client* communicates to a *firm* that it wishes (whether pursuant to a contractual right or otherwise) to terminate ~~an arrangement relating to the transfer of full ownership of its *safe custody asset* to a *firm* for the purposes set out in CASS 6.1.6R(1) and CASS 6.1.6AR(1) a *TTCA*~~ and the *client's* communication is not in writing, the *firm* must make a written record of the *client's* communication which also records the date the communication was received.
- ...
- (3) (a) If a *firm* agrees to the termination of ~~an arrangement relating to the transfer of full ownership of its *safe custody asset* to a *firm* a *TTCA*~~, it must notify the *client* of its agreement in writing. The notification must state when the termination is to take effect and whether or not the *client's safe custody asset* will be held under the *custody rules* by the *firm* thereafter.
- (b) If a *firm* does not agree to terminate ~~an arrangement relating to the transfer of full ownership of a *client's safe custody asset* to the *firm* a *TTCA*~~, it must notify the *client* of its disagreement in writing.
- ...
- 6.1.8B G CASS 6.1.8AR(3)(a) refers only to a *firm's* agreement to terminate an existing ~~arrangement relating to the transfer of full ownership of a *client's safe custody asset* to the *firm* *TTCA*~~. Such agreement by a *firm* does not necessarily need to amount to the termination of its entire agreement with the *client*.
- 6.1.8C G When a *firm* notifies a *client* under CASS 6.1.8AR(3)(a) of when the termination of ~~an arrangement relating to the transfer of full ownership of the *safe custody asset* to a *firm* a *TTCA*~~ is to take effect, it should take into account:
- ...
- 6.1.8D R If ~~an arrangement relating to the transfer of full ownership of *safe custody assets* to a *firm* for the purposes set out in CASS 6.1.6R(1) and CASS 6.1.6AR(1) a *TTCA*~~ is terminated, then the exemption at CASS 6.1.6R(4) (4) no longer applies.
- 6.1.8E G (1) Following the termination of ~~an arrangement relating to the transfer of full ownership of *safe custody assets* to a *firm* for the purposes set out in CASS 6.1.6R(1) and CASS 6.1.6AR(1) a *TTCA*~~, where a *firm* does not immediately return the *safe custody assets* to the *client* the *firm* should consider whether the *custody rules* apply in respect of the *safe custody assets* pursuant to CASS 6.1.1R(1A) to CASS

## 6.1.1R(1C).

- (2) Where the *custody rules* apply to a *firm* for *safe custody assets* in these circumstances then the *firm* is required to comply with those *rules* and should, for example, update the registration under CASS 6.2 (Holding of client assets), update its records under CASS 6.6 (Records, accounts and reconciliations) and treat any *shortfall* in accordance with CASS 6.6.54R (in each case as appropriate).

- 6.1.9 G *Firms* are reminded that, in certain cases, the *collateral rules* apply where a *firm* receives collateral from a *client* in order to secure the obligations of the *client*.

...

**6.2 Holding of client assets**

## Requirement to protect clients' safe custody assets

- 6.2.1 R A *firm* must, when holding *safe custody assets* belonging to *clients*, make adequate arrangements so as to safeguard *clients'* ownership rights, especially in the event of the *firm's* insolvency, and to prevent the use of *safe custody assets* belonging to a *client* on the *firm's* own account except with the *client's* express consent.

[**Note:** article ~~13(7)~~ 16(8) of *MiFID*]

## Requirement to have adequate organisational arrangements

- 6.2.2 R A *firm* must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of *clients' safe custody assets*, or the rights in connection with those *safe custody assets*, as a result of the misuse of the *safe custody assets*, fraud, poor administration, inadequate record-keeping or negligence.

[**Note:** article ~~16(1)(f)~~ 2(1)(f) of the *MiFID implementing Delegated Directive*]

...

**6.3 Depositing assets and arranging for assets to be deposited with third parties**

## Depositing safe custody assets with third parties

- 6.3.1 R ...

- (3) When a *firm* makes the selection, appointment and conducts the periodic review referred to under this *rule*, it must take into account:

...

- (b) any legal requirements ~~or market practices~~ related to the holding of those *safe custody assets* that could adversely affect *clients'* rights.

...

[**Note:** article 17 ~~3~~(1) of the *MiFID implementing Delegated Directive*]

- 6.3.2 G In discharging its obligations under CASS 6.3.1R, a *firm* should also consider, as appropriate, together with any other relevant matters:

...

- (2) ...

(2A) market practices related to the holding of the *safe custody asset* that could adversely affect *clients'* rights.

...

...

- 6.3.4 R (1) Subject to (2), a *firm* must only deposit *safe custody assets* with a third party in a jurisdiction which specifically regulates and supervises the safekeeping of *safe custody assets* for the account of another ~~person~~ person with a third party who is subject to such regulation.
- (2) A *firm* must not deposit *safe custody assets* held on behalf of a *client* with a third party in a country that is not an *EEA State* (third country) and which does not regulate the holding and safekeeping of *safe custody assets* for the account of another ~~person~~ person unless:
- (a) the nature of the *safe custody assets* or of the *investment services* connected with those *safe custody assets* requires them to be deposited with a third party in that third country; or
- (b) the *safe custody assets* are held on behalf of a *professional client* and the *client* requests the *firm* in writing to deposit them with a third party in that third country.

...

(4) The requirements under paragraphs (1) and (2) of this rule also apply when the third party has delegated any of its functions concerning the holding and safekeeping of *safe custody assets* to another third party.

[**Note:** article 17~~(2) and (3)~~ 3(2)-(4) of the *MiFID implementing Delegated*

*Directive]*

6.3.4A-2 G CASS 6.3.4R(4) applies to a firm which deposits a safe custody asset into an account opened with a third party under CASS 6.3.1R(1). It is therefore possible for more than one firm in a chain of custody to be subject to CASS 6.3.4R(4) in respect of the same safe custody asset.

6.3.4A-1 R A firm must take the necessary steps to ensure that any *client's safe custody assets* deposited with a third party are identifiable separately from the *applicable assets* belonging to the firm and from the *applicable assets* belonging to that third party, by means of differently titled accounts on the books of the third party or other equivalent measures that achieve the same level of protection.

[~~Note: article 16(1)(d) 2(1)(d) of the MiFID implementing Delegated Directive]~~

...

6.3.5 R ~~Subject to CASS 6.3.6R, in relation to a third party with which a firm deposits safe custody assets belonging to a client, a firm must ensure that any agreement with that third party relating to the custody of those assets does not include the grant to that party, or to any other person, of a lien or a right of retention or sale over the safe custody assets, or a right of set-off over any client money derived from those safe custody assets. [deleted]~~

6.3.6 R ~~A firm may conclude an agreement with a third party relating to the custody of safe custody assets which confers on that party, or on another person instructed by that party to provide custody services for those assets, a lien, right of retention or sale, or right of set-off in favour of that party or that other person only if that lien or right: [deleted]~~

~~(1) is confined to those safe custody assets held in an account with that third party or that other person and extends only to properly incurred charges and liabilities arising from the provision of custody services in respect of safe custody assets held in that account; or~~

~~(2) arises under the operating terms of a securities depository, securities settlement system or central counterparty in whose account safe custody assets are recorded or held, and provided that it does so for the purpose only of facilitating the settlement of trades involving the assets held in that account; or~~

~~(3) arises in relation to those safe custody assets held in a jurisdiction, outside the United Kingdom provided that:~~

~~(a) it does so as a result of local applicable law in that jurisdiction or is necessary for that firm to gain access to the local market in that jurisdiction; and~~

- (b) ~~in respect of each *client* to which those assets belong, either:~~
  - (i) ~~the *firm* has taken reasonable steps to determine that holding those assets subject to that, lien or right is in the best interests of that *client*; or~~
  - (ii) ~~where a *client* is a *professional client*, the *firm* is instructed by that *client* to hold those assets in that jurisdiction notwithstanding the existence of that lien or right.~~

- 6.3.6A R (1) A *firm* must not grant, or permit the granting of, any security interest, lien or right of set-off to a third party over *clients*' *safe custody assets* that enable the third party to dispose of the *safe custody assets* in order to recover debts unless conditions (a) or (b), and in either case (c) are satisfied:
- (a) those debts relate to one or more *clients* or the provision of services to one or more *clients*, or
  - (b) (i) the security interest, lien or right of set-off is required by applicable law in a third country jurisdiction in which the *safe custody assets* are held;
    - (ii) the *firm* discloses information to the *client* so that the *client* is informed of the risks associated with these arrangements; and
    - (iii) the *firm* has taken reasonable steps to determine that holding *safe custody assets* subject to that security interest, lien or right is in the best interests of the *clients*; and
  - (c) the security interest, lien or right of set-off is exercisable by the third party only:
    - (i) in relation to *safe custody assets* held for *clients* at the time; and
    - (ii) to the extent the relevant *clients*' contracts with the *firm* meet the requirements of (2).
- (2) Where security interests, liens or rights of set-off are granted by a *firm* over *safe custody assets*, or where the *firm* has been informed that they are granted, these must be recorded in *client* contracts and the *firm*'s own books and records to make the ownership status of *safe custody assets* clear, such as in the event of an insolvency.

**[Note: article 2(4) of the *MiFID Delegated Directive*]**

- 6.3.6B    G    Under CASS 6.3.6AR(1)(a), a security interest, lien or right of set-off should be regarded as being granted in order to recover debts that relate to one or more *clients* or the provision of services to one or more *clients* where it arises to facilitate the clearing or settlement of transactions that refer only to *clients*. This is regardless of which third party gains protection under the arrangement (for example, the third party may be a securities depository, securities settlement system, central counterparty or *intermediate broker*).
- 6.3.6C    G    To comply with CASS 6.3.6AR(2) and in relation to any security interests, liens or rights of set-off over *safe custody assets*, a *firm* should ensure that:
- (1)    its contracts with the relevant *clients* contain all the terms under which such security interests, liens or rights of set-off may be granted to a third party; and
- (2)    its books and records are able to show the *safe custody assets* in respect of which such security interests, liens, rights of retention or sale or rights of set-off exist.
- 6.3.7    G    A *firm* will be considered to be acting on the instructions of its professional client under CASS 6.3.6R (3)(b)(ii) where: [deleted]
- (1)    ~~the *firm* has received an individual instruction or has a standing instruction in its terms of business which results in it holding *safe custody assets* in the relevant jurisdiction; and~~
- (2)    ~~prior to acting on the instruction, the *firm* has expressly informed the *client* that holding that *client's safe custody assets* in the relevant jurisdiction will involve the granting of a lien or right over those assets. The *firm* may do this by discussing the lien or right individually with the *client* or by including reference to it in terms of business (which may themselves cross refer to a separate list of relevant jurisdictions to which CASS 6.3.6R(3)(a) applies maintained on the *firm's* website in a form accessible to *clients*) or by a similar method.~~
- 6.3.8    R    For the purpose of CASS 6.3.6R, references to a *safe custody asset* include any *client money* derived from that *safe custody asset*. *Client money* derived from a *safe custody asset* may be regarded as held in the same account as that *safe custody asset* even though that money and those assets may be recorded separately. [deleted]
- ...
- 6.3.10    G    *Firms* should note the corresponding *rule* on security interests, liens or rights of set-off over *client money* at CASS 7.11.59R.

## 6.4 Use of safe custody assets

- 6.4.1 R (1) A *firm* must not enter into arrangements for *securities financing transactions* in respect of *safe custody assets* held by it on behalf of a *client* or otherwise use such *safe custody assets* for its own account or the account of any other *person* or ~~another *client*~~ of the *firm*, unless:
- (a) the *client* has given express prior consent to the use of the *safe custody assets* on specified terms; and
  - (b) the use of that *client's safe custody assets* is restricted to the specified terms to which the *client* consents.
- (2) A *firm* must not enter into arrangements for *securities financing transactions* in respect of *safe custody assets* held by it on behalf of a *client* in an omnibus account ~~held~~ maintained by a third party, or otherwise use *safe custody assets* held in such an account for its own account or for the account of ~~another *client*~~ any other *person* unless, in addition to the conditions set out in (1):
- (a) each *client* whose *safe custody assets* are held together in an omnibus account has given express prior consent in accordance with (1)(a); or
  - (b) the *firm* has in place systems and controls which ensure that only *safe custody assets* belonging to *clients* who have given express prior *consent* in accordance with ~~the requirements of~~ (1)(a) are so used.
- (3) For the purposes of obtaining the express prior consent of a ~~retail~~ *client* under this *rule*, the consent must be clearly evidenced in writing and the signature of the *retail client* or an equivalent alternative ~~mechanism~~ means of affirmative execution is required.

[**Note:** article ~~19~~ 5(1) and (2) of the *MiFID implementing Delegated Directive*]

- 6.4.1A G The *FCA* expects *firms* which enter into arrangements under CASS 6.4.1R with *retail clients* to only enter into *securities financing transactions* and not otherwise use *retail ~~client's~~ clients' safe custody assets*.
- 6.4.1B G (1) Prior express consent by *clients* should be given and recorded by *firms* in order to allow the *firm* to demonstrate clearly what the *client* agreed to and to help clarify the status of *safe custody assets*.
- (2) *Clients' consent* may be given once at the start of the commercial relationship, as long as it is sufficiently clear that the *client* has consented to the use of their *safe custody assets*.

- (3) Where a *firm* is acting on a *client* instruction to lend *safe custody assets* and where this constitutes consent to entering into the transaction, the *firm* should hold evidence to demonstrate this.

[Note: recital 10 to the *MiFID Delegated Directive*]

6.4.1C R A *firm* must take appropriate measures to prevent the unauthorised use of *safe custody assets* for its own account or the account of any other *person*, such as:

- (1) the conclusion of agreements with *clients* on measures to be taken by the *firm* in case the *client* does not have enough provision on its account on the settlement date, such as borrowing of the corresponding securities on behalf of the *client* or unwinding the position;
- (2) the close monitoring by the *firm* of its projected ability to deliver on the settlement date and the putting in place of remedial measures if this cannot be done; and
- (3) the close monitoring and prompt requesting of undelivered securities outstanding on the settlement day and beyond.

[Note: article 5(3) of the *MiFID Delegated Directive*]

6.4.1D G Examples of remedial measures in CASS 6.4.1.CR(2) can be found in CASS 6.6.54R.

...

6.4.2A R A *firm* must adopt specific arrangements for all *clients* to ensure that the borrower of *client safe custody assets* provides the appropriate collateral and that the *firm* monitors the continued appropriateness of such collateral and takes the necessary steps to maintain the balance with the value of the *client safe custody assets*.

[Note: article 5(4) of the *MiFID Delegated Directive*]

6.4.2B G The requirement to monitor collateral under CASS 6.4.2AR applies to a *firm* where it is party to a *securities financing transaction*, including when acting as an agent for the conclusion of a *securities financing transaction* or in the case of a tripartite transaction between a borrower, a *client* and the *firm*.

[Note: recital 9 to the *MiFID Delegated Directive*]

6.4.3 R Where a *firm* uses *safe custody assets* as permitted in this section, the records of the *firm* must include details of the *client* on whose instructions the use of the *safe custody assets* has been effected, as well as the number of *safe custody assets* used belonging to each *client* who has given consent, so as to enable the correct allocation of any loss.

[~~Note: article 19(2) 5(2), second sub-paragraph~~ of the *MiFID implementing Delegated Directive*]

...

## 6.6 Records, accounts and reconciliations

...

- 6.6.2 R A *firm* must keep such records and accounts as necessary to enable it at any time and without delay to distinguish *safe custody assets* held for one *client* from *safe custody assets* held for any other *client*, and from the *firm's* own *applicable assets*.

[~~Note: article 16(1)(a) 2(1)(a)~~ of the *MiFID implementing Delegated Directive*]

- 6.6.3 R A *firm* must maintain its records and accounts in a way that ensures their accuracy, and in particular their correspondence to the *safe custody assets* held for *clients* and that they may be used as an audit trail.

[~~Note: article 16(1)(b) 2(1)(b)~~ of the *MiFID implementing Delegated Directive*]

- 6.6.4 R A *firm* must maintain a *client-specific safe custody asset record*.

- 6.6.5 G (1) The requirements in CASS 6.6.2R to CASS 6.6.4R are for a *firm* to keep internal records and accounts of *clients' safe custody assets*. Therefore any records falling under those requirements should be maintained by the *firm*, and should be separate to any records the *firm* may have obtained from any third parties, such as those with whom it may have deposited, or through whom it may have registered legal title to, *clients' safe custody assets*.

(2) The FCA expects that compliance by a *firm* with CASS 6.6 as a whole (to the extent applicable to that *firm*) will be sufficient to comply with the requirement under CASS 6.6.3R to maintain its records and accounts in a way that ensures that they may be used as an audit trail.

...

### External custody reconciliations

...

- 6.6.34 R A *firm* must conduct, on a regular basis, reconciliations between its internal records and accounts of *safe custody assets* held by the *firm* for *clients* and those of any third parties by whom those *safe custody assets* are held.

[**Note:** article ~~16(1)(e)~~ 2(1)(c) of the *MiFID implementing Delegated Directive*]

...

## 7 Client money rules

...

### 7.10 Application and purpose

...

Credit institutions and approved banks

7.10.16 R In relation to the application of the *client money rules* (and any other rule in so far as it relates to matters covered by the *client money rules*) to the firms referred to in (1) and (2), the following is not *client money*:

- (1) any deposits within the meaning of the *CRD* held by a *CRD credit institution*; and

[**Note:** article ~~13(8)~~ 16(9) of *MiFID* and article ~~18(1)~~ 4(1) of the *MiFID implementing Delegated Directive*]

...

...

### 7.11 Treatment of client money

Title transfer collateral arrangements

7.11.1 R (1) ~~Where a *client* transfers full ownership of *money* to a *firm* for the purpose of securing or otherwise covering present or future, actual or contingent or prospective obligations, such *money* should no longer be regarded as *client money*. [deleted]~~

[**Note:** recital 27 to *MiFID*]

- (2) ~~Excepted from (1) is a transfer of the full ownership of *money*:~~

- (a) ~~belonging to a *retail client*;~~
- (b) ~~whose purpose is to secure or otherwise cover that *client's* present or future, actual, contingent or prospective obligations under a *contract for differences* or a *rolling spot forex contract* that is a *future*, and in either case where that contract is entered into with a *firm* acting as *market maker*; and~~

(e) ~~which is made to that *firm* or to any other *person* arranging on its behalf. [deleted]~~

(3) (a) A *firm* must not enter into a *TTCA* with a *retail client*.

(b) Where a *firm* entered into a *TTCA* with a *retail client* before this *rule* came into force, the *firm* must terminate that *TTCA*.

[Note: article 16(10) of *MiFID* and article 5(5) of the *MiFID Delegated Directive*]

(4) *Money* that is subject to a *TTCA* does not amount to *client money*, provided that the *TTCA* is not with a *retail client*.

[Note: recital 52 to *MiFID*]

7.11.2 R (1) ~~Subject to (2), where a *firm* makes arrangements for the purpose of securing or otherwise covering present or future, actual, contingent or prospective obligations of a *retail client* those arrangements must not provide for the taking of a transfer of full ownership of any of that *client's money*. [deleted]~~

(2) ~~The application of (1) is confined to the taking of a transfer of full ownership:~~

(a) ~~whose purpose is to secure or otherwise cover that *retail client's* obligations under a *contract for differences* or a *rolling spot forex contract* that is a *future*, and in either case where that contract is entered into with a *firm* acting as *market maker*; and~~

(b) ~~which is made to that *firm* or to any other *person* arranging on its behalf.~~

7.11.3 R (1) ~~A *firm* must ensure that any arrangement relating to the transfer of full ownership of a *client's money* to the *firm* for the purposes set out in *CASS 7.11.1R(1)* and *CASS 7.11.2 R(1)* *TTCA* is the subject of a written agreement made on a *durable medium* between the *firm* and the *client*.~~

...

...

7.11.4A R (1) A *firm* must properly consider and document the use of *TTCAs* in the context of the relationship between the *client's* obligation to the *firm* and the *money* subjected to *TTCAs* by the *firm*.

(2) A *firm* must be able to demonstrate that it has complied with the requirement under (1).

- (3) When considering, and documenting, the appropriateness of the use of TTCAs, a firm must take into account the following factors:
- (a) whether there is only a very weak connection between the client's obligation to the firm and the use of TTCAs, including whether the likelihood of a liability arising is low or negligible;
  - (b) the extent by which the amount of money subject to a TTCA is in excess of the client's obligations (including where the TTCA applies to all money from the point of receipt by the firm) and whether the client might have no obligations at all to the firm; and
  - (c) whether all the client's money is made subject to TTCAs, without consideration of what obligation the client has to the firm.
- (4) Where a firm uses a TTCA, it must highlight to the client the risks involved and the effect of any TTCA on the client's money.

[Note: article 6 of the MiFID Delegated Directive]

7.11.5 G ~~A title transfer financial collateral arrangement under the Financial Collateral Directive is an example of a type of transfer of money to cover obligations where that money will not be regarded as client money. [deleted]~~

...

7.11.8 G ~~Pursuant to the client's best interests rule, a firm should ensure that where a retail client transfers full ownership of money to a firm: [deleted]~~

- (1) ~~the client is notified that full ownership of the money has been transferred to the firm and, as such, the client no longer has a proprietary claim over this money and the firm can deal with it on its own right;~~
- (2) ~~the transfer is for the purposes of securing or covering the client's obligations;~~
- (3) ~~an equivalent transfer is made back to the client if the provision of collateral by the client is no longer necessary; and~~
- (4) ~~there is a reasonable link between the timing and the amount of the collateral transfer and the obligation that the client owes, or is likely to owe, to the firm.~~

Termination of title transfer collateral arrangements

7.11.9 R (1) If a client communicates to a firm that it wishes (whether pursuant to

a contractual right or otherwise) to terminate ~~an arrangement relating to the transfer of full ownership of its money to the firm for the purposes set out in CASS 7.11.1.R(1) and CASS 7.11.2R(1) a TTCA~~, and the *client's* communication is not in writing, the *firm* must make a written record of the *client's* communication, which also records the date the communication was received.

...

- (3) (a) If a *firm* agrees to the termination of ~~an arrangement relating to the transfer of full ownership of a client's money to the firm a TTCA~~, it must notify the *client* of its agreement in writing. The notification must state when the termination is to take effect and whether or not the *client's money* will be treated as *client money* by the *firm* thereafter.
- (b) If a *firm* does not agree to terminate ~~an arrangement to the transfer of full ownership of a client's money to the firm a TTCA~~, it must notify the *client* of its disagreement in writing.

...

7.11.10 G CASS 7.11.9 R(3)(a) refers only to a *firm's* agreement to terminate an existing ~~arrangement relating to the transfer of full ownership of a client's money to the firm TTCA~~. Such agreement by a *firm* does not necessarily need to amount to the termination of its entire agreement with the *client*.

7.11.11 G When a *firm* notifies a *client* under CASS 7.11.9R(3)(a) of when the termination of ~~an arrangement relating to the transfer of full ownership of the client's money to the firm a TTCA~~ is to take effect, it should take into account:

...

7.11.12 R (1) If ~~an arrangement relating to the transfer of full ownership of a client's money to a firm for the purposes set out in CASS 7.11.1R(1) and CASS 7.11.2R(1) a TTCA~~ is terminated then, unless otherwise permitted under the *client money rules* and notified to the *client* under CASS 7.11.9R(3)(a), the *firm* must treat that *money* as *client money* from the start of the next business day following the date of termination as set out in the *firm's* notification under CASS 7.11.9R (3)(a).

(2) Where the *firm's* notification under CASS 7.11.9R(3)(a) does not state when the termination of the arrangement will take effect, the *firm* must treat that *money* as *client money* from the start of the next *business day* following the date on which the *firm's* notification is made.

...

Third party rights over client money

- 7.11.59    R    (1)    A firm must not grant, or permit the granting of, any security interest, lien or right of set-off to a third party over *client money* that enables the third party to dispose of *client money* in order to recover debts unless conditions (a) or (b), and in either case (c) are satisfied:
- (a)    those debts relate to one or more *clients* or the provision of services to one or more *clients*, or
- (b)    (i)    the security interest, lien or right of set-off is required by applicable law in a third country jurisdiction in which the *client money* is held;
- (ii)    the *firm* discloses information to the *client* so that the *client* is informed of the risks associated with these arrangements; and
- (iii)    the *firm* has taken reasonable steps to determine that holding *client money* subject to that security interest, lien or right is in the best interests of the *clients*; and
- (c)    the security interest, lien or right of set-off is exercisable by the third party only:
- (i)    in relation to *client money* held for *clients* at the time; and
- (ii)    to the extent the relevant *clients*’ contracts with the *firm* meet the requirements of (2).
- (2)    Where security interests, liens or rights of set-off are granted by a *firm* over *client money*, or where the *firm* has been informed that they are granted, these must be recorded in *client* contracts and the *firm*’s own books and records to make the ownership status of *client money* clear, such as in the event of an insolvency.

[Note: article (2)(4) of the *MiFID Delegated Directive*]

- 7.11.60    G    To comply with CASS 7.11.59R(2) and in relation to any security interests, liens or rights of set-off over *client money*, a *firm* should ensure that:
- (1)    its contracts with the relevant *clients* contain all the terms under which such security interests, liens or rights of set-off may be granted to a third party; and
- (2)    its books and records are able to show the balances of *client money* in respect of which such security interests, liens or rights of set-off exist.

## 7.12 Organisational requirements: client money

### Requirement to protect client money

- 7.12.1 R A *firm* must, when holding *client money*, make adequate arrangements to safeguard the *client's* rights and prevent the use of *client money* for its own account.

[**Note:** article ~~13(8)~~ 16(9) of *MiFID*]

### Requirement to have adequate organisational arrangements

- 7.12.2 R A *firm* must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of *client money*, or of rights in connection with *client money*, as a result of misuse of *client money*, fraud, poor administration, inadequate record-keeping or negligence.

[**Note:** article ~~16(1)(f)~~ 2(1)(f) of the *MiFID implementing Delegated Directive*]

...

## 7.13 Segregation of client money

...

### Depositing client money

- 7.13.3 R A *firm*, on receiving any *client money*, must promptly place this *money* into one or more accounts opened with any of the following:
- (1) a central bank;
  - (2) a *CRD credit institution*;
  - (3) a bank authorised in a third country;
  - (4) a *qualifying money market fund*.

[**Note:** article ~~18(1)~~ 4(1) of the *MiFID implementing Delegated Directive*]

...

### Selection, appointment and review of third parties

- 7.13.8 R (1) A *firm* that does not deposit *client money* with a central bank must exercise all due skill, care and diligence in the selection, appointment and periodic review of the *CRD credit institution*, bank or *qualifying money market fund* where the *money* is deposited and the

arrangements for the holding of this *money*.

- (2) The *firm* must consider the need for diversification as part of its due diligence under (1).

[**Note:** article ~~18(3)~~ 4(2) first sub-paragraph of the *MiFID implementing Delegated Directive*]

...

- 7.13.10 R When a *firm* makes the selection, appointment and conducts the periodic review of a *CRD credit institution*, a bank or a *qualifying money market fund*, it must take into account:
- (1) the expertise and market reputation of the third party with a view to ensuring the protection of *clients*' rights; and
  - (2) any legal or regulatory requirements or market practices related to the holding of *client money* that could adversely affect *clients'* rights.

[**Note:** article ~~18(3)~~ 4(2) second sub-paragraph of the *MiFID implementing Delegated Directive*]

...

#### Client bank accounts

- 7.13.12 R A *firm* must take the necessary steps to ensure that *client money* deposited, in accordance with CASS 7.13.3R, in a central bank, a *credit institution*, a bank authorised in a third country or a *qualifying money market fund* is held in an account or accounts identified separately from any accounts used to hold *money* belonging to the *firm*.

[**Note:** article ~~16(1)(e)~~ 2(1)(e) of the *MiFID implementing Delegated Directive*]

...

#### Diversification of client money

- 7.13.20-A G (1) In CASS 7.13.20R to CASS 7.13.27G *client money* means *money* deposited under CASS 7.13.3R and therefore includes *money* deposited under CASS 7.13.3R:
- (a) in an account opened with a *qualifying money market fund*; or
  - (b) invested in units or shares of a *qualifying money market fund*.
- (2) But *client money* held under CASS 7.14.2R does not fall within the scope of the diversification provisions at CASS 7.13.20R to 7.13.27G.

7.13.20 R Notwithstanding the requirement at CASS 7.13.22R a *firm* must limit the funds that it deposits or holds with a relevant group entity or combination of such entities so that the value of those funds do not at any point in time exceed 20 per cent of the total of all the *client money* held by the *firm* ~~in its client bank accounts~~ under CASS 7.13.3R.

[Note: article 4(3) first sub-paragraph of the MiFID Delegated Directive]

7.13.21 R For the purpose of CASS 7.13.20R an entity is a relevant group entity if it is:

- (1) (a) a *CRD credit institution*; or
- (b) a bank authorised in a third country; or
- (c) a *qualifying money market fund*; or
- (d) the entity operating or managing the *qualifying money market fund*; and
- (2) a member of the same *group* as that *firm*.

7.13.21 R (1) A *firm* need not comply with CASS 7.13.20R if, following an assessment, it is able to demonstrate that the requirement under that rule is not proportionate, in view of:

A

- (a) the small balance of *client money* that it holds;
- (b) the nature, scale and complexity of its business; and
- (c) the safety offered by the relevant third parties referred to under CASS 7.13.20R.

(2) A *firm* must periodically review the assessment made in accordance with (1) and must notify the initial and reviewed assessments to the FCA.

[Note: article 4(3) second sub-paragraph of the MiFID Delegated Directive]

7.13.21B G (1) A *firm* should send the notification under CASS 7.13.21AR(2) to its CASS supervisory contact in accordance with CASS 7.13.21CR.

(2) The FCA considers it likely that only a CASS *small firm* would hold a sufficiently small balance of *client money* to justify the approach in CASS 7.13.21AR(1).

(3) As part of its duty to ‘periodically review’ under CASS 7.13.21AR(2), a *firm* which has made use of the approach under CASS 7.13.21AR(1) should carry out a review under CASS 7.13.21AR(2):

- (a) if it predicts that its ‘CASS firm type’ will change, and
- (b) in any case, at suitably regular intervals.
- (4) Firms are reminded that, independent of CASS 7.13.21AR, each firm is required by CASS 1A.2.2R to determine once every year whether it is a CASS large firm, CASS medium firm or CASS small firm.
- 7.13.21C R (1) Where a firm decides following an assessment under CASS 7.13.21AR(1) that it will start to use the approach under that rule, the firm must give the FCA notice of this within one month of that decision.
- (2) Where, following a review under CASS 7.13.21AR(2):
- (a) a firm decides that it will cease to use the approach under CASS 7.13.21AR(1), it must give the FCA notice of this within one month of that decision; or
- (b) where a firm decides that it will continue to use the approach under CASS 7.13.21AR(1), it must give the FCA notice of this within the month after the period referred to in SUP 3.10.6R in which that decision was taken.
- 7.13.22 R Subject to the requirement at CASS 7.13.20R, and in accordance with Principle 10 and CASS 7.12.1R, a firm must:
- (1) periodically assess review whether it is appropriate to diversify (or further diversify) the third parties with which it deposits some or all of the *client money* that the firm holds; and
- (2) whenever it concludes that it is appropriate to do so, it must make adjustments accordingly to the third parties it uses and to the amounts of *client money* deposited with them.
- [Note: article 4(2) first sub-paragraph of the MiFID Delegated Directive]
- 7.13.23 G In complying with the requirement in CASS 7.13.22R to periodically assess review whether diversification (or further diversification) is appropriate, a firm should have regard to:
- ...
- ...
- Qualifying money market funds
- 7.13.26 R Where a firm deposits *client money* with a *qualifying money market fund*, the firm's holding of those units or shares in that fund will be subject to any

applicable requirements of the *custody rules*.

[**Note:** recital 23 4 to the *MiFID implementing Delegated Directive*]

...

- 7.13.28 R (1) A firm must inform a client that money placed with a qualifying money market fund will not be held in accordance with the requirements for holding client money.
- (2) ~~A firm must give a client the right to oppose the placement of his money in a qualifying money market fund ensure that, having provided the information to the client under (1), the client gives its explicit consent to the placement of their money in a qualifying money market fund.~~

[**Note:** article 18(3) 4(2) third sub-paragraph to the *MiFID implementing Delegated Directive*]

- 7.13.29 G ~~If a firm that intends to place client money in a qualifying money market fund is subject to the requirement to disclose information before providing services, it should, in compliance with that obligation, notify the client that: [deleted]~~
- (1) ~~money held for that client will be held in a qualifying money market fund; and~~
- (2) ~~as a result, the money will not be held in accordance with the client money rules; and~~
- (3) ~~if it is the case, that the units will be held as the client's safe custody assets in accordance with the custody rules.~~

- 7.13.29 G A firm may comply with CASS 7.13.28 R(1) by informing the client that the units or shares in the qualifying money market fund will be held as safe custody assets.
- A

...

## 7.15 Records, accounts and reconciliations

...

- 7.15.2 R A firm must keep such records and accounts as are necessary to enable it, at any time and without delay, to distinguish *client money* held for one *client* from *client money* held for any other *client*, and from its own money.

[**Note:** article 16(1)(a) 2(1)(a) of the *MiFID implementing Delegated Directive*]

- 7.15.3 R A firm must maintain its records and accounts in a way that ensures their

accuracy, and in particular their correspondence to the *client money* held for *clients* and that they may be used as an audit trail.

[**Note:** article ~~16(1)(b)~~ 2(1)(b) of the *MiFID implementing Delegated Directive*]

- 7.15.4 G (1) The requirements in CASS 7.15.2R to CASS 7.15.3R are for a *firm* to keep internal records and accounts of *client money*. Therefore, any records falling under those requirements should be maintained by the *firm* and should be separate to any records the *firm* may have obtained from any third parties, such as those with or through whom it may have deposited, or otherwise allowed to hold, *client money*.
- (2) Where a *firm* complies with CASS 7.15 as a whole (to the extent applicable to that *firm*) this will be sufficient to comply with the specific duty in CASS 7.15.3R to maintain its records and accounts in a way that ensures that they can be used as an audit trail.

...

External client money reconciliations

- 7.15.20 R A *firm* must conduct, on a regular basis, reconciliations between its internal records and accounts and those of any third parties which hold *client money*.

[**Note:** article ~~16(1)(e)~~ 2(1)(c) of the *MiFID implementing Delegated Directive*]

**9 Information to clients**

...

**9.3 Prime brokerage agreement disclosure annex**

...

- 9.3.2 G ...
- (2) ...
- (c) ...
- (i) ...
- (ii) the record-keeping obligations in CASS ~~6.3.6R(3)(b)(i)~~ 6.3.6AR.

...

## 10 CASS resolution pack

### 10.1 Application, purpose and general provisions

...

#### Purpose

10.1.2 G The purpose of the *CASS resolution pack* is to ensure that a *firm* maintains and is able to retrieve information that would:

- (1) in the event of its insolvency, assist an insolvency practitioner in achieving a timely return of *client money* and *safe custody assets* held by the *firm* to that *firm's clients*; and
- (2) in the event of its or another *firm's* resolution, assist the Bank of England in its capacity as resolution authority under the *RRD*; and
- (3) in either case, assist the *FCA*.

...

10.1.7 R In relation to each document in a *firm's CASS resolution pack* a *firm* must:

- (1) put in place adequate arrangements to ensure that an administrator, receiver, trustee, liquidator or analogous officer appointed in respect of it or any material part of its property is able to retrieve each document as soon as practicable and in any event within 48 hours of that officer's appointment; and
- (2) ensure that it is able to retrieve each document as soon as practicable, and in any event within 48 hours, where it has taken a decision to do so or as a result of an *FCA* or Bank of England request.

[Note: article 2(5) of the *MiFID Delegated Directive*]

...

### 10.3 Existing records forming part of the CASS resolution pack

10.3.1 R A *firm* must include, as applicable, within its *CASS resolution pack* the records required under:

- (1) ...
- (1A) *CASS* 6.3.6AR (third party rights over client assets);
- (2) ...

...

**12 Commodity Futures Trading Commission Part 30 exemption order**

...

**12.2 Treatment of client money**

...

12.2.2 G The *FCA* understands that in complying with condition 2(g) of the *Part 30 exemption order*, a *firm* is representing that it will not:

...

- (3) enter into any arrangement relating to the transfer of full ownership of the *client's money* to the *firm* for the purposes set out in *CASS 7.11.1R(1)* *TTCA* under *CASS 7.11*;

...

...

Please re-order rows in their correct numerical sequence to correspond with the order of the Handbook.

## Sch 1 Record keeping requirements

...

1.3G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
CASS 6.1.6BR(3)	Written agreement regarding any arrangement relating to <del>the transfer of full ownership of a client's safe custody asset to the firm for the purposes set out in</del> CASS 6.1.6R(1) and CASS 6.1.6AR(1) a <u>TTCA</u>	...	...	<u>Five years from date agreement terminated</u> From the date the agreement is entered into and until five years after the agreement is terminated
CASS 6.1.8AR(1) and (2)	<del>Client's</del> <u>Client's</u> communication to firm of wish to terminate <del>TTCA</del> <u>TTCA</u>	<del>Client's</del> <u>Client's</u> communication of wish to terminate <del>TTCA</del> <u>TTCA</u>	...	...
CASS 6.1.8AR(4)	<del>Firm's</del> response to <del>client's</del> wish to terminate <del>TTCA</del> <u>TTCA</u>	<del>Firm's</del> response to <del>client's</del> wish to terminate <del>TTCA</del> <u>TTCA</u>	...	...
<del>CASS</del> <u>CASS</u> 6.1.12R(4) 6.1.12R(5)	...	...	...	Not specified (see default provision CASS <del>6.5.3R</del> 6.6.7R)
...				
<u>CASS 6.3.6AR(2)</u>	<u>Granting of security interests, liens or rights of set-off</u>	<u>Recording of the granting of security interests, liens or rights of set-off in the firm's books and records</u>	<u>On the firm's granting, or where the firm has been informed of the granting</u>	<u>Not specified (see default provision CASS 6.6.7R)</u>

CASS 6.4.3R	...	...	...	5 years (from the date the record was made) <u>Not specified</u> (see <u>default provision CASS 6.6.7R</u> )
CASS 6.6.2R	...	...	...	5 years (from the date the record was made) <u>Not specified</u> (see <u>default provision CASS 6.6.7R</u> )
CASS 6.6.3R	...	...	...	5 years (from the date the record was made) <u>Not specified</u> (see <u>default provision CASS 6.6.7R</u> )
CASS 6.5.2AR	<del>Client agreements that include a firm's right to use safe custody assets for its own account</del>	<del>A copy of every executed client agreement that includes a firm's right to use safe custody assets for its own account</del>	<del>Maintain up to date records</del>	5 years (from the date the record was made) <del>[deleted]</del>
CASS 6.5.3R	Default record keeping provisions for CASS 6	Refer to the rule concerned	Refer to the rule concerned	Five years from the later of: (1) the date it was created; and (2) if it has been modified since the date in (1), the date it was most recently modified <del>[deleted]</del>
CASS 6.6.4R	...	...	...	5 years (from the date the record was made) <u>Not specified</u> (see <u>default provision CASS</u>

				<u>6.6.7R</u>
<u>CASS 6.6.6R</u>	<u>Client agreements that include a firm's right to use safe custody assets for its own account</u>	<u>A copy of every executed client agreement that includes a firm's right to use safe custody assets for its own account</u>	<u>Not specified</u>	<u>Not specified (see default provision CASS 6.6.7R)</u>
<u>CASS 6.6.7R</u>	<u>Default record keeping provisions for CASS 6</u>	<u>Refer to the rule concerned</u>	<u>Refer to the rule concerned</u>	<u>Five years from the later of:</u> <u>(1) the date it was created;</u> <u>and</u> <u>(2) if it has been modified since the date in (1), the date it was most recently modified</u>
CASS 6.6.8R	...	...	...	Not specified (see default provision CASS 6.6.7R )
CASS 6.6.16R	...	...	...	Not specified (see default provision CASS 6.6.7R )
...				
CASS 6.6.46R(2)	...	...	...	Not specified (see default provision CASS 6.6.7R )
CASS 6.6.54R(2)(a)	...	...	...	Not specified (see default provision CASS 6.6.7R )
CASS 6.6.54R(2)(b)	...	...	...	Not specified (see default provision CASS 6.6.7R )
<del>CASS 7.11.3R(3)</del> <u>CASS 7.10.3R(3)</u>	Record of election to comply with the <i>client money chapter</i>	Record of election to comply with the <i>client money chapter</i> , including the date from which the election	Date of the election	5 years (from the date the <i>firm</i> ceases to use the election)

		is to be effective		
CASS 7.10.31R	Record of election in relation to CASS <del>7.1.15CR</del> <u>7.10.30R</u>	Record of election in relation to CASS <del>7.1.15CR</del> <u>7.10.30R</u>	Date of the election	Not specified (see default provision CASS <del>7.6.4R</del> <u>7.15.5R(3)</u> )
...				
<u>CASS 7.11.3R(3)</u>	<u>Written agreement regarding any arrangement relating to a TTCA</u>	<u>The agreement</u>	<u>When agreement made</u>	<u>From the date the agreement is entered into and until five years after the agreement is terminated</u>
<del>CASS 7.2.8AER</del> <u>7.11.20R</u>	<i>Client's</i> agreement to <i>firm's</i> use of the delivery versus payment exemption in CASS <del>7.2.8R</del> <u>7.11.14R</u>	...	...	During the time the <i>firm</i> makes use or intends to make use of the exemption in CASS <del>7.2.8R</del> <u>7.11.14R</u> in respect of that <i>client's</i> monies
<u>CASS 7.11.24R</u>	<u><i>Client's</i> agreement to <i>firm's</i> use of the delivery versus payment exemption in CASS 7.11.21R</u>	<u><i>Client's</i> written agreement</u>	<u>At the time of <i>client's</i> agreement</u>	<u>During the time the <i>firm</i> makes use, or intends to make use, of the exemption in CASS <u>7.11.21R</u> in respect of that <i>client's</i> monies</u>
CASS 7.11.55R	<i>Client</i> money paid to charity by the <i>firm</i> under CASS <del>7.2.19R</del> <u>7.11.50R(4)</u>	...	...	...
CASS 7.11.57R(4)	<i>Client</i> money paid to charity by the <i>firm</i> under <del>CASS 7.2.25R</del> <u>this rule</u>	<del>Indefinite</del> <u>Records of all balances released from <i>client</i> bank accounts, including the information in CASS <u>7.11.55R(1)(a)</u> and <u>CASS <u>7.11.55R(1)(b)</u>.</u></u>	...	Not specified (see default provision CASS <del>7.6.4R</del> <u>7.15.5R(3)</u> )
<del>CASS</del> <u>CASS 7.13.25R(1)</u>	...	...	...	...

<u>CASS 7.13.32R(3)</u>	<u>Physical receipts</u>	<u>Physical receipt of money</u>	<u>When the firm receives client money in the form of cash, a cheque or other payable order</u>	<u>Not specified (see default provision CASS 7.15.5R(3))</u>
<u>CASS 7.13.33R(3)</u>	<u>Future dated cheque</u>	<u>Receipt of money</u>	<u>When the firm receives client money in the form of a cheque that is dated with a future date</u>	<u>Not specified (see default provision CASS 7.15.5R(3))</u>
<u>CASS 7.4.17BR</u> <u>7.13.55R</u>	...	...	...	...
<u>CASS 7.4.19AR</u> to <u>CASS 7.4.19CR</u>	<u>Alternative approach alternative approach mandatory prudent segregation record</u>	<u>Details of money segregated under CASS 7.4.18BR required by these rules</u>	<u>Maintain up to date</u>	<u>Five years (after the firm ceases to retain money as client money under CASS 7.4.18BR) [deleted]</u>
...				
<u>CASS 7.6.4R</u> <u>7.15.5R(3)</u>	...	...	...	...
<u>CASS 7.6.7R</u> <u>7.15.18R</u>	...	<u>Explanation of method of internal reconciliation of client money balances used by the firm, and if different from the standard method of internal client money reconciliation, an explanation as to how the method used affords equivalent degree of protection to clients, and how it enables the firm to comply with the client money</u>	<u>Date the firm starts using the method</u> <u>Before the firm uses a non-standard method of internal client money reconciliation or materially changes its method</u>	<u>5 years (from the date the firm ceases to use the method)</u> <u>Not specified (see default provision CASS 7.15.5R(3))</u>

		<i>distribution rules</i> <u>The firm's reasons for concluding that the method of internal client money reconciliation it proposes to use meets the criteria at CASS 7.15.18R(1)(a)</u>		
<del>CASS 7.8.9R(1)</del> <u>7.18.10R(1)</u>	...	...	...	...
<del>CASS 7.8.9R(2)</del> <u>7.18.10R(2)</u>	...	...	...	...
<del>CASS 7.8.10R</del> <u>7.18.11R</u>	...	...	...	...
...				
CASS 7.11.20R	<i>Client's agreement to firm's use of the delivery versus payment exemption under CASS 7.11.14R</i>	Written evidence of <i>client's</i> agreement	Immediate	Until the <i>firm</i> ceases to use this exemption [deleted]
CASS 7.11.24R	<i>Client's agreement to firm's use of the delivery versus payment exemption under CASS 7.11.21R</i>	Written evidence of <i>client's</i> agreement	Immediate	Until the <i>firm</i> ceases to use this exemption [deleted]
...				
CASS 7.13.50R; CASS 7.13.51R	...	...	...	Five years (after the <del>firm</del> <i>firm</i> ceases to retain money as <i>client</i> money under CASS 7.13.41R)
CASS 7.13.66R; CASS 7.13.67R	...	...	...	Five years (after the <del>firm</del> <i>firm</i> ceases to retain money as <i>client</i> money under CASS 7.13.65R)

CASS 7.13.74R; CASS 7.13.75R	...	...	...	Five years (after the <del>firm</del> <u>firm</u> ceases to retain money as client money under CASS 7.13.73R(3)(a) )
CASS 7.15.9R	...	...	...	Not specified (see detail provision <del>CASS</del> <u>CASS</u> 7.15.5R(3))
...				

## Sch 2 Notification Requirements

2.1G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<del>CASS</del> <u>CASS</u> 6.6.57R(1)	...	...	...	...
...				
<del>CASS</del> <u>CASS</u> 6.6.57R(6)	Inability or material failure to conduct an <del>external custody record check</del> <u>external custody reconciliation</u> in compliance with CASS 6.6.34R to CASS 6.6.37R	...	...	...
...				
<u>CASS 7.13.21AR</u>	<u>Periodic diversification assessment</u>	<u>Initial and reviewed assessments</u>	<u>Whenever an assessment is completed</u>	<u>Without delay</u>
<u>CASS 7.13.21CR(1)</u>	<u>Commencement of approach under CASS 7.13.21AR(1)</u>	<u>Notice that the firm will start to use the approach under CASS 7.13.21AR(1)</u>	<u>Whenever a decision to use the approach under CASS 7.13.21AR(1) is taken</u>	<u>Within one month of the decision</u>
<u>CASS 7.13.21CR(2)(a)</u>	<u>Cessation of approach under CASS 7.13.21AR(1)</u>	<u>Notice that the firm will cease to use the approach under CASS</u>	<u>Whenever a decision to cease the approach under</u>	<u>Within one month of the decision</u>

		<u>7.13.21AR(1)</u>	<u>CASS 7.13.21AR(1) is taken</u>	
<u>CASS 7.13.21CR(2)(b)</u>	<u>Continuation of approach under CASS 7.13.21AR(1)</u>	<u>Notice that the firm will continue to use the approach under CASS 7.13.21AR(1)</u>	<u>Whenever a decision to continue the approach under CASS 7.13.21AR(1) is taken</u>	<u>Within the month after the period referred to in SUP 3.10.6R in which the decision was taken</u>
<del>CASS 7.4.17DR</del> CASS 7.13.57R	...	...	...	...
<del>CASS</del> <u>CASS 7.15.18R(1)(b)</u>	...	...	...	...
CASS 7.6.16R(2)	<del>Non-compliance or inability, in any material respect, to comply with the requirements in CASS 7.6.13R to CASS 7.6.15R (Reconciliation discrepancies)</del>	<del>The fact that the firm has not complied or is unable, in any material respect, to comply with the requirements and the reasons for that</del>	<del>Non-compliance or inability, in any material respect, to comply with the requirements</del>	<del>Without delay [deleted]</del>
CASS 7.15.33R(6)	...	...	<u>On becoming aware</u>	...
...				

## Annex G

### Amendments to the Market Conduct Sourcebook (MAR)

Insert the following chapter after the deleted MAR 9. The text is all new and not underlined.

## 10 Commodity derivative position limits and controls, and position reporting

### 10.1 Application

#### Introduction

- 10.1.1 G (1) The purpose of this chapter is to implement articles 57 and 58 of *MiFID* by setting out the necessary directions and *guidance*.
- (2) In particular, this chapter sets out the *FCA*'s requirements in respect of:
- (a) article 57(1) and 57(6) of *MiFID*, which require *competent authorities* or *central competent authorities* to establish limits, on the basis of a methodology determined by *ESMA*, on the size of a net position which a *person* can hold, together with those held on that *person's* behalf at an aggregate group level, at all times, in *commodity derivatives* traded on *trading venues* and *economically equivalent OTC contracts* to those *commodity derivatives*;  
[**Note:** articles 3 and 4 of *RTS 21*]
  - (b) article 57(8) of *MiFID*, which requires *MiFID investment firms* and *market operators* operating a *trading venue* which trades *commodity derivatives* to apply position management controls;
  - (c) article 58(1) of *MiFID*, which requires *MiFID investment firms* and *market operators* operating a *trading venue* which trades *commodity derivatives* or *emission allowances* to provide the *competent authority* with reports in respect of such positions held; and
  - (d) article 58(2) of *MiFID*, which requires *investment firms* trading in *commodity derivatives* or *emission allowances* outside a *trading venue* to provide the *competent authority* or *central competent authority* with reports containing a complete breakdown of their positions held through such contracts traded on a *trading venue* and *economically equivalent OTC contracts*, as well as of those of their *clients* and the clients of those clients until the end client is reached.
- (3) The position limit requirements apply to both *authorised persons* and *unauthorised persons*. As such, the *MiFI Regulations* provide for a separate regulatory framework in relation to such *persons*. This

framework is set out in:

- (a) Part 3 of the *MiFI Regulations* ('Position limits'); and
- (b) Part 5 of the *MiFI Regulations* ('Administration and enforcement of Parts 3 and 4'), which provides for the administration and enforcement of position limits established by the *FCA*, and of the reporting of positions in *commodity derivatives*, *emission allowances* and *economically equivalent OTC contracts*.

This chapter complements and adds to the regulatory framework in the *MiFI Regulations* by establishing the applicable position limits.

### Scope and Territoriality

10.1.2 G The scope of this chapter is as follows:

- (1) In respect of position limit requirements in *MAR* 10.2, a *commodity derivative* position limit established by the *FCA* applies regardless of the location of the *person* at the time of entering into the position and the location of execution.  
  
[**Note:** article 57(14)(a) of *MiFID*]
- (2) In respect of position management controls requirements:
  - (a) the requirements contained or referred to in *MAR* 10.3 apply to *persons* operating a *trading venue* which trades *commodity derivatives* in respect of which the *FCA* is the *Home State competent authority*; and
  - (b) in the case of a *UK branch* of a *third country investment firm* operating an *MTF* or *OTF*, *MAR* 10.3 applies in the same way as it does to a *UK firm* operating an *MTF* or *OTF*.
- (3) In respect of position reporting requirements:
  - (a) the position reporting requirements in *MAR* 10.4 apply to:
    - (i) a *UK regulated market*; and
    - (ii) a *UK firm* or a *UK branch* of a *third country investment firm* operating an *MTF* or *OTF*,  
  
when operating a *trading venue* which trades *commodity derivatives* or *emission allowances*; and
  - (b) the position reporting requirements in *MAR* 10.4 apply to an *investment firm* regardless of its location at the time of entering into the position and the location of execution.

## Structure

10.1.3 G This chapter is structured as follows:

- (1) *MAR* 10.1 sets out an introduction to *MAR* 10, a description of the application of *MAR* 10 to different categories of *person*, an explanation of the approach taken to *UK* transposition of articles 57 and 58 of *MiFID*, the scope and territoriality of this chapter, and the structure of this chapter.
- (2) *MAR* 10.2 sets out the position limit requirements.
- (3) *MAR* 10.3 sets out the position management controls requirements.
- (4) *MAR* 10.4 sets out the position reporting requirements.
- (5) *MAR* 10.5 sets out other reporting, notification and information requirements.

## 10.2 Position limit requirements

Establishing, applying and resetting position limits

- 10.2.1 G (1) The following provisions of the *MiFI Regulations* regulate the establishment, application and resetting of position limits:
- (a) Regulation 7(1) imposes an obligation on the *FCA* to establish position limits in accordance with *ESMA*'s methodology;
  - (b) Regulation 7(2) imposes obligations on the *FCA* in respect of the position limits it establishes, for example that the position limits should be published in a manner which the *FCA* considers appropriate;
  - (c) Regulation 7(3) imposes an obligation on the *FCA* to review position limits it has established in the presence of certain factors;
  - (d) Regulation 7(4) empowers the *FCA* to reset a position limit following its review if it believes that the limit should be reset;
  - (e) Regulation 7(5) imposes an obligation on the *FCA*, where it receives an *ESMA* opinion stating that the *FCA* has established a position limit incompatible with *ESMA*'s methodology, to modify the position limit in accordance with *ESMA*'s opinion or to notify *ESMA* as to why amendment to the limit is considered to be unnecessary;
  - (f) Regulation 7(6) prohibits the *FCA* from establishing position limits which are more restrictive than permitted under *ESMA*'s methodology, unless in exceptional cases where more restrictive

position limits are objectively justified;

- (g) Regulation 7(7) imposes obligations on the *FCA* where it establishes position limits which are more restrictive than permitted under *ESMA*'s methodology in accordance with Regulation 7(6) of the *MiFI Regulations*. The obligations are that the *FCA* must publish that position limit on its website, not apply that position limit for more than six months from the date of publication unless further subsequent six-month application periods for that limit are objectively justified, and must notify *ESMA* of the position limit and the justification for establishing it;
  - (h) Regulation 7(8) imposes an obligation on the *FCA* to publish a notice on its website explaining the reasons for its decision when it does not modify a position limit following an *ESMA* opinion under Regulation 7(5) and Regulation 7(7) of the *MiFI Regulations*; and
  - (i) Regulation 9 empowers the *FCA* to require a *person* to provide information on, or concerning, a position the *person* holds in a contract to which an established position limit relates.
- (2) [*RTS 21*] provides a methodology for the calculation of position limits on *commodity derivatives*, and rules for the calculation of the net position held by a *person* in that instrument.
  - (3) [*RTS 21*] provides that the *FCA* can establish different position limits for different times within the spot month period of a *commodity derivative*, and those position limits shall decrease towards the maturity of the *commodity derivative*, and shall take into account the position management controls of *trading venues*.

[**Note:** article 57 of *MiFID*]

#### Application of position limits

- 10.2.2 D (1) A *person* must comply with *commodity derivative* position limits established by the *FCA*, published at [insert link].
- (2) A direction made under (1) applies where a *commodity derivative* is traded on a *trading venue* in the *United Kingdom*, provided that there is not a *central competent authority* established in an *EEA State* other than the *United Kingdom*.
  - (3) Position limits established under (1) shall apply to the positions held by a *person* together with those held on its behalf at an aggregate group level.
  - (4) Position limits established under (1) shall apply regardless of the location of the *person* at the time of entering into the position (subject to the *non-financial entity* exemption in regulation 6(4) of the *MiFI Regulations*).

[**Note:** articles 57(1) and 57(14) of *MiFID*; and *RTS 21* in respect of *ESMA*'s methodology for *competent authorities* to calculate position limits]

#### Non-financial entity exemption

- 10.2.3 G (1) Regulation 6(4) of the *MiFI Regulations* regulates the position limit exemption applicable to positions in a *commodity derivative* held by or on behalf of a *non-financial entity* which are objectively measurable as reducing risks directly relating to the commercial activity of that *non-financial entity*. Regulation 6(4) imposes an obligation on the *FCA* to disregard such positions, when calculating the position held by such entities in respect of a *commodity derivative* to which a position limit applies.
- (2) [*RTS 21*] stipulates detail on positions qualifying as reducing risks directly related to commercial activities, and the application for the exemption from position limits.
- (3) [*RTS 21*] clarifies that a *non-financial entity* shall notify the *FCA* if there is a significant change to the nature or value of that *non-financial entity's* commercial activities, or its trading activities in *commodity derivatives*. The obligation arises where the change is relevant to the description of the nature and value of the *non-financial entity's* trading and positions held in *commodity derivatives* and their *economically equivalent OTC contacts* in a position limit exemption application it has already submitted. In this case, a *non-financial entity* must submit a new application if it intends to continue to make use of the exemption.

[**Note:** article 57(1) of *MiFID*]

#### Non-financial entity exemption application

- 10.2.4 D A *non-financial entity* must complete the application form in *MAR 10 Annex 1D* for approval to be exempt from compliance with position limits established by the *FCA* under *MAR 10.2.2D(2)*.

[**Note:** article 8 of *RTS 21*]

### 10.3 Position Management Controls

#### Application

- 10.3.1 G The application of this section is set out in the following table:

Type of firm	Applicable provisions
<i>UK market operator</i> operating a <i>trading venue</i>	<i>MAR 10.3.2G</i> and <i>MAR 10.3.4G</i>

a <i>UK firm operating an MTF or OTF</i> and a <i>UK branch of a third country investment firm operating an MTF or OTF</i>	MAR 10.3.3R and MAR 10.3.4G
--	-----------------------------

Position Management Controls applicable to UK market operators operating a trading venue

- 10.3.2 G A *UK market operator* operating a *trading venue* which trades *commodity derivatives* must apply position management controls on that *trading venue*, in accordance with paragraph 7BA of the Schedule to the *Recognition Requirements Regulations*, as inserted by the *MiFI Regulations*.

[**Note:** article 57(8) to 57(10) of *MiFID*]

Position Management Controls applicable to UK firms and UK branches of third country investment firms operating an MTF or OTF

- 10.3.3 R (1) This rule applies to a *UK firm operating an MTF or OTF* and a *UK branch of a third country investment firm operating an MTF or OTF*.
- (2) A *firm* must apply position management controls which enable an *MTF or OTF* at least to:
- (a) monitor the open interest positions of *persons*;
  - (b) access information, including all relevant documentation, from *persons* about:
    - (i) the size and purpose of a position or exposure entered into;
    - (ii) any beneficial or underlying owners;
    - (iii) any concert arrangements; and
    - (iv) any related assets or liabilities in the underlying market;
  - (c) require a *person* to terminate or reduce a position on a temporary or permanent basis and unilaterally to take appropriate action to ensure the termination or reduction if the *person* does not comply; and
  - (d) require a *person* to provide liquidity back into the market at an agreed price and volume on a temporary basis with the express intent of mitigating the effects of a large and dominant position.
- (3) The position management controls in paragraph (2) must take account of the nature and composition of market participants and of the use they make of the contracts admitted to trading and must:

- (a) be transparent;
  - (b) be non-discriminatory; and
  - (c) specify how the controls apply to *persons*.
- (4) A *firm* must inform the *FCA* of the details of the position management controls in relation to each *MTF* or *OTF* it operates which trades *commodity derivatives*.

[**Note:** article 57(8) to 57(10) of *MiFID*]

#### Supervision of Position Management Controls

- 10.3.4 G An operator of a *trading venue* referred to in *MAR* 10.3.1G may include provisions in its rulebook which impose appropriate obligations on its members or participants as part of its complying with its position management controls obligations.

## 10.4 Position reporting

### Application

- 10.4.1 G The application of this section is set out in the following table:

Type of firm	Applicable provisions
<i>UK regulated market</i>	<i>MAR</i> 10.4.2G
<i>UK firm operating an MTF or OTF and a UK branch of a third country investment firm operating an MTF or OTF</i>	<i>MAR</i> 10.4.3R to <i>MAR</i> 10.4.6G
<i>UK MiFID investment firm</i>	<i>MAR</i> 10.4.7D to <i>MAR</i> 10.4.9D
<i>UK branch of third country investment firm when not operating an MTF or OTF</i>	<i>MAR</i> 10.4.7D to <i>MAR</i> 10.4.9D

### Position reporting by UK regulated markets

- 10.4.2 G A *UK regulated market* which trades *commodity derivatives* or *emission allowances* must provide position reports in accordance with paragraph 7BB of the Schedule to the *Recognition Requirements Regulations*, as inserted by the *MiFI Regulations*.

[**Note:** article 58(1) of *MiFID*]

Position reporting by UK firms and UK branches of third country investment firms operating an MTF or OTF: Reports

- 10.4.3 R (1) This rule applies to a *UK firm operating an MTF or OTF* and a *UK branch of a third country investment firm operating an MTF or OTF*.
- (2) A *firm* must make public and provide to the *FCA* and *ESMA*, a weekly report with the aggregate positions held by the different categories of *persons* for the different *commodity derivatives* or *emission allowances* traded on the *trading venue*, where those instruments meet the criteria of article [83] of the *MiFID Org Regulation*, specifying:
- (a) the number of long and short positions held by such categories;
  - (b) changes in those positions since the previous report;
  - (c) the percentage of the total open interest represented by each category; and
  - (d) the number of *persons* holding a position in each category, as specified in *MAR 10.4.4R*.
- (3) The *firm* must provide the *FCA* with a complete breakdown of the positions held by all *persons*, including the members and participants and their *clients*, as well as those of their clients until the end client is reached, on the *trading venue* on a daily basis.
- (4) For the weekly report mentioned in (2) above, the *firm* must differentiate between:
- (a) positions which in an objectively measurable way reduce risks directly relating to commercial activities; and
  - (b) other positions.

[**Note:** article 58(1) of *MiFID*, *ITS 4* on position reporting and *ITS 5* on the format and timing of weekly position reports to *ESMA*]

Position reporting by UK firms and UK branches of third country investment firms operating an MTF or OTF: classification of persons holding positions in commodity derivatives or emission allowances

- 10.4.4 R A *firm* must classify *persons* holding positions in *commodity derivatives* or *emission allowances* according to the nature of their main business, taking account of any applicable authorisation or registration, as:
- (1) *investment firms* or *credit institutions*; or
  - (2) investment funds, either as a *UCITS*, or an *AIF* or an *AIFM*; or

- (3) other financial institutions, including:
  - (a) insurance undertakings and reinsurance undertakings as defined in the *Solvency II Directive*; and
  - (b) institutions for occupational retirement provision as defined in Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement; or
- (4) commercial undertakings; or
- (5) in the case of emission allowances, operators with compliance obligations under the *Emission Allowance Trading Directive*.

[**Note:** article 58(4) of *MiFID*]

Position reporting by UK firms and UK branches of a third country investment firms operating an MTF or OTF: Procedure for reporting to FCA

- 10.4.5 D (1) This direction applies to:
- (a) a *UK firm operating an MTF or OTF*; and
  - (b) a *UK branch of a third country investment firm operating an MTF or OTF*.
- (2) A *firm* shall report to the *FCA*:
- (a) (where it meets the minimum threshold as specified in article [83] of the *MiFID Org Regulation* [insert link]) the weekly report referred to in *MAR* 10.4.3R(1), by using the form set out in Annex [I] of *ITS 4* (available at [www.fca.org.uk/[insert]]), and publish it on its website and provide the report to *ESMA*; and
  - (b) in respect of the daily report referred to in *MAR* 10.4.3R(2):
    - (i) by using the form in *MAR* 10 Annex 2D; and
    - (ii) in each case, the report must be provided to the *FCA* by [GMT 17:00 the following *business day*].

[**Note:** *ITS 4* on position reporting]

Position reporting by UK firms and UK branches of a third country investment firms operating an MTF or OTF: Duplication of reporting

- 10.4.6 G For the purposes of making the weekly report referred to under *MAR* 10.4.7D(2)(a), the *FCA* will treat the provision of reports to *ESMA* as also

amounting to provision of the equivalent report to the *FCA*. As such, a *firm* which provides the weekly report in *MAR 10.4.3R(1)* directly to *ESMA* does not need to transmit it separately to the *FCA*.

Position reporting by UK MiFID investment firms and UK branches of third country investment firms: trading venue participant reporting

- 10.4.7 D (1) This direction applies to a member, participant or a *client* of a *trading venue*.
- (2) A *person* in (1) must report to the relevant operator of a *UK trading venue* or *UK branch* of a *third country investment firm operating an MTF* or *OTF* the details of their own positions held through contracts traded on that venue, at least on a daily basis, as well as those of their *clients* and the clients of those clients, until the end client is reached.

[**Note:** article 58(3) of *MiFID*]

UK MiFID investment firms and UK branches of third country investment firms: OTC reporting to the FCA

- 10.4.8 D (1) This direction applies to:
- (a) a *UK MiFID investment firm*; and
- (b) a *UK branch* of a *third country investment firm*.
- (2) An *investment firm* in (1) trading in a *commodity derivative* or *emission allowance* outside a *trading venue* must, where the *FCA* is the *competent authority* of the *trading venue* where that *commodity derivative* or *emission allowance* is traded, or the *central competent authority* for the purposes of that *commodity derivative*, provide the *FCA* with a report containing a complete breakdown of:
- (a) their positions taken in those *commodity derivatives* or *emission allowances* traded on a *trading venue*;
- (b) economically equivalent *OTC* contracts; and
- (c) the positions of their *clients* and the clients of those clients until the end client is reached.
- (3) The report in (2) must be submitted to the *FCA*, for each *business day*, by [GMT 17:00 the following *business day*], using the form set out in Annex [II] of *ITS 4* available at [www.fca.org.uk/[insert]].
- (4) The obligation in (2) does not apply where there is a *central competent authority* for the *commodity derivative* other than the *FCA*.

[**Note:** 58(2) of *MiFID*, and *ITS 4* on position reporting]

UK MiFID investment firms and UK branches of third country investment firms:  
OTC reporting to EEA competent authorities other than the FCA

- 10.4.9 D (1) This direction applies to:
- (a) a *UK MiFID investment firm*; and
  - (b) a *UK branch of a third country investment firm*.
- (2) An *investment firm* in (1) trading in a *commodity derivative* or *emission allowance* outside a *trading venue* must, where an *EEA competent authority* other than the *FCA* is the *competent authority* of the *trading venue* where that *commodity derivative* or *emission allowance* is traded, or the *central competent authority* for the purposes of that *commodity derivative*, provide that *EEA competent authority* with a report containing a complete breakdown of:
- (a) their positions taken in those *commodity derivatives* or *emission allowances* traded on a *trading venue*;
  - (b) economically equivalent *OTC* contracts; and
  - (c) the positions of their *clients* and the clients of those clients until the end client is reached.
- (3) The report in (2) must be submitted to the relevant *EEA competent authority*, for each *business day*, by [GMT 17:00 the following *business day*].
- (4) The obligation in (2) does not apply where the *FCA* is the *central competent authority* for that *commodity derivative*.

[**Note:** 58(2) of *MiFID*, and *ITS 4* on position reporting]

## 10.5 Other reporting, notifications and information requirements

Information requirement

- 10.5.1 G Regulation 9 of the *MiFI Regulations* provides the *FCA* with the power to require a *person* to provide information on, or concerning, a position the *person* holds in a contract to which an established position limit relates.

[**Note:** article 69(2)(j) of *MiFID*]

Power to intervene

- 10.5.2 G The following provisions of the *MiFI Regulations* regulate the power of the *FCA* to intervene in respect of position limits:

- (1) Regulation 10 provides that the *FCA* may limit the ability of any *person* to enter into a contract for a *commodity derivative*, restrict the size of positions a *person* may hold in such a contract, or require any *person* to reduce the size of a position held, notwithstanding that the restriction or reduction would be below the position limit established by the *FCA* or another *competent authority* in accordance with article 57 of *MiFID* to which the contract relates; and
- (2) Regulation 17 provides that the *FCA* must maintain arrangements designed to enable it to determine whether *persons* on whom the *FCA* imposes position limit requirements are complying with those requirements, and also maintain arrangements for enforcing the position limits requirements on such *persons*.

[**Note:** article 69(2)(o) and 69(2)(p) of *MiFID*]

#### Reporting requirements

10.5.3 G The following provisions of the *MiFI Regulations* regulate the power of the *FCA* to impose reporting requirements in respect of positions taken in *commodity derivatives* and *emission allowances*:

- (1) Regulation 23 provides that a *person* must provide the *FCA* with information in respect of its compliance or non-compliance with position limit requirements, as the *FCA* may direct; and
- (2) Regulation 17 provides that the *FCA* must maintain arrangements designed to enable it to determine whether *persons* on whom the *FCA* imposes position limit requirements are complying with those requirements, and also maintain arrangements for enforcing the position limits requirements on such *persons*.

[**Note:** article 69(2)(j) of *MiFID*]

#### Breaches of MAR 10 by unauthorised persons

- 10.5.4 D (1) An *unauthorised person* to which this chapter applies, must notify the *FCA* of:
- (a) a breach of a direction in this chapter;
  - (b) a breach of a directly applicable provision imposed by *MiFIR* or any *EU regulation* adopted under *MiFID* or *MiFIR*; and
  - (c) a breach of any requirement imposed by or under the *MiFI Regulations* which relates to this chapter.
- (2) Notifications under (1) must be made immediately if the *person* becomes aware, or has information which reasonably suggests, that any of the breaches referred to in (1) have occurred, may have occurred or may occur

in the foreseeable future.

Notifications by unauthorised persons: non-financial entity exemption applications

- 10.5.5 G *SUP 15.3.13G* and *SUP 15.3.14G* apply to notifications of an application by an *unauthorised person* for the *non-financial entity* exemption under Regulation 6(4) of the *MiFI Regulation* as if the *person* is a *firm* to which *SUP 15.3.11R* applies.

Breaches of MAR 10 by authorised persons

- 10.5.6 G *Firms* should refer to *SUP 15.3* (General notification requirements) generally, and in particular *SUP 15.3.11R*, in respect of the following:
- (1) a breach of a *rule* or *direction* in this chapter;
  - (2) a breach of a directly applicable provision imposed by *MiFIR* or any *EU regulation* adopted under *MiFID* or *MiFIR*; and
  - (3) a breach of any requirement imposed by or under the *MiFI Regulations* which relates to this chapter.

Territoriality

- 10.5.7 G The powers of the *FCA* referred to in *MAR 10.5.1G* to *MAR 10.5.3G* can be applied to a *person* regardless of whether the *person* is situated or operating in the *UK* or abroad, where the relevant position relates to a *commodity derivative* or *emission allowance* of which the *FCA* is the *competent authority* or *central competent authority*, or *economically equivalent OTC contracts*.

Decision and appeal procedures

- 10.5.8 G The power of the *FCA* referred to in *MAR 10.5.2G* is exercisable subject to the decision making procedures in *DEPP 2 Annex 2G* (Supervisory notices) (and other provisions in *DEPP*, as appropriate).

After MAR 10 insert the following forms as separate Annexes. [Each Annex consists of a link to the relevant form.]

- 10  
Annex  
1D Application form for a non-financial entity for an exemption from compliance with position limits

[insert link]

[form to be consulted on by the *FCA* at a later date]

10 Form for daily position reports by UK firms and UK branches of third country  
Annex investment firms operating an MTF or OTF  
2D

[insert link]

[form to be consulted on by the *FCA* at a later date]

## Annex H

### Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

[*Editor's Note:* This Annex assumes that the amendments to SUP 13 proposed in Annex E of the Markets (MiFID 2) Instrument 2016 (published as an appendix to CP 15/43: Markets in Financial Instrument Directive II Implementation – Consultation Paper I) will be made, with the exception of the proposed deletion of SUP 13 Annex 2R which has been reversed in this draft instrument.]

### 3 Auditors

...

#### 3.10 Duties of auditors: notification and report on client assets

...

Client assets report: timing of submission

- 3.10.7 R An auditor must deliver a client assets report under *SUP* 3.10.4R to the *FCA* within four months from the end of each period covered, unless it is the auditor of a *firm* falling within category (10) of *SUP* 3.1.2R.

[Note: article 8 of the *MiFID Delegated Directive*]

...

### 13 Exercise of passport rights by UK firms

...

#### 13.3 Establishing a branch in another EEA State

...

MiFID branch forms

- 13.3.9 G ...
- (2) (a) Each of the forms of *ITS 4A* referred to in *SUP* 13.3.9G(1)(a) to (c) is replicated in *SUP* 13 ~~Annex 1R~~ Annex 1AR.

...

...

## 13.5 Notices of intention

Specified contents: notice of intention to establish a branch

- 13.5.1 R A *UK firm*, other than a *CRD credit institution*, wishing to establish a *branch* in a particular *EEA State* for the first time under an *EEA right*, other than under the *auction regulation*, must submit a *notice of intention* in the form set out in:

(3) SUP 13 Annex 1R; or

(4) if the firm is a UK MiFID investment firm, SUP 13 Annex 1AR.

...

Method of submission of notices

- 13.5.3 R (1) A *UK firm*, other than a *credit union*, must submit any notice under ~~SUP 13.5.1R(1), SUP 13.5.1AR~~ or SUP 13.5.2R online at [www.fca.org.uk](http://www.fca.org.uk) using the ~~ONA system~~ FCA's Connect system for the submission of applications and notifications.

...

## 13.6 Changes to branches

...

Firms passporting under MiFID

...

- 13.6.5G G (1) Each of the forms in ~~ITS 4A~~ referred to in SUP 13.6.5DG to SUP 13.6.5FG is replicated in ~~SUP 13 Annex 1R~~ Annex 1AR.

...

...

## 13.7 Changes to cross border services

...

Termination of an investment services and activities passport

- 13.7.3G R A UK MiFID investment firm must use the relevant form in SUP 13 Annex 2AR to notify the FCA that it intends to:

(1) change its programme of operations by ceasing to provide cross border services; or

- (2) change its programme of operations by ceasing to provide *cross border services* through a *tiered agent* established in the *UK*; or
- (3) terminate in the territory of an *EEA State*, the provision of arrangements to facilitate access to, and trading on, an *MTF* or *OTF* by remote users, members or participants established in that *EEA State*.

...

### 13.8 Changes of details: provision of notices to the appropriate UK regulator

- 13.8.1 R (1) ~~Where a *firm* is required to submit~~ A *firm* must complete and submit the following notices in accordance with the procedures in *SUP* 13.5 for notifying the establishment of a branch or the provision of *cross border services*:

...

(c) a notice of a change to a *branch* or a *tiered agent* referred to in *SUP* 13.6.5G(1), *SUP* 13.6.5BG(1), *SUP* 13.6.5DG, *SUP* 13.6.5EG, *SUP* 13.6.5FG, *SUP* 13.6.7G(1), *SUP* 13.6.8G, *SUP* 13.6.9BR, *SUP* 13.6.10G(1), *SUP* 13.6.9CG and 13.6.9DG ; or

(d) a notice of change to *cross border services* referred to in *SUP* 13.7.3G(1), *SUP* 13.7.3AG(1), *SUP* 13.7.3DG, *SUP* 13.7.3EG, *SUP* 13.7.3GR, *SUP* 13.7.5G(1), *SUP* 13.7.6G, *SUP* 13.7.13BG, *SUP* 13.7.14G and *SUP* 13.7.15G ;

~~it must complete and submit that notice in accordance with the procedures set out in *SUP* 13.5 for notifying the establishing of a *branch* or the provision of *cross border services* .~~

...

- 13.8.1A G The effect of *SUP* 13.8.1R(1) is that a *firm* should submit any form, notice or application under *SUP* 13.8.1R(1) in the following ways:

- (1) A *UK firm*, other than a *credit union*, should submit it online at [www.fca.org.uk](http://www.fca.org.uk) using the ~~*ONA system*~~ *FCA's Connect system* for the submission of applications and notifications.

...

...

### 13 Annex 1R **Passporting: Notification of intention to establish a branch in another EEA state**

...

4 Markets in Financial Instruments Directive ('MiFID') [deleted]

Section 4 of the form at Annex 1R is deleted in its entirety. The deleted text is not shown.

...

After SUP 13 Annex 1R (Passporting: Notification of intention to establish a branch in another EEA state) insert the following new section. All the text is new and is not underlined.

*[Editor's Note:*

The forms comprising SUP 13 Annex 1AR can be found in the Appendix at the end of this instrument and are as follows:

Part 1: Notice of intention to establish a branch or change branch particulars in another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID) (Branch passport notification)

Part 2: Notice of intention to use a tied agent established in another EEA State or to amend the details of a tied agent established in another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID) (tied agent passport notification)

Part 3: Notice of the termination of the operation of a branch or cessation of the use of a tied agent established in another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID)]

**13 Annex 1AR Passporting: Branch passport notifications and tied agent notifications under ITS 4A**

This annex consists of only one or more forms. Forms can be completed online now by visiting: <http://www.fca.org.uk/firms/being-regulated/passporting/notification-forms> for an *FCA-authorised person*.

The forms can also be found through the following address:

Passporting: Branch passport notifications and tied agent notifications under ITS 4A of MiFID – SUP 13 Annex 1AR

...

Amend the following as shown.

*[Editor's Note:*

The forms comprising SUP 13 Annex 2R can be found in the Appendix at the end of this instrument and are as follows:

Part 1: Notice of intention to provide cross border services and activities in another EEA

State in accordance with the Markets in Financial Instruments Directive (MiFID) (investment services and activities passport notification)

Part 2: Notice of intention to provide arrangements to facilitate the access to an MTF or an OTF from another EEA State under the Markets in Financial Instruments Directive (MiFID)]

**13  
Annex  
2R**      **Passporting: ~~Markets in Financial Instruments Directive~~ MiFID investment services and activities passport notification and notification for the provision of arrangements to facilitate access to an MTF or OTF under ITS 4A**

This annex consists of only one or more forms. Forms can be completed online now by visiting: <http://www.fca.org.uk/firms/being-regulated/passporting/notification-forms> for an *FCA-authorised person*.

The forms ~~are~~ can also be found through the following address:

~~*Passporting: Markets in Financial Instruments Directive – SUP 13 Annex 2*~~

*Passporting: MiFID investment services and activities passport notification and notification for the provision of arrangements to facilitate access to an MTF or OTF under ITS 4A – SUP 13 Annex 2R*

After SUP 13 Annex 2R (Passporting: MiFID investment services and activities passport notification and notification for the provision of arrangements to facilitate access to an MTF or OTF under ITS 4A) insert the following new section. All the text is new and is not underlined.

[*Editor's Note:*

The forms comprising SUP 13 Annex 2AR can be found in the Appendix at the end of this instrument and are as follows:

Part 1: Notice of cancellation of a cross border services and activities passport or cessation of the use of a tied agent providing cross border services in another EEA State under the Markets in Financial Instruments Directive (MiFID)

Part 2: Notice of intention to cancel arrangements to facilitate the access to an MTF or an OTF from another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID)]

**13  
Annex  
2AR**      **Passporting: Notification to cease the provision of cross border services under MiFID**

This annex consists of only one or more forms. Forms can be completed online now by visiting: <http://www.fca.org.uk/firms/being-regulated/passporting/notification-forms> for an *FCA-authorised person*.

The forms can also be found through the following address:

*Passporting: Notification to stop the provision of services under MiFID and notification to terminate the provision, within the territory of an EEA State, arrangements to facilitate access to, and trading on, an MTF or OTF by remote users, members or participants established in that EEA State – SUP 13 Annex 2AR*

## 15 Notifications to the FCA

...

### 15.3 General notification requirements

...

Breaches of rules and other requirements in or under the Act or the CCA

15.3.11 R (1) A *firm* must notify the *FCA* of:

...

(b) ...

(ba) a breach of any requirement imposed by or under either of the *MiFI Regulations* or the *DRS Regulations*; or

...

(d) a breach of any directly applicable provision ~~in the *MiFID Regulation*~~ imposed by *MiFIR* or any *EU regulation* adopted under *MiFID* or *MiFIR*; or

...

...

...

### 15.6 Inaccurate, false or misleading information

15.6.1 R A *firm* must take reasonable steps to ensure that all information it gives to the *FCA* in accordance with a *rule* in any part of the *Handbook* (including *Principle 11*) is:

- (1) factually accurate or, in the case of estimates and judgments, fairly and properly based after appropriate enquiries have been made by the *firm*; and

- (2) complete, in that it should include anything of which the *FCA* would reasonably expect notice.

15.6.1A R *SUP 15.6.1R* also applies to all information given, or to be given, by a *firm* in accordance with any of the following:

- (1) a directly applicable provision imposed by *MiFIR* or any *EU regulation* adopted under *MiFID* or *MiFIR*; or
- (2) a breach of any requirement imposed by or under either of the *MiFI Regulations* or the *DRS Regulations*.

...

## 16.12 Integrated Regulatory Reporting

...

### Regulated Activity Group 3

16.12.11 R The applicable *data items* referred to in *SUP 16.12.4R* are set out according to *firm* type in the table below:

Description of <i>data item</i>	<i>Firms' prudential category and applicable data items</i> (note 1)					
	<i>IFPRU investment firms and BIPRU firms</i>		<i>Firms other than BIPRU firms or IFPRU investment firms</i>			
	<i>IFPRU</i>	<i>BIPRU</i>	<i>IPRU(INV)</i> Chapter 3	<i>IPRU(INV)</i> Chapter 5	<i>IPRU(INV)</i> Chapter 9	<i>IPRU(INV)</i> Chapter 13
...						
Note 18	Except if the <i>firm</i> is an <i>adviser</i> , <del><i>local or traded options market maker</i></del> (as referred to in <i>IPRU(INV)</i> 3-60(4)R).					
...						
Note 20	Only required in the case of an <i>adviser</i> , <del><i>local or traded options market maker</i></del> (as referred to in <i>IPRU(INV)</i> 3-60(4)R) that is a <i>sole trader</i> .					
...						

After SUP TP 8 (Financial Services (Banking Reform) Act 2013: Approved persons in small non-directive insurers) insert the following new chapter SUP TP 9. All this text is new and is not underlined.

**TP 9 Transitional Provisions in relation to the MiFID Regulation****9.1 Continuing obligations under the MiFID Regulation**

- 9.1.1 R (1) If the condition in (2) is met, *SUP* TP 9 applies in respect of an obligation or requirement in, or under, the following with which a *firm* must comply:
- (a) the *MiFID Regulation*; or
  - (b) a *rule* under *SUP* 17 (Transaction reporting).
- (2) As at 2 January 2018, a *firm* is under an obligation or requirement to comply, or to have complied, with a provision referred to in (1) in the version in force on that date.
- 9.1.2 R A *firm* remains obliged to comply with the obligation, requirement or *rule* referred to in *SUP* TP 9.1.1R(1)(a) and (b) until such time as effective compliance is achieved.
- 9.1.3 R *SUP* 15 (Notifications to the FCA) continues to apply in respect of a breach of a requirement or a *rule* referred to in *SUP* TP 9.1.1R.

## Purpose

- 9.1.4 G The purpose of *SUP* TP 9.1.1R is to ensure that *firms* continue to notify and remedy breaches of the *MiFID Regulation* and *SUP* 17 (as at 2 January 2018) whenever these breaches come to light, notwithstanding the repeal of the *MiFID Regulation* on 3 January 2018.

## Annex I

### Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text and striking through indicates deleted text unless otherwise indicated.

## 1 Treating complainants fairly

### 1.1 Purpose and application

...

Application to firms

1.1.3 R (1) ...

(2) ~~For complaints relating to the MiFID business of a firm, the complaints handling rules and the complaints record rule~~ For the MiFID complaints of a MiFID investment firm:

- (a) ~~apply to complaints from retail clients and do not apply to complaints from eligible complainants who are not retail clients;~~ DISP 1.1A applies; and
- (b) ~~also apply in respect of activities carried on from a branch of a UK firm in another EEA State; and the other provisions of this chapter apply only as set out in DISP 1.1A.~~
- (c) ~~do not apply in respect of activities carried on from a branch of an EEA firm in the United Kingdom. [deleted]~~

(2A) For the MiFID complaints of a third country investment firm received from retail clients or elective professional clients:

- (a) DISP 1.1A applies; and
- (b) the other provisions of this chapter apply only as set out in DISP 1.1A.

(3) ...

...

...

Exemptions for firms, payment service providers, electronic money issuers and designated credit reference agencies

- 1.1.12 R (1) ...
- (2) Notwithstanding (1):
- (a) ~~the complaints handling rules and complaints record rule will continue to apply in respect of complaints concerning MiFID business~~ DISP 1.1A will continue to apply to MiFID complaints; and
- (b) ...
- ...

Insert the following new section after DISP 1.1 (Purpose and application). All the text is new and is not underlined.

### **1.1A Complaints handling requirements for MiFID complaints**

Application: Who? What?

- 1.1A.1 R This section:
- (1) applies to the *MiFID complaints* of a *MiFID investment firm* and does not apply to *complaints* that are not *MiFID complaints*;
- (2) also applies to the *MiFID complaints* of a *third country investment firm* received from a *retail client* or an *elective professional client* but does not apply to *complaints* that are not *MiFID complaints*; and
- (3) applies certain other provisions in *DISP 1* to such complaints.
- 1.1A.2 R For the *MiFID complaints* of a *third country investment firm*, the provisions marked “EU” shall apply as *rules*.
- 1.1A.3 G A *MiFID complaint* is, amongst other things, a complaint to which article 26 of the *MiFID Org Regulation* applies, being a complaint about:
- (1) the provision of *investment services* or *ancillary services* to a *client* by an *investment firm*;
- (2) the provision of one or more *investment services* to a *client* by a *CRD credit institution*;
- (3) selling *structured deposits* to *clients*, or advising *clients* on them, where the sale or advice is provided by an *investment firm* or a *CRD credit institution*;
- (4) the activities permitted by article 6(3) of the *UCITS Directive* when

carried on by a *collective portfolio management investment firm*; and

- (5) the activities permitted by article 6(4) of the *AIFMD* when carried on by a *collective portfolio management investment firm*.

[**Note:** see article 1.1, 1.3 and 1.4 of *MiFID*, and article 1 of the *MiFID Org Regulation*]

- 1.1A.4 G A *MiFID complaint* is also a complaint about the *equivalent business of a third country investment firm*.

[**Note:** see articles 39 and 41 of *MiFID*]

- 1.1A.5 G In contrast to the other provisions in *DISP* 1 which generally apply to *complaints* from *eligible complainants*, subject to *DISP* 1.1A.6R:

- (1) the obligations in this section that apply to the *MiFID complaints* of *MiFID investment firms*, apply to complaints from “clients” as defined in *MiFID* (which includes *retail clients*, *professional clients* and (in relation to *eligible counterparty business*) *eligible counterparties*; and
- (2) the obligations in this section that apply to the *MiFID complaints* of *third country investment firms*, apply to complaints from *retail clients* and *elective professional clients*.

[**Note:** see recital (103) and article 4.1(9) of *MiFID* for the definition of “client”]

- 1.1A.6 R (1) Only the provisions in this section marked “EU” and *DISP* 1.1A.34R apply to a *MiFID complaint* received from a *retail client*, *professional client* or an *eligible counterparty* that is not an *eligible complainant*.
- (2) But where the *retail client*, *professional client* or *eligible counterparty* is also an *eligible complainant*, all of the provisions in this section apply.

Application: Where?

- 1.1A.7 R The table below sets out how *DISP* 1.1A applies to *MiFID complaints* relating to:

- (1) the activities of a *MiFID investment firm* carried on from an establishment in the *United Kingdom*;
- (2) the *equivalent business of a third country investment firm* where the complaint is received from a *retail client* or an *elective professional client*;
- (3) activities carried on from a *branch* of a *UK firm* in another *EEA State*; and

- (4) activities carried on from a *branch* of an *EEA firm* in the *United Kingdom*.

Table: Application of DISP 1.1A to the MiFID business of firms in the UK, and the equivalent business of third country investment firms, branches of UK firms and UK branches of EEA firms

<b>(1) Provision</b>	<b>(2) Provision applies to the MiFID business of a firm carried on from an establishment in the UK?</b>	<b>(3) Provision applies to the equivalent third country business of a third country investment firm where the complaint is received from a retail client or an elective professional client?</b>	<b>(4) Provision applies to a branch of a UK firm in another EEA State?</b>	<b>(5) Provision applies to a branch of an EEA firm in the UK?</b>
1.1A.10EU	Yes	Yes	Yes	Yes
1.1A.11R	Yes	Yes	No	Yes
1.1A.12EU	Yes	Yes	Yes	Yes
1.1A.13EU	Yes	Yes	Yes	Yes
1.1A.14G	Yes	Yes	Yes	No
1.1A.15G	Yes	Yes	Yes	No
1.1A.16EU	Yes	Yes	Yes	Yes
1.1A.17EU	Yes	Yes	Yes	Yes
1.1A.18EU	Yes	Yes	Yes	Yes
1.1A.19G	Yes	Yes	Yes	No
1.1A.20R	Yes	Yes	No	Yes

1.1A.21G	Yes	Yes	No	Yes
1.1A.22R	Yes	Yes	No	Yes
1.1A.23R	Yes	Yes	No	Yes
1.1A.24EU	Yes	Yes	Yes	Yes
1.1A.25EU	Yes	Yes	Yes	Yes
1.1A.26R	Yes	Yes	No	Yes
1.1A.27G	Yes	Yes	No	Yes
1.1A.28G	Yes	Yes	No	Yes
1.1A.29G	Yes	Yes	No	Yes
1.1A.30R	Yes	Yes	No	Yes
1.1A.31R	Yes	Yes	No	Yes
1.1A.32EU	Yes	Yes	Yes	Yes
1.1A.33EU	Yes	Yes	Yes	Yes
1.1A.34R	Yes	Yes	No	Yes
1.1A.35R	Yes	Yes	No	No
1.1A.36G	Yes	Yes	No	No
1.1A.37R	No	No	Yes	No
Notes				
(1) The provisions marked “EU” in the table are ‘directly applicable’ which means they apply to all <i>MiFID investment firms</i> in relation to <i>MiFID complaints</i> by virtue of the <i>MiFID Org Regulation</i> .				
(2) This table should be read in conjunction with the <i>rules and guidance</i> in <i>DISP 1.1A.1R to DISP 1.1A.6R</i> .				

#### Interpretation of this section

- 1.1A.8 G This section contains a number of provisions marked with the status letters “EU”, which have been selectively reproduced from the *MiFID Org Regulation*.
- 1.1A.9 G References in column (1) to a word or phrase used in those provisions

marked “EU” have the meaning indicated in column (2) of the table below:

(1)	(2)
“complaint”	<i>MiFID complaint</i>
“investment firm” and “firm”	<i>MiFID investment firm</i>

[**Note:** for the definition of “client” see recital (103) and article 4.1(9) of *MiFID*]

#### Consumer awareness

- 1.1A.10 EU Investment firms shall publish the details of the process to be followed when handling a complaint. Such details shall include information about the complaints management policy and the contact details of the complaints management function. This information shall be provided to clients or potential clients, on request, or when acknowledging a complaint.

[**Note:** article 26.2 of the *MiFID Org Regulation*]

- 1.1A.11 R A *MiFID investment firm* must provide information to *eligible complainants*, in a clear, comprehensible and easily accessible way, about the *Financial Ombudsman Service* (including the *Financial Ombudsman Service’s* website address):

- (1) on its website, where one exists; and
- (2) if applicable, in the general conditions of its contracts with *eligible complainants*.

[**Note:** subject to a few minor changes reflecting its amended application, this provision replicates *DISP* 1.2.1R(4)]

[**Note:** article 13(2) of the *ADR Directive*, article 14(1) of the *ODR Regulation*, and regulation 19 of the *ADR Regulations*]

#### Complaints handling

- 1.1A.12 EU Investment firms shall establish, implement and maintain effective and transparent complaints management policies and procedures for the prompt handling of clients’ or potential clients’ complaints.

[**Note:** first paragraph, article 26.1 of the *MiFID Org Regulation*]

- 1.1A.13 EU The complaints management policy shall provide clear, accurate and up-to-date information about the complaints-handling process. This policy shall be endorsed by the firm’s management body.

[**Note:** second paragraph, article 26.1 of the *MiFID Org Regulation*]

- 1.1A.14 G The complaints management policy should be set out in a written document e.g. as part of a general fair treatment policy. It should be made available to all relevant staff of the *firm* through appropriate internal channels.
- [**Note:** guideline 1(b) and (c) of the complaints handling guidelines for the securities (*ESMA*) and banking (*EBA*) sectors. See <https://www.eba.europa.eu/documents/10180/732334/JC+2014+43+-+Joint+Committee+-+Final+report+complaints-handling+guidelines.pdf/312b02a6-3346-4dff-a3c4-41c987484e75>]
- 1.1A.15 G The *firm's* senior management should be responsible for the implementation of the complaints management policy and for monitoring compliance with it.
- [**Note:** guideline 1(b) and (c) of the complaints handling guidelines for the securities (*ESMA*) and banking (*EBA*) sectors. See <https://www.eba.europa.eu/documents/10180/732334/JC+2014+43+-+Joint+Committee+-+Final+report+complaints-handling+guidelines.pdf/312b02a6-3346-4dff-a3c4-41c987484e75>]
- 1.1A.16 EU Investment firms shall enable clients and potential clients to submit complaints free of charge.
- [**Note:** article 26.2 of the *MiFID Org Regulation*]
- 1.1A.17 EU Investment firms shall establish a complaints management function responsible for the investigation of complaints. This function may be carried out by the compliance function.
- [**Note:** article 26.3 of the *MiFID Org Regulation*]
- 1.1A.18 EU Investment firms' compliance function shall analyse complaints and complaints-handling data to ensure that they identify and address any risks or issues.
- [**Note:** article 26.7 of the *MiFID Org Regulation*]
- 1.1A.19 G *MiFID complaints* should be handled effectively and in an independent manner.
- [**Note:** recital (38) of the *MiFID Org Regulation*]

#### Complaints resolution

- 1.1A.20 R Once a *MiFID complaint* has been received by a *MiFID investment firm*, the *firm* must:
- (1) investigate the complaint competently, diligently and impartially, obtaining additional information as necessary;
  - (2) assess fairly, consistently and promptly:

- (a) the subject matter of the complaint;
  - (b) whether the complaint should be upheld;
  - (c) what remedial action or redress (or both) may be appropriate; and
  - (d) if appropriate, whether it has reasonable grounds to be satisfied that another respondent may be solely or jointly responsible for the matter alleged in the complaint; and
- (3) comply promptly with any offer of remedial action or redress accepted by the complainant.

[**Note:** subject to a few minor changes reflecting its amended application, this provision replicates *DISP* 1.4.1R(1), (2) and (5).]

1.1A.21 G Factors that may be relevant in the assessment of a *MiFID complaint* under *DISP* 1.1A.20R(2) include the following:

- (1) all the evidence available and the particular circumstances of the complaint;
- (2) similarities with other complaints received by the respondent;
- (3) relevant guidance published by the *FCA*, other relevant regulators, the *Financial Ombudsman Service* or former schemes; and
- (4) appropriate analysis of decisions by the *Financial Ombudsman Service* concerning similar complaints received by the *MiFID investment firm*.

[**Note:** subject to a few minor changes reflecting its amended application, this provision replicates *DISP* 1.4.2G.]

1.1A.22 R Where a *MiFID complaint* against a *MiFID investment firm* is referred to the *Financial Ombudsman Service*, the *MiFID investment firm* must cooperate fully with the *Financial Ombudsman Service* and comply promptly with any settlements or awards made by it.

[**Note:** subject to a few minor changes reflecting its amended application, this provision replicates *DISP* 1.4.4R.]

#### Complaints time limits

1.1A.23 R On receipt of a *MiFID complaint*, a *MiFID investment firm* must:

- (1) send the complainant a prompt written acknowledgement providing early reassurance that it has received the *MiFID complaint* and is dealing with it; and

- (2) ensure the complainant is kept informed thereafter of the progress of the measures being taken for the *MiFID complaint's* resolution.

[**Note:** subject to a few minor changes reflecting its amended application, this provision replicates *DISP* 1.6.1R.]

- 1.1A.24 EU When handling a complaint, investment firms shall communicate with clients or potential clients clearly, in plain language that is easy to understand and shall reply to the complaint without undue delay.

[**Note:** article 26.4 of the *MiFID Org Regulation*]

- 1.1A.25 EU Investment firms shall communicate the firm's position on the complaint to clients or potential clients and inform the clients or potential clients about their options, including that they may be able to refer the complaint to an alternative dispute resolution entity, as defined in Article 4(h) of Directive 2013/11/EU of the European Parliament and Council on consumer ADR or that the client may be able to take civil action.

[**Note:** article 26.5 of the *MiFID Org Regulation*. See the *ADR Directive* at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF>]

- 1.1A.26 R The explanation given by *MiFID investment firms* to *clients* or potential *clients* in accordance with *DISP* 1.1A.24EU must also:

- (1) enclose a copy of the *Financial Ombudsman Service's* standard explanatory leaflet;
- (2) provide the website address of the *Financial Ombudsman Service*;
- (3) inform the complainant that if, still dissatisfied with the *respondent's* response, the *complaint* may now be referred to the *Financial Ombudsman Service*; and
- (4) indicate whether or not the *respondent* consents to waiving the relevant time limits in *DISP* 2.8.2R or *DISP* 2.8.7R (Was the complaint referred to the Financial Ombudsman Service in time?) by including the appropriate wording set out in *DISP* 1 Annex 3R.

[**Note:** article 13 of the *ADR Directive*]

- 1.1A.27 G The information regarding the *Financial Ombudsman Service* required to be provided in a *final response* sent under *DISP* 1.1A.25EU and referred to in *DISP* 1.1A.26R should be set out clearly, comprehensibly, in an easily accessible way and prominently within the text of those responses.

[**Note:** article 13 of the *ADR Directive*]

- 1.1A.28 G When assessing a *MiFID investment firm's* response to a *MiFID complaint*, the *FCA* may have regard to a number of factors, including, the quality of response, as against the above rules, as well as the speed with which it was made.

[**Note:** subject to a few minor changes reflecting its amended application, this provision replicates *DISP* 1.6.8G]

- 1.1A.29 G *DISP* 2.8.1R sets out the circumstances in which the *Ombudsman* can consider a *complaint*, including where eight weeks have elapsed since its receipt by the *MiFID investment firm* and where the *MiFID investment firm* consents (subject to the other requirements of *DISP* 2.8.1R(4)).

#### Complaints forwarding

- 1.1A.30 R *DISP* 1.7 also applies to a *MiFID complaint* received by a *MiFID investment firm*.

#### Complaints time barring

- 1.1A.31 R If a *MiFID investment firm* receives a *MiFID complaint* which is outside the time limits for referral to the *Financial Ombudsman Service* (see *DISP* 2.8) it may reject the *MiFID complaint* without considering the merits, but must explain this to the complainant in a *final response*.

[**Note:** subject to a few minor changes reflecting its amended application, this provision replicates *DISP* 1.8]

#### Complaints records

- 1.1A.32 EU Investment firms shall keep a record of the complaints received and the measures taken for their resolution.

[**Note:** article 26.1 of the *MiFID Org Regulation*; see also article 72 of the *MiFID Org Regulation* regarding the retention of records]

#### Complaints reporting

- 1.1A.33 EU Investment firms shall provide information on complaints and complaints-handling to the relevant competent authorities and, where applicable under national law, to an alternative dispute resolution (ADR) entity.

[**Note:** article 26.6 of the *MiFID Org Regulation*]

- 1.1A.34 R The *complaints reporting rules* also apply to the *MiFID complaints* of a *firm*, except that the relevant parts of the report which the *firm* must provide to the *FCA* under *DISP* 1.10.1R must, in relation to *MiFID complaints*, include information about such complaints received from *retail clients*, *professional clients*, and (where relevant) *eligible counterparties* rather than *eligible complainants*.

## Complaints data publication

- 1.1A.35 R The *complaints data publication rules* apply to the *MiFID complaints* of a *firm*.
- 1.1A.36 G The effect of the *complaints data publication rules* and *DISP 1.1A.32R* is that, for the purposes of complying with those *rules*, a *firm's complaints data summary* should include relevant data about any *MiFID complaints* received by the *firm*.

## ADR entities and branches of UK MiFID investment firms in other EEA States

- 1.1A.37 R A *branch* of a *UK MiFID investment firm* in another *EEA State* must adhere to one or more relevant *ADR entities* in that *EEA State* in respect of *consumer disputes concerning investment services and ancillary services*.

[**Note:** article 75 of *MiFID*]

Amend the following as shown. Underlining indicates new text and striking through indicates deleted text.

### 1.3 Complaints handling rules

#### Complaints handling procedures for respondents

- 1.3.1 R ...

[**Note:** ~~article 10 of the *MiFID implementing Directive* and article 6(1) of the *UCITS implementing Directive*~~]

...

#### Further requirements for all respondents

- 1.3.3 R ~~In respect of *complaints* that do not relate to *MiFID business*, a A *respondent* must put in place appropriate management controls and take reasonable steps to ensure that in handling *complaints* it identifies and remedies any recurring or systemic problems, for example, by:~~

...

...

- 1.3.4 G ~~In respect of *complaints* that relate to *MiFID business*, a *firm* should put in place appropriate management controls and take reasonable steps, in the same way as for *complaints* that do not relate to *MiFID business* (see *DISP 1.3.3R* and *DISP 1.3.3BG*), in order to detect and minimise any risk of compliance failures (*SYSC 6.1*) and to comply with *Principle 6* (Customers'~~

interests)- [deleted]

...

## 1.9 Complaints record rule

1.9.1 R A *firm*, including, in the case of ~~MiFID business~~ or *collective portfolio management services for a UCITS scheme or an EEA UCITS scheme*, a *branch of a UK firm in another EEA state*, must keep a record of each *complaint* received and the measures taken for its resolution, and retain that record for:

- (1) at least five years where the *complaint* relates to ~~MiFID business~~ or *collective portfolio management services for a UCITS scheme or an EEA UCITS scheme*; and
- (2) three years for all other *complaints*;

from the date the *complaint* was received.

[~~Note: article 10 of the MiFID implementing Directive~~ and article 6(2) of the *UCITS implementing Directive*]

...

## 1 Annex 2G Application of DISP 1 to type of respondent / complaint

...

Type of respondent/complaint	DISP 1.1A Requirements for MiFID investment firms	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules
<i>firm</i> in relation to <i>complaints</i> concerning non-MiFID <i>business</i> (except as specifically provided below)	<u>Does not apply</u>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i> (DISP 1.3.4G does not apply)	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>
<i>firm</i> in relation to <i>complaints</i> concerning MiFID <i>clients</i> concerning MiFID	<u>Applies for retail clients and professional clients, and (where</u>	<u>Applies for eligible complainants</u> <u>Does not</u>	(DISP 1.3.3R does not apply) <u>Does not</u>	<u>Applies for eligible complainants</u> <u>DISP 1.7 applies as</u>	<u>Applies for retail clients</u> <u>Does not apply (but see DISP</u>	<u>Applies for eligible complainants</u> <u>Applies as set out in</u>	<u>Applies for eligible complainants</u> <u>Applies as set out in</u>

<i>business carried on from an establishment in the UK</i>	<u>relevant) eligible counterparties</u> (see also <i>DISP</i> 1.1A.6R)	<u>apply</u>	<u>apply</u>	set out in <i>DISP</i> 1.1A	<u>1.1A.32EU</u> )	<u>DISP</u> 1.1A	<u>DISP</u> 1.1A
<i>UK UCITS management company in relation to complaints concerning collective portfolio management services in respect of a UCITS scheme or an EEA UCITS scheme provided under the freedom to provide cross border services</i>	<u>Does not apply</u>	Applies for unitholders	Applies for unitholders	Applies for eligible complainants	Applies for unitholders	Applies for eligible complainants	Applies for eligible complainants
<i>branch of a UK UCITS management company in another EEA State in relation to complaints concerning collective portfolio management services in respect of an EEA UCITS scheme</i>	<u>Does not apply</u>	Applies for unitholders	Applies for unitholders	Does not apply	Applies for unitholders	Does not apply	Does not apply
<i>branch of a UK firm (other than a UK UCITS management company)</i>	<u>Does not apply</u>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply

when providing <i>collective portfolio management</i> services in respect of an <i>EEA UCITS scheme</i> ) in another <i>EEA State</i> in relation to <i>complaints</i> concerning non- <i>MiFID</i> business							
branch of a <i>UK firm</i> in another <i>EEA State</i> in relation to <i>MiFID</i> complaints concerning <i>MiFID</i> business	<u>Applies for retail clients and professional clients, and (where relevant) eligible counterparties</u> (see also <i>DISP</i> 1.1A.6R)	Does not apply	<del>Applies for retail clients</del> ( <i>DISP</i> 1.3.3R does not apply)	Does not apply	<del>Applies for retail clients</del> Does not apply (but see <i>DISP</i> 1.1A.32EU)	Does not apply	Does not apply
incoming branch of an <i>EEA firm</i> (other than an <i>EEA UCITS management company</i> ) when providing <i>collective portfolio management</i> services in respect of an <i>EEA UCITS scheme</i> ) in relation to <i>complaints</i> concerning non- <i>MiFID</i> business	<u>Does not apply</u>	Applies for eligible complaints	Applies for eligible complaints	Applies for eligible complaints	Applies for eligible complaints	Applies for eligible complaints	Does not apply
incoming	<u>Applies for</u>	<del>Applies for</del>	Does not	<u>Applies for</u>	<u>Does not</u>	<u>Applies for</u>	Does not

<i>branch of an EEA firm in relation to <u>MiFID</u> complaints concerning <u>MiFID</u> business</i>	<i><u>retail clients and professional clients</u>, and (where relevant) <u>eligible counterparties</u> (see also <u>DISP 1.1A.6R</u>)</i>	<i><u>eligible complainants</u> Does not apply</i>	apply	<i><u>eligible complainants</u> Applies as set out in <u>DISP 1.1A</u></i>	apply (but see <u>DISP 1.1A.32EU</u> )	<i><u>eligible complainants</u> Applies as set out in <u>DISP 1.1A</u></i>	apply
<i>incoming branch of an EEA UCITS management company in relation to complaints concerning collective portfolio management services in respect of a UCITS scheme</i>	<u>Does not apply</u>	Applies for unitholders	Applies for unitholders	Applies for eligible complainants	Applies for unitholders	Applies for eligible complainants	Does not apply
<i>incoming EEA UCITS management company in relation to complaints concerning collective portfolio management services in respect of a UCITS scheme provided under the freedom to provide cross border services</i>	<u>Does not apply</u>	Does not apply	Does not apply	Applies for eligible complainants	Does not apply	Applies for eligible complainants	Does not apply
<i>incoming EEA firm providing cross-</i>	<u>Does not apply</u>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply

<del>border services</del> <u>cross border services</u> from outside the UK							
<u>equivalent business of a third country investment firm in relation to MiFID complaints</u>	<u>Applies as set out in DISP 1.1A</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Applies as set out in DISP 1.1A</u>	<u>Does not apply (but see DISP 1.1A.32EU)</u>	<u>Applies as set out in DISP 1.1A</u>	<u>Applies as set out in DISP 1.1A</u>
<u>branch of an overseas firm (in relation to all other complaints)</u>	<u>Does not apply</u>	<u>Applies for eligible complaints</u>	<u>Applies for eligible complaints</u>	<u>Applies for eligible complaints</u>			
<u>payment service provider in relation to complaints concerning payment services</u>	<u>Does not apply</u>	<u>Applies for eligible complaints</u>	<u>Applies for eligible complaints</u>	<u>Applies for eligible complaints</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>
<u>EEA branch of a UK payment service provider in relation to complaints concerning payment services</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>				
<u>incoming branch of an EEA authorised payment institution in relation to complaints concerning</u>	<u>Does not apply</u>	<u>Applies for eligible complaints</u>	<u>Applies for eligible complaints</u>	<u>Applies for eligible complaints</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>

<i>payment services</i>							
incoming EEA authorised payment institution providing cross border payment services from outside the UK	<u>Does not apply</u>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
electronic money issuer in relation to complaints concerning issuance of electronic money	<u>Does not apply</u>	Applies for eligible complainants	Applies for eligible complainants	Applies for eligible complainants	Does not apply	Does not apply	Does not apply
EEA branch of an authorised electronic money institution or an EEA branch of any other UK electronic money issuer in relation to complaints concerning issuance of electronic money	<u>Does not apply</u>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
incoming branch of an EEA authorised electronic money institution in relation to complaints	<u>Does not apply</u>	Applies for eligible complainants	Applies for eligible complainants	Applies for eligible complainants	Does not apply	Does not apply	Does not apply

concerning issuance of <i>electronic money</i>							
incoming <i>EEA authorised electronic money institution</i> providing cross border <i>electronic money</i> issuance services from outside the <i>UK</i>	<u>Does not apply</u>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
<i>VJ participant</i>	<u>Does not apply</u>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants (DISP 1.3.4G to DISP 1.3.5G do not apply)</i>	Applies for <i>eligible complainants (DISP 1.6.8G does not apply)</i>	Does not apply	Does not apply	Does not apply
<i>complaints</i> relating to <i>auction regulation bidding</i>	<u>Does not apply</u>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
a <i>full-scope UK AIFM</i> , <i>small authorised UK AIFM</i> or an <i>incoming EEA AIFM</i> , for <i>complaints</i> concerning <i>AIFM management functions</i> carried on for an <i>AIF</i> that is a <i>body corporate</i> (unless it is a <i>collective</i> )	<u>Does not apply</u>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply

<i>investment scheme)</i>							
a <i>depository</i> , for <i>complaints</i> concerning activities carried on for an <i>authorised AIF</i>	<u>Does not apply</u>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants (DISP 1.3.4G does not apply)</i>	Applies for <i>eligible complainants</i>			
a <i>depository</i> , for <i>complaints</i> concerning activities carried on for an <i>unauthorised AIF</i> that is a <i>charity AIF</i> (other than a <i>body corporate</i> that is not a <i>collective investment scheme</i> )	<u>Does not apply</u>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants (DISP 1.3.4G does not apply)</i>	Applies for <i>eligible complainants</i>			
a <i>depository</i> , for <i>complaints</i> concerning activities carried on for an <i>unauthorised AIF</i> that is a <i>UK ELTIF</i> (other than a <i>body corporate</i> that is not a <i>collective investment scheme</i> )	<u>Does not apply</u>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants (DISP 1.3.4G does not apply)</i>	Applies for <i>eligible complainants</i>			
a <i>depository</i> , for <i>complaints</i> concerning	<u>Does not apply</u>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply

activities carried on for an <i>unauthorised AIF</i> that is not a <i>charity AIF</i> or a <i>UK ELTIF</i>							
a <i>depository</i> , for <i>complaints</i> concerning activities carried on for an <i>unauthorised AIF</i> that is a <i>body corporate</i> (other than a <i>collective investment scheme</i> ).	<u>Does not apply</u>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
an <i>incoming EEA AIFM</i> , for <i>complaints</i> concerning <i>AIFM management functions</i> carried on for an <i>authorised AIF</i> or a <i>UK ELTIF</i> under the freedom to provide <i>cross-border services</i>	<u>Does not apply</u>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i> ( <i>DISP 1.3.4G</i> does not apply)	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Does not apply
a <i>CBTL firm</i> in relation to <del>complaints</del> <i>complaints</i> concerning <i>CBTL business</i>	<u>Does not apply</u>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Does not apply	Does not apply	Does not apply
a	<u>Does not apply</u>	Applies for	Applies for	Applies for	Does not	Does not	Does not

<i>designated credit reference agency in relation to complaints about providing credit information</i>	<u>apply</u>	<i>eligible complainants</i>	<i>eligible complainants</i>	<i>eligible complainants</i>	apply	apply	apply
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...

## 2 Jurisdiction of the Financial Ombudsman Service

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### 2.3 To which activities does the Compulsory Jurisdiction apply?

Activities by firms

2.3.1 R ...

2.3.1A R The Ombudsman can also consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by:

- (1) *an investment firm* authorised under *MiFID* when providing *investment services* or *ancillary services*;
- (2) *a CRD credit institution* when providing one or more *investment services*;
- (3) *an investment firm* authorised under *MiFID* or a *CRD credit institution* when selling *structured deposits* to *clients*, or advising *clients* on them;
- (4) *a collective portfolio management investment firm* when providing the activities permitted by article 6(3) of the *UCITS Directive*; and
- (5) *a collective portfolio management investment firm* when providing the activities permitted by article 6(4) of the *AIFMD*.

[Note: see article 1.1, 1.3 and 1.4 and article 75 of *MiFID*, and articles 1 and 26.5 of the *MiFID Org Regulation*]

- 2.3.1B    G    For the purposes of DISP 2.3.1AR, the Ombudsman can consider a complaint about an act carried out by a MiFID investment firm that is preparatory to the provision of an investment service or ancillary service which is an integral part of such a service. This includes, for example, generic advice given by a MiFID investment firm to a client prior to, or in the course of, the provision of investment advice or another investment service or ancillary service.

**[Note: recitals 15 and 16 of the MiFID Org Regulation]**

## Appendix

This appendix comprises the following forms by reference to corresponding provisions in *SUP 13*:

### **SUP 13 Annex 1AR**

Part 1: Notice of intention to establish a branch or change branch particulars in another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID) (Branch passport notification)

Part 2: Notice of intention to use a tied agent established in another EEA State or to amend the details of a tied agent established in another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID) (tied agent passport notification)

Part 3: Notice of the termination of the operation of a branch or cessation of the use of a tied agent established in another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID)

### **SUP 13 Annex 2R**

Part 1: Notice of intention to provide cross border services and activities in another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID) (investment services and activities passport notification)

Part 2: Notice of intention to provide arrangements to facilitate the access to an MTF or an OTF from another EEA State under the Markets in Financial Instruments Directive (MiFID)

### **SUP 13 Annex 2AR**

Part 1: Notice of cancellation of a cross border services and activities passport or cessation of the use of a tied agent providing cross border services in another EEA State under the Markets in Financial Instruments Directive (MiFID)

Part 2: Notice of intention to cancel arrangements to facilitate the access to an MTF or an OTF from another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID)



## **Notice of intention to establish a branch or change branch particulars in another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID) (Branch passport notification)**

**FIRM NAME:**

**FRN:**

**DATE:**

### **Purpose of this form**

This form replicates Annex VI of ITS 4A and should be completed in accordance with ITS 4A and RTS 3A.

You should complete this form if you are a UK firm that wishes to exercise a passport right to establish a branch in another EEA state or wishes to make changes to the details of your current branch in another EEA state under MiFID.

### **Important information you should read before completing this form**

A UK firm can only use this form if it is entitled to establish a branch in another EEA State subject to the conditions of MiFID (see Schedule 3 to the Financial Services and Markets Act 2000 (FSMA)). By completing this form, you are confirming this is the case. UK firms should consult the legislation or take professional advice both in the UK and in the relevant EEA State(s) if they are in any doubt.

We give guidance on this in the Supervision manual (SUP). In particular, a UK firm that wants to exercise an EEA right must have the corresponding permission included in its Scope of Permission.

### **Filling in the form**

- 1.** If you are using your computer to complete the form, use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question. Once completed, print the relevant sections and sign the declaration in section 4.
- 2.** If you are filling in the form by hand, use black ink, write clearly and, once you have completed the relevant sections, sign the declaration in section 4.
- 3.** All firms should answer sections 1, 2 and 3. If you are notifying us of a change in particulars, complete only those parts of the form relevant to the change in particulars.
- 4.** Please e-mail this form to [passport.notifications@fca.org.uk](mailto:passport.notifications@fca.org.uk)

## 1 Contact Information

**Type of notification:** Branch passport notification/ Changes to existing branch notification

**Member State in which the investment firm intends to establish a branch:**

**Name of investment firm:**

**Address of investment firm:\***

**Telephone number of investment firm:\***

**E-mail of investment firm:**

**Name of the contact person at the investment firm:**

**Name of the branch:**

**Address of the branch:\***

**Telephone number of the branch:\***

**E-mail of the branch:**

**Name(s) of those responsible for the management of the branch:**

**Home Member State:** United Kingdom

**Authorisation Status:** Authorised by the Financial Conduct Authority

**Authorisation Date:**

**Note:**

- 1) If you are applying to change the branch manager, i.e. the name of the person responsible for the management of the branch, please submit a CV for the new branch manager.
- 2) If the investment firm has more than one branch in the considered country, please include the first line of the address next to the name of the branch.

## 2 Intended investment services, activities and ancillary services

**Please indicate all the investment services, activities, ancillary services or financial instruments provided by the branch.**

		Investment services and activities									Ancillary services						
		A1	A2	A3	A4	A5	A6	A7	A8	A9	B1	B2	B3	B4	B5	B6	B7
Financial instruments	C1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C2	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C3	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C4	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C5	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C6	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C7	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C8	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C9	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C10	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C11	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

*\*Please place an (x) in the appropriate boxes. If the intention is to make changes to the investment services, activities, ancillary services or financial instruments, please list all the investment services, activities, ancillary services or financial instruments the firm will provide.*

### 3 Business Plan and structural organisation of the branch

<p>1. Business plan</p> <p>(a) How will the branch contribute to the strategy of the firm/group?</p> <p>(b) What will the main functions of the branch be?</p> <p>(c) Describe the main objectives of the branch.</p>	<p>1. Business plan</p> <p>(a)</p> <p>(b)</p> <p>(c)</p>
<p>2. Commercial strategy</p> <p>(a) Describe the types of clients/counterparties the branch will be dealing with.</p> <p>(b) Describe how the firm will obtain and deal with these clients.</p>	<p>2. Commercial strategy</p> <p>(a)</p> <p>(b)</p>
<p>3. Organisational structure</p> <p>(a) Briefly describe how the branch fits into the corporate structure of the firm/group (This may be facilitated by attaching an organisational chart).</p> <p>(b) Set out the organisational structure of the branch, showing functional, geographical and legal reporting lines.</p> <p>(c) Who will be responsible for the branch operations on a day-to-day basis? Provide details of the professional experience of the persons responsible for the management of the branch (Please attach CV(s)).</p>	<p>3. Organisational structure</p> <p>(a)</p> <p>(b)</p> <p>(c)</p>

<p>(d) Who will be responsible for the internal control functions at the branch?</p> <p>(e) Who will be responsible for dealing with complaints in relation to the branch?</p> <p>(f) How will the branch report to the head office?</p> <p>(g) Detail any critical outsourcing arrangements.</p>	<p>(d)</p> <p>(e)</p> <p>(f)</p> <p>(g)</p>
<p>4. Tied agents</p> <p>(a) Will the branch use a tied agent?</p> <p>(b) What is the identity of the tied agent?</p> <p>(i) Name</p> <p>(ii) Address</p> <p>(iii) Telephone</p> <p>(iv) E-mail</p> <p>(v) Contact point</p> <p>(vi) Reference or hyperlink to the public register where the tied agent is registered</p>	<p>4. Tied agents*</p> <p>(a)</p> <p>(b)</p> <p>(i)</p> <p>(ii)</p> <p>(iii)</p> <p>(iv)</p> <p>(v)</p> <p>(vi)</p>
<p>5. Systems &amp; controls</p> <p>Provide a brief summary of arrangements for:</p> <p>(a) safeguarding client money and assets;</p> <p>(b) compliance with the conduct of business and other obligations that fall under the responsibility of the Competent Authority of the host Member State according to Art 35(8)</p>	<p>5. Systems &amp; controls</p> <p>(a)</p> <p>(b)</p>

<p>and record keeping under Art 16(6);</p> <p>(c) staff code of conduct, including personal account dealing;</p> <p>(d) anti-money laundering;</p> <p>(e) monitoring and control of critical outsourcing arrangements (if applicable); and</p> <p>(f) details of the accredited compensation scheme of which the investment firm is a member.</p>	<p>(c)</p> <p>(d)</p> <p>(e)</p> <p>(f)</p>
<p>6. Financial forecast</p> <p>Attach a forecast statement for profit and loss and cash flow, both over an initial thirty-six-month period.</p>	<p>6. Financial forecast</p>

**Note:**

Please make sure you provide sufficiently detailed answers to the questions in this section, or your notification may experience processing delays.

\*An investment firm that intends to use tied agents in another Member State shall complete a separate notification in respect of each tied agent it intends to use.

## 4 Declaration

### Warning

Knowingly or recklessly giving the FCA information which is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). SUP 15.6.1R and SUP 15.6.4R require an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FCA and to notify the FCA immediately if materially inaccurate information has been provided. If necessary, please take appropriate professional advice before supplying information to us.

If any information is inaccurate or incomplete this notification may take longer to be processed.

You must notify us immediately of any significant change to the information provided. If you do not, it may take longer to be processed.

### Data Protection

For the purpose of complying with the Data Protection Act, the personal information in this notification may be used by the FCA to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation and will not be disclosed for any other purpose without the permission of the notifying firm.

### Declaration

I am authorised to make this notification on behalf of the notifying firm named on the front of this notification.

I have attached the relevant documents where requested.

I confirm that the information in this notification is accurate and complete to the best of my knowledge and belief.

I authorise the FCA to make such enquiries and to seek such further information as it thinks appropriate to verify the information given in this notification.

I understand that the FCA may require the notifying firm to provide further information or documents at any time after I have sent this notification.

- Tick here to confirm that the person submitting this notification on behalf of the notifying firm and (if applicable) the individual named below have read and understood the declaration.

### Signature

- I confirm that a permanent copy of this notification will be retained for an appropriate period, for inspection at the FCA's request.

Name of authorised signatory

\_\_\_\_\_

Signature (to be signed on the printed version only)

\_\_\_\_\_

Date

\_\_\_\_\_



**Notice of intention to use a tied agent established in another EEA State  
or to amend the details of a tied agent established in another EEA State  
in accordance with the Markets in Financial Instruments Directive  
(MiFID) (tied agent passport notification)**

**FIRM NAME:**

**FRN:**

**DATE:**

**Purpose of this form**

This form replicates Annex VII of ITS 4A and should be completed in accordance with ITS 4A and RTS 3A

You should complete this form if you are a UK firm that wishes to exercise a passport right to use a tied agent established in another EEA state or wishes to make changes to the details of a tied agent established in another EEA state under MiFID.

**Important information you should read before completing this form**

A UK firm can only use this form if it is entitled to establish a tied agent in another EEA State subject to the conditions of MiFID (see Schedule 3 to the Financial Services and Markets Act 2000 (FSMA)). By completing this form, you are confirming this is the case. UK firms should consult the legislation or take professional advice both in the UK and in the relevant EEA State(s) if they are in any doubt.

We give guidance on this in the Supervision manual (SUP). In particular, a UK firm that wants to exercise an EEA right must have the corresponding permission included in its Scope of Permission.

**Filling in the form**

- 1.** If you are using your computer to complete the form, use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question. Once completed, print the relevant sections and sign the declaration in section 2.
- 2.** If you are filling in the form by hand, use black ink, write clearly and, once you have completed the relevant sections, sign the declaration in section 2.
- 3.** All firms should answer sections 1, 2 and 3. If you are notifying us of a change in particulars, complete only those parts of the form relevant to the change in particulars.
- 4.** Please e-mail this form to [passport.notifications@fca.org.uk](mailto:passport.notifications@fca.org.uk)

## 1 Contact Information

**Type of notification:**

Tied agent passport notification under the right of establishment/ Change of tied agent particulars notification

**Member State in which the investment firm intends to use/is using a tied agent:**

**Name of investment firm:**

**Address of investment firm:\***

**Telephone number of investment firm:\***

**E-mail of investment firm:**

**Name of the contact person at the investment firm:**

**Name of the tied agent:**

**Address of the tied agent:\***

**Telephone number of the tied agent:\***

**E-mail of the tied agent:**

**Name(s) of those responsible for the management of the tied agent:**

**Home Member State:**

United Kingdom

**Authorisation Status:**

Authorised by the Financial Conduct Authority

**Authorisation Date:**

**Note:**

If you are applying to change the person responsible for the management of the tied agent, please submit a CV for the new manager.

*\* to be completed only if amended*

## 2 Intended investment services, activities and ancillary services

**Please indicate all the investment services, activities, ancillary services or financial instruments provided by the tied agent.**

		Investment services and activities									Ancillary services						
		A1	A2	A3	A4	A5	A6	A7	A8	A9	B1	B2	B3	B4	B5	B6	B7
Financial instruments	C1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C2	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C3	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C4	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C5	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C6	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C7	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C8	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C9	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C10	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C11	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

*\*Please place an (x) in the appropriate boxes. If the intention is to make changes to the investment services, activities or financial instruments, please list all the investment services, activities or financial instruments the tied agent will provide.*

### 3 Business Plan and structural organisation of the tied agent

<p>1. Business plan and structural organisation of the tied agent</p> <p>(a) How will the tied agent contribute to the strategy of the firm/group?</p> <p>(b) What will the main functions of the tied agent be?</p> <p>(c) Describe the main objectives of the tied agent.</p>	<p>1. Business plan and structural organisation of the tied agent</p> <p>(a)</p> <p>(b)</p> <p>(c)</p>
<p>2. Commercial strategy</p> <p>(a) Describe the types of clients/ counterparties the tied agent will be dealing with.</p> <p>(b) Describe how the firm will obtain and deal with these clients.</p>	<p>2. Commercial strategy</p> <p>(a)</p> <p>(b)</p>
<p>3. Organisational structure</p> <p>(a) Briefly describe how the tied agent fits into the corporate structure of the firm/group (This may be facilitated by attaching an organisational chart).</p> <p>(b) Set out the organisational structure of the tied agent, showing functional, geographical and legal reporting lines.</p> <p>(c) Who will be responsible for the tied agent operations on a day-to-day basis? Provide details of the professional experience of the persons responsible for the management of the tied agent (Please</p>	<p>3. Organisational structure</p> <p>(a)</p> <p>(b)</p> <p>(c)</p>

<p>attach CV(s);</p> <p>(d) Who will be responsible for the internal control functions at the tied agent?</p> <p>(e) Who will be responsible for dealing with complaints in relation to the tied agent?</p> <p>(f) How will the tied agent report to the head office?</p> <p>(g) Detail any critical outsourcing arrangements.</p>	<p>(d)</p> <p>(e)</p> <p>(f)</p> <p>(g)</p>
<p>4. Systems &amp; controls</p> <p>Provide a brief summary of arrangements for:</p> <p>(a) safeguarding client money and assets (not applicable – see note 3);</p> <p>(b) compliance with the conduct of business and other obligations that fall under the responsibility of the Competent Authority of the host Member State according to Art 35(8) and record keeping under Art 16(6);</p> <p>(c) staff code of conduct, including personal account dealing;</p> <p>(d) anti-money laundering;</p> <p>(e) monitoring and control of critical outsourcing arrangements (where applicable); and</p> <p>(f) details of the accredited compensation scheme of which the investment firm is a member.</p>	<p>4. Systems &amp; controls</p> <p>(a)</p> <p>(b)</p> <p>(c)</p> <p>(d)</p> <p>(e)</p> <p>(f)</p>

<p>5. Financial forecast</p> <p>Attach a forecast statement for profit and loss and cash flow, both over an initial thirty-six-month period.</p>	<p>5. Financial forecast</p>
--	------------------------------

**Note:**

- 1) Please make sure you provide sufficiently detailed answers to the questions in this section, or your notification may experience processing delays.
- 2) Please make sure you submit a separate notification for each tied agent you wish to appoint.
- 3) Point 4(a) is not applicable to tied agents in the UK. See SUP 12.6.

## 4 Declaration

### Warning

Knowingly or recklessly giving the FCA information which is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). SUP 15.6.1R and SUP 15.6.4R require an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FCA and to notify the FCA immediately if materially inaccurate information has been provided. If necessary, please take appropriate professional advice before supplying information to us.

If any information is inaccurate or incomplete this notification may take longer to be processed.

You must notify us immediately of any significant change to the information provided. If you do not, it may take longer to be processed.

### Data Protection

For the purpose of complying with the Data Protection Act, the personal information in this notification may be used by the FCA to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation and will not be disclosed for any other purpose without the permission of the notifying firm.

### Declaration

I am authorised to make this notification on behalf of the notifying firm named on the front of this notification.

I have attached the relevant documents where requested.

I confirm that the information in this notification is accurate and complete to the best of my knowledge and belief.

I authorise the FCA to make such enquiries and to seek such further information as it thinks appropriate to verify the information given in this notification.

I understand that the FCA may require the notifying firm to provide further information or documents at any time after I have sent this notification.

- Tick here to confirm that the person submitting this notification on behalf of the notifying firm and (if applicable) the individual named below have read and understood the declaration.

### Signature

- I confirm that a permanent copy of this notification will be retained for an appropriate period, for inspection at the FCA's request.

Name of authorised signatory

\_\_\_\_\_

Signature (to be signed on the printed version only)

\_\_\_\_\_

Date

\_\_\_\_\_



**Notice of the termination of the operation of a branch or cessation of the use of a tied agent established in another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID)**

**FIRM NAME:**

**FRN:**

**DATE:**

**Purpose of this form**

This form replicates Annex X of ITS 4A and should be completed in accordance with ITS 4A and RTS 3A

You should complete this form if you are a UK firm that wishes to notify us of the termination of the operation of a branch or cessation of the use of a tied agent established in another EEA state under MiFID.

**Important information you should read before completing this form**

A UK firm can only use this form if it is entitled to establish a branch in another EEA State subject to the conditions of MiFID (see Schedule 3 to the Financial Services and Markets Act 2000 (FSMA)). By completing this form, you are confirming this is the case. UK firms should consult the legislation or take professional advice both in the UK and in the relevant EEA State(s) if they are in any doubt.

We give guidance on this in the Supervision manual (SUP). In particular, a UK firm that wants to exercise an EEA right must have the corresponding permission included in its Scope of Permission.

**Filling in the form**

- 1.** If you are using your computer to complete the form, use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question. Once completed, print the relevant sections and sign the declaration in section 3.
- 2.** If you are filling in the form by hand, use black ink, write clearly and, once you have completed the relevant sections, sign the declaration in section 3.
- 3.** All firms should answer sections 1 and 2.
- 4.** Please e-mail this form to [passport.notifications@fca.org.uk](mailto:passport.notifications@fca.org.uk)

## 1 Contact Information

**Type of notification:** Termination of the operation of a branch/ the use of a tied agent

**Member State in which the branch/ tied agent is established:**

**Name of investment firm:**

**Address of investment firm:**

**Telephone number of investment firm:**

**E-mail of investment firm:**

**Name of the contact person responsible for the termination of the operations of the branch/ tied agent:**

**Name of the branch/ tied agent in the territory of the host Member State:**

**Home Member State:**

United Kingdom

**Home Member State Competent Authority:**

Financial Conduct Authority

**Authorisation Status:**

Authorised by the Financial Conduct Authority

**Authorisation Date:**

**Date from which the termination will be effective:**

## 2 Schedule for the planned termination

**Description of the schedule for the planned termination:**

**Information on the process of winding down the business operations, including details of how client interests are to be protected, complaints resolved and any outstanding liabilities discharged:**

### 3 Declaration

#### Warning

Knowingly or recklessly giving the FCA information which is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). SUP 15.6.1R and SUP 15.6.4R require an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FCA and to notify the FCA immediately if materially inaccurate information has been provided. If necessary, please take appropriate professional advice before supplying information to us.

If any information is inaccurate or incomplete this notification may take longer to be processed.

You must notify us immediately of any significant change to the information provided. If you do not, it may take longer to be processed.

#### Data Protection

For the purpose of complying with the Data Protection Act, the personal information in this notification may be used by the FCA to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation and will not be disclosed for any other purpose without the permission of the notifying firm.

#### Declaration

I am authorised to make this notification on behalf of the notifying firm named on the front of this notification.

I have attached the relevant documents where requested.

I confirm that the information in this notification is accurate and complete to the best of my knowledge and belief.

I authorise the FCA to make such enquiries and to seek such further information as it thinks appropriate to verify the information given in this notification.

I understand that the FCA may require the notifying firm to provide further information or documents at any time after I have sent this notification.

- Tick here to confirm that the person submitting this notification on behalf of the notifying firm and (if applicable) the individual named below have read and understood the declaration.

#### Signature

- I confirm that a permanent copy of this notification will be retained for an appropriate period, for inspection at the FCA's request.

Name of authorised signatory

\_\_\_\_\_

Signature (to be signed on the printed version only)

\_\_\_\_\_

Date

\_\_\_\_\_



## **Notice of intention to provide cross border services and activities in another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID) (investment services and activities passport notification)**

**FIRM NAME:**

**FRN:**

**DATE:**

### **Purpose of this form**

This form replicates Annex 1 of ITS 4A and should be completed in accordance with ITS 4A and RTS 3A

You should complete this form if you are a UK firm that wishes to:

- exercise a passport right to provide investment services and activities in another EEA State;  
or
- use one or several tied agent(s) established in the UK to provide investment services in another EEA State; or
- change the particulars of an investment services and activities passport notification under MiFID.

### **Important information you should read before completing this form**

A UK firm can only use this form if it is entitled to provide cross border services into another EEA State subject to the conditions of MiFID (see Schedule 3 to the Financial Services and Markets Act 2000 (FSMA)). By completing this form, you are confirming this is the case. UK firms should consult the legislation or take professional advice both in the UK and in the relevant EEA State(s) if they are in any doubt.

We give guidance on this in the Supervision manual (SUP). In particular, a UK firm that wants to exercise an EEA right must have the corresponding permission included in its Scope of Permission.

### **Filling in the form**

- 1.** If you are using your computer to complete the form, use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question. Once completed, print the relevant sections and sign the declaration in section 4.
- 2.** If you are filling in the form by hand, use black ink, write clearly and, once you have completed the relevant sections, sign the declaration in section 4.
- 3.** An investment firm wishing to provide investment services or activities through a tied agent shall complete only those parts of the form relevant to the tied agent.
- 4.** If you are notifying us of a change in particulars, complete only those parts of the form relevant to the change in particulars.
- 5.** Please e-mail this form to [passport.notifications@fca.org.uk](mailto:passport.notifications@fca.org.uk)

## 1 Contact Information

**Type of notification:** New/Change to investment services and activities passport notification

**Member State in which the investment firm intends to operate:**

**Name of investment firm:**

**Trading name:\***

**Address:\***

**Telephone number:\***

**E-mail:**

**Name of the contact person at the investment firm:**

**Home Member State:** United Kingdom

**Authorisation Status:** Authorised by the Financial Conduct Authority

**Authorisation Date:**

*\* to be completed only if information amended*

**Note:**

Please submit one passport notification for each country.

## 2 Intended investment services, activities and ancillary services

**Please indicate all the investment services, activities, ancillary services or financial instruments the firm will provide.**

		Investment services and activities									Ancillary services						
		A1	A2	A3	A4	A5	A6	A7	A8	A9	B1	B2	B3	B4	B5	B6	B7
Financial instruments	C1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C2	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C3	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C4	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C5	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C6	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C7	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C8	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C9	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C10	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C11	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

*\*Please place an (x) in the appropriate boxes. If the intention is to make changes to the investment services, activities, ancillary services or financial instruments, please list all the investment services, activities, ancillary services or financial instruments the firm will provide.*

### 3 Details of tied agent located in the home Member State

Please provide separate matrices with the intended investment services for each tied agent the investment firm intends to use.

FRN	Name of tied agent	Address	Telephone	E-mail	Contact

**Intended investment services to be provided by the tied agent:\***

	Investment services and activities										Ancillary services						
		A1	A2	A3	A4	A5	A6	A7	A8	A9	B1	B2	B3	B4	B5	B6	B7
Financial instruments	C1	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C2	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C3	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C4	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C5	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C6	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C7	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C8	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C9	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C10	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C11	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									

\* Please place an (x) in the appropriate boxes. If the intention is to make changes to the investment services, activities or financial instruments provided by the tied agent, please list all the investment services, activities or financial instruments the firm will provide.

## 4 Declaration

### Warning

Knowingly or recklessly giving the FCA information which is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). SUP 15.6.1R and SUP 15.6.4R require an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FCA and to notify the FCA immediately if materially inaccurate information has been provided. If necessary, please take appropriate professional advice before supplying information to us.

If any information is inaccurate or incomplete this notification may take longer to be processed.

You must notify us immediately of any significant change to the information provided. If you do not, it may take longer to be processed.

### Data Protection

For the purpose of complying with the Data Protection Act, the personal information in this notification may be used by the FCA to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation and will not be disclosed for any other purpose without the permission of the notifying firm.

### Declaration

I am authorised to make this notification on behalf of the notifying firm named on the front of this notification.

I have attached the relevant documents where requested.

I confirm that the information in this notification is accurate and complete to the best of my knowledge and belief.

I authorise the FCA to make such enquiries and to seek such further information as it thinks appropriate to verify the information given in this notification.

I understand that the FCA may require the notifying firm to provide further information or documents at any time after I have sent this notification.

- Tick here to confirm that the person submitting this notification on behalf of the notifying firm and (if applicable) the individual named below have read and understood the declaration.

### Signature

- I confirm that a permanent copy of this notification will be retained for an appropriate period, for inspection at the FCA's request.

Name of authorised signatory

\_\_\_\_\_

Signature (to be signed on the printed version only)

\_\_\_\_\_

Date

\_\_\_\_\_



## **Notice of intention to provide arrangements to facilitate the access to an MTF or an OTF from another EEA State under the Markets in Financial Instruments Directive (MiFID)**

**FIRM NAME:**

**FRN:**

**Date:**

### **Purpose of this form**

This form replicates Annex IV of ITS 4A and should be completed in accordance with ITS 4A and RTS 3A

You should complete this form if you are a UK firm or market operator that wishes to provide arrangements to facilitate the access to an MTF or an OTF from another EEA State, or to make changes to existing arrangements, under MiFID.

### **Important information you should read before completing this form**

A UK firm or market operator can only use this form if it is entitled to provide such arrangements subject to the conditions of MiFID (see Schedule 3 to, and section 312C of, the Financial Services and Markets Act 2000 (FSMA)). By completing this form, you are confirming this is the case. UK firms and market operators should consult the legislation or take professional advice both in the UK and in the relevant EEA State(s) if they are in any doubt.

We give guidance on this in the Supervision manual (SUP) and REC 4.2B). In particular, a UK firm or market operator that wants to exercise an EEA right must have the corresponding permission included in its Scope of Permission.

### **Filling in the form**

- 1.** If you are using your computer to complete the form, use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question. Once completed, print the relevant sections and sign the declaration in section 3.
- 2.** If you are filling in the form by hand, use black ink, write clearly and, once you have completed the relevant sections, sign the declaration in section 3.
- 3.** All firms should answer sections 1 and 2. If you are notifying us of a change in particulars, complete only those parts of the form relevant to the change in particulars.
- 4.** Please e-mail this form to [passport.notifications@fca.org.uk](mailto:passport.notifications@fca.org.uk)

## 1 Contact Information

**Type of notification:** Provision of/ Changes to the particulars of the notification for the provision of arrangements to facilitate access to MTF /OTF

**Member State in which the investment firm/ market operator intends to provide arrangements:**

**Name of investment firm/ market operator:**

**Address:\***

**Telephone number:\***

**E-mail:**

**Name of the contact person at the investment firm / market operator:**

**Home Member State:** United Kingdom

**Authorisation Status:** Authorised by the Financial Conduct Authority

**Applicable Law:**

**Authorisation Date:**

**Name of the MTF/ OTF:**

**Date at which the arrangements will be provided:** With immediate effect

*\* to be completed only if information amended*

## 2 Business Model's description

**Type of traded financial instruments:\***

**Type of trading participants:\***

**Type of appropriate arrangements:\***

**Marketing:\***

*\* to be completed only if information amended*

**Note:**

Please note you can only use this form to provide access to an MTF or OTF. If you would like to passport other activities, please submit another notification.

## 3 Declaration

### Warning

Knowingly or recklessly giving the FCA information which is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). SUP 15.6.1R and SUP 15.6.4R require an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FCA and to notify the FCA immediately if materially inaccurate information has been provided. If necessary, please take appropriate professional advice before supplying information to us.

If any information is inaccurate or incomplete this notification may take longer to be processed.

You must notify us immediately of any significant change to the information provided. If you do not, it may take longer to be processed.

### Data Protection

For the purpose of complying with the Data Protection Act, the personal information in this notification may be used by the FCA to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation and will not be disclosed for any other purpose without the permission of the notifying firm.

### Declaration

I am authorised to make this notification on behalf of the notifying firm named on the front of this notification.

I have attached the relevant documents where requested.

I confirm that the information in this notification is accurate and complete to the best of my knowledge and belief.

I authorise the FCA to make such enquiries and to seek such further information as it thinks appropriate to verify the information given in this notification.

I understand that the FCA may require the notifying firm to provide further information or documents at any time after I have sent this notification.

- Tick here to confirm that the person submitting this notification on behalf of the notifying firm and (if applicable) the individual named below have read and understood the declaration.

### Signature

- I confirm that a permanent copy of this notification will be retained for an appropriate period, for inspection at the FCA's request.

Name of authorised signatory

\_\_\_\_\_

Signature (to be signed on the printed version only)

\_\_\_\_\_

Date

\_\_\_\_\_



## **Notice of cancellation of a cross border services and activities passport or cessation of the use of a tied agent providing cross border services in another EEA State under the Markets in Financial Instruments Directive (MiFID)**

**FIRM NAME:**

**FRN:**

**DATE:**

### **Purpose of this form**

You should complete this form if you are a UK firm that wishes to notify us that it wishes to cancel its passport right to provide cross border services and activities or to cease using a tied agent providing cross border services under MiFID.

### **Important information you should read before completing this form**

A UK firm can only use this form if it is entitled to provide cross border services in another EEA State subject to the conditions of MiFID (see Schedule 3 to the Financial Services and Markets Act 2000 (FSMA)). By completing this form, you are confirming this is the case. UK firms should consult the legislation or take professional advice both in the UK and in the relevant EEA State(s) if they are in any doubt.

We give guidance on this in the Supervision manual (SUP). In particular, a UK firm that wants to exercise an EEA right must have the corresponding permission included in its Scope of Permission.

### **Filling in the form**

- 1.** If you are using your computer to complete the form, use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question. Once completed, print the relevant sections and sign the declaration in section 2.
- 2.** If you are filling in the form by hand, use black ink, write clearly and, once you have completed the relevant sections, sign the declaration in section 2.
- 3.** All firms should answer section 1.
- 4.** Please e-mail this form to [passport.notifications@fca.org.uk](mailto:passport.notifications@fca.org.uk)

## 1 Contact Information

**Type of notification:** Cancellation of service passport/ termination of the use of a tied agent

**Member State in which the investment firm operated:**

**Name of investment firm:**

**Address of investment firm:**

**Telephone number of investment firm:**

**E-mail of investment firm:**

**Name of the contact person at the investment firm:**

**Name of the tied agent located in the Home Member State:**

**Home Member State:** United Kingdom

**Home Member State Competent Authority:** Financial Conduct Authority

**Authorisation Status:**

**Authorisation Date:**

**Date from which the termination will be effective:**

**Note:**

Please submit one passport notification for each country.

## 2 Declaration

### Warning

Knowingly or recklessly giving the FCA information which is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). SUP 15.6.1R and SUP 15.6.4R require an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FCA and to notify the FCA immediately if materially inaccurate information has been provided. If necessary, please take appropriate professional advice before supplying information to us.

If any information is inaccurate or incomplete this notification may take longer to be processed.

You must notify us immediately of any significant change to the information provided. If you do not, it may take longer to be processed.

### Data Protection

For the purpose of complying with the Data Protection Act, the personal information in this notification may be used by the FCA to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation and will not be disclosed for any other purpose without the permission of the notifying firm.

### Declaration

I am authorised to make this notification on behalf of the notifying firm named on the front of this notification.

I have attached the relevant documents where requested.

I confirm that the information in this notification is accurate and complete to the best of my knowledge and belief.

I authorise the FCA to make such enquiries and to seek such further information as it thinks appropriate to verify the information given in this notification.

I understand that the FCA may require the notifying firm to provide further information or documents at any time after I have sent this notification.

- Tick here to confirm that the person submitting this notification on behalf of the notifying firm and (if applicable) the individual named below have read and understood the declaration.

### Signature

- I confirm that a permanent copy of this notification will be retained for an appropriate period, for inspection at the FCA's request.

Name of authorised signatory

\_\_\_\_\_

Signature (to be signed on the printed version only)

\_\_\_\_\_

Date

\_\_\_\_\_



## **Notice of intention to cancel arrangements to facilitate the access to an MTF or an OTF from another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID)**

**FIRM NAME:**

**FRN:**

**Date:**

### **Purpose of this form**

You should complete this form if you are a UK firm or market operator that wishes to cancel existing arrangements to facilitate the access to an MTF or an OTF from another EEA State under the MiFID Directive.

### **Important information you should read before completing this form**

A UK firm or market operator can only use this form if it is entitled to provide such arrangements subject to the conditions of MiFID (see Schedule 3 to, and section 312C of, the Financial Services and Markets Act 2000 (FSMA)). By completing this form, you are confirming this is the case. UK firms and market operators should consult the legislation or take professional advice both in the UK and in the relevant EEA State(s) if they are in any doubt.

We give guidance on this in the Supervision manual (SUP). In particular, a UK firm or market operator that wants to exercise an EEA right must have the corresponding permission included in its Scope of Permission.

### **Filling in the form**

- 1.** If you are using your computer to complete the form, use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question. Once completed, print the relevant sections and sign the declaration in section 2.
- 2.** If you are filling in the form by hand, use black ink, write clearly and, once you have completed the relevant sections, sign the declaration in section 2.
- 3.** All firms should answer section 1.
- 4.** Please e-mail this form to [passport.notifications@fca.org.uk](mailto:passport.notifications@fca.org.uk)

## 1 Contact Information

**Type of notification:** Cancel the provision of arrangements to facilitate access to MTF / OTF

**Member State in which the investment firm/ market operator provided arrangements:**

**Name of investment firm/ market operator:**

**Address of investment firm/ market operator:**

**Telephone number of investment firm/ market operator:**

**E-mail of investment firm/ market operator:**

**Name of the contact person at the investment firm / market operator:**

**Name of the MTF/ OTF:**

**Home Member State:** United Kingdom

**Home Member State Competent Authority:** Financial Conduct Authority

**Authorisation Status:** Authorised by the Financial Conduct Authority

**Applicable Law:**

**Authorisation Date:**

**Date from which the termination will be effective:**

## 2 Declaration

### Warning

Knowingly or recklessly giving the FCA information which is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). SUP 15.6.1R and SUP 15.6.4R require an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FCA and to notify the FCA immediately if materially inaccurate information has been provided. If necessary, please take appropriate professional advice before supplying information to us.

If any information is inaccurate or incomplete this notification may take longer to be processed.

You must notify us immediately of any significant change to the information provided. If you do not, it may take longer to be processed.

### Data Protection

For the purpose of complying with the Data Protection Act, the personal information in this notification may be used by the FCA to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation and will not be disclosed for any other purpose without the permission of the notifying firm.

### Declaration

I am authorised to make this notification on behalf of the notifying firm named on the front of this notification.

I have attached the relevant documents where requested.

I confirm that the information in this notification is accurate and complete to the best of my knowledge and belief.

I authorise the FCA to make such enquiries and to seek such further information as it thinks appropriate to verify the information given in this notification.

I understand that the FCA may require the notifying firm to provide further information or documents at any time after I have sent this notification.

- Tick here to confirm that the person submitting this notification on behalf of the notifying firm and (if applicable) the individual named below have read and understood the declaration.

### Signature

- I confirm that a permanent copy of this notification will be retained for an appropriate period, for inspection at the FCA's request.

Name of authorised signatory \_\_\_\_\_

Signature (to be signed on the printed version only) \_\_\_\_\_

Date \_\_\_\_\_

## Appendix 2

# MiFID Navigation Guide for SYSC

### MiFID Navigation Guide 20160618

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#### MiFID II implementation for senior management arrangements and systems and controls obligations<sup>1</sup>

##### *Background*

1. This navigation guide sets out an overview of the FCA's approach to the transposition of the Markets in Financial Instruments Directive II (MiFID II) in the SYSC sourcebook. It explains how this fits within the context of the overall implementation of the legislation at EU and UK levels. The guide focuses on the regulatory regime for UK firms with the exception of UCITS managers and full scope AIFM.<sup>2</sup> As such, it is aimed at UK MiFID investment firms, that is investment firms authorised under MiFID and credit institutions carrying on MiFID business, and article 3 MiFID firms. The latter comprise advisers or arrangers who do not hold client money or assets and meet other conditions imposed under article 3 MiFID II, so as to be exempt from the Directive's full application.<sup>3</sup>
2. MiFID II (2014/65/EU) is addressed to all Member States and is binding as to the result to be achieved, albeit leaving the choice and method to national authorities. The UK implements the Directive via a combination of primary legislation, secondary legislation and regulatory rules.
3. MiFID II contains revised senior management and systems and controls obligations relating to firms. With the exception of one aspect of the implementation of the whistleblowing obligations in MiFID II by way of primary legislation, transposition takes the form of regulatory rules. The relevant FCA rules are mainly contained in SYSC but PRA-authorized firms will also be subject to rules in the General Organisational Requirements in the PRA Rulebook.
4. MiFID II also enables the European Commission (EC) to make secondary legislation which is of particular importance in the case of systems and controls. The EC delegated Regulation of 25 April 2016 under MiFID II (the MiFID Org Regulation<sup>4</sup>) contains detailed organisational requirements for those firms to which it applies, including authorised MiFID investment firms and credit institutions. These 'Level 2' obligations supplement the more general systems and controls obligations in MiFID II itself. As an EU regulation, the MiFID Org Regulation is binding in its entirety and directly applicable, and it becomes law in the UK without the need for domestic legislation.

1 The changes to SYSC discussed in this guide do not include the product governance requirements contained in article 16(3) of MiFID II, or the complaints handling requirements in the MiFID Org Regulation.

2 The summary will be updated to include material in relation to UCITS managers and full scope AIFM when the FCA consults on further changes to SYSC in respect of these firms. The current text is relevant to small AIFM which carry on MiFID business. Likewise the text will be updated when we consult on the implementation of MiFID II tapping requirements.

3 See PERG 13 Q49 and proposed updating in CP15/43 draft Handbook instrument, Annex G (p.208-209)

4 [http://ec.europa.eu/finance/securities/docs/isd/mifid/160425-delegated-regulation\\_en.pdf](http://ec.europa.eu/finance/securities/docs/isd/mifid/160425-delegated-regulation_en.pdf)

5. Many of the obligations in the MiFID Org Regulation feature in the MiFID implementing Directive (2006/73/EC) and so were implemented in SYSC by way of regulatory rules. The use of a regulation in MiFID II to impose many detailed requirements necessitates revisiting the corresponding rules in SYSC implementing MiFID and adapting the structure of SYSC.

### MiFID I implementation and SYSC

6. The main Handbook sourcebook for implementing the MiFID requirements in relation to the management body, general organisational requirements, conflicts of interest and whistleblowing is SYSC. As regards the obligations on the management body, general organisational requirements and conflicts of interest, the corresponding requirements in MiFID 1 were implemented using the 'common platform'. The common platform requirements in chapters 4 to 10 covered the following areas: -
- Chapter 4 – General organisational requirements including persons who effectively direct the business and responsibility of senior personnel
  - Chapter 5 – Employees, agents and other relevant persons
  - Chapter 6 – Compliance, internal audit and financial crime
  - Chapter 7 – Risk control
  - Chapter 8 – Outsourcing
  - Chapter 9 – Record-keeping
  - Chapter 10 – Conflicts of interest
7. The common platform was initially devised to ensure that a single set of requirements apply to firms subject to MiFID and CRD, as opposed to similar, but different, regulatory requirements arising from these Directives being imposed upon the same business functions. A unified set of requirements is simpler and more cohesive for firms, and was supported in consultation responses. The common platform requirements in SYSC 4-10 were then adapted and extended to non-MiFID firms, including investment advisers and arrangers subject to the article 3 MiFID exemption. The adaptation of the common platform requirements took the form of applying various rules as guidance to these firms, as set out in the application tables in SYSC 1 Annex 1 Part 3.

### Main types of senior management and organisational requirements in MiFID II

8. MiFID II's senior management and systems and controls requirements for firms fall into five<sup>5</sup> broad categories:
- management body (article 9)
  - general organisational requirements (article 16)

<sup>5</sup> Firms operating an MTF or an OTF are subject to additional systems and controls for algorithmic trading (see MAR 5 and 5A). Likewise, MAR 7A contains systems and controls requirements for other firms engaged in algorithmic trading or providing direct electronic access.

- conflicts of interest (article 23)
  - remuneration and performance management of sales staff (article 24)
  - whistleblowing (article 73)
9. The general organisational requirements in article 16 are added to by detailed provisions in the MiFID Org Regulation including the following areas:
- compliance
  - risk management
  - internal audit
  - responsibility of senior management
  - complaints handling
  - remuneration policies and practices
  - personal transactions
  - outsourcing
  - conflicts of interest
  - record-keeping

### MiFID II implementation and SYSC

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10. The combination of senior management and systems and controls requirements for firms in a directive and regulation means that FCA rules are still required in order to implement the provisions in the directive. As such, the approach to implementation of MiFID II retains the familiar approach of the common platform but adapts the existing structure of SYSC in the following principal ways:
- updates the application of common platform requirements in SYSC 1 Annex 1 Part 3 and creates a new Table B for Article 3 MiFID firms
  - creates a new rule which has the effect, amongst other things, of extending the application of certain parts of the MiFID Org Regulation to all of a UK MiFID investment firm's *designated investment business*, MiFID or otherwise<sup>6</sup>
  - creates a new rule which extends the application of the MiFID Org Regulation in relation to general organisational requirements, compliance, risk management, internal audit, responsibility of senior management, remuneration policies and practices and outsourcing to all of an Article 3 MiFID firm's *designated investment business*, by way of rule or guidance depending on the individual provision<sup>7</sup>

<sup>6</sup> [SYSC 1 Annex 1 2.8R]

<sup>7</sup> [SYSC 1 Annex 1 3.2CR] discussed further in the 'Navigating SYSC' section.

- uses signposting references in the application provisions to individual SYSC chapters to identify the relevant articles of the MiFID Org Regulation which supplement the rules implementing the MiFID requirements. These are also listed in the new Table C in SYSC 1 Annex 1
- creates a new chapter (SYSC 10A) on recording telephone conversations and electronic communications to implement new obligations imposed by MiFID II, supplemented by the [MiFID Org Regulation](#)
- creates a new section (SYSC 18.6) on the whistleblowing obligations imposed upon MiFID investment firms and includes a signposting mechanism pointing firms to similar obligations in other single market legislation
- creates a new section (SYSC 19F) to implement a new obligation in respect of remuneration and performance management of sales staff

### Navigating SYSC

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11. In order to navigate SYSC material implementing MiFID II, it is essential to follow the relevant application provisions in the sourcebook.
12. SYSC 1.1A summarises the application of the sourcebook to different types of firms. UK MiFID investment firms and article 3 MiFID firms fall into the category of ‘every other firm’ in SYSC 1.1A and so the applicable chapters are 4 to 12, 18, 19A, 19D and 21. The detailed application of the provisions in chapters 4-10 is cut back in SYSC 1 Annex 1 and it is this annex which provides the starting point for understanding and determining the application of the common platform requirements to your business. More specifically, SYSC 1 Annex 1 Part 3.1G provides a roadmap for individual categories of firms, including UK MiFID investment firms and article 3 MiFID firms, in explaining how the common platform requirements and the MiFID Org Regulation apply to them.

#### UK MiFID investment firms

13. In the case of UK MiFID investment firms, these are common platform firms for the purposes of the Handbook so are subject to the following MiFID II related obligations:
  - SYSC 4 to 10 in accordance with SYSC 1 Annex 1 Part 3 Table A Column A. This table identifies whether individual provisions in these chapters apply:
    - i. either as rules or guidance,
    - ii. only to certain sub-categories of common platform firms, or
    - iii. are non-applicable
14. These obligations apply to the firm’s regulated activities generally and other activities identified in SYSC 1 Annex 1.2.8R.

- The MiFID Org Regulation
- Certain provisions of the MiFID Org Regulation are also adapted to apply to the firm's non-MiFID business in accordance with SYSC 1 Annex 1.2.8R and SYSC 1 Annex 1.2.8AR. The effect of SYSC 1 Annex 1.2.8AR is to adapt the MiFID Org Regulation so that a small number of its terms are to be read as if they were broader corresponding Handbook terms. For example, references in the MiFID Org Regulation to 'investment service' and 'investment services and activities' are to be read as 'designated investment business'. This helps maintain a common single standard of organisational requirements applying to all of a UK MiFID investment firm's business.
- Other non-common platform requirements including recording telephone conversations and electronic communications (SYSC 10A), whistleblowing (SYSC 18) and remuneration and performance management of sales staff (SYSC 19F). These chapters apply to a firm's MiFID and other business to the extent set out in the application provisions of each chapter.

**Article 3 MiFID firms**

**15.** Article 3 MiFID firms are subject to the following MiFID II related obligations:

- SYSC 4 to 10 in accordance with SYSC 1 Annex 1 Part 3 Table B Column A. This table identifies whether individual provisions in these chapters apply:
  - i. either as rules or guidance, or
  - ii. are non-applicable

**16.** These obligations apply to the firm's regulated activities and other activities identified in SYSC 1 Annex 1.2.8R.

- Articles 21 to 25, 27, 30 to 35 and 72 of the MiFID Org Regulation are applied to the business of an article 3 MiFID firm in accordance with SYSC 1 Annex 1 3.2CR. The effect of SYSC 1 Annex 1 3.2CR is to apply these provisions of the MiFID Org Regulation:
  - i. as either rules or guidance in accordance with SYSC 1 Annex 1 Part 3 Table C, and
  - ii. to the firm's regulated activities generally and other activities identified in SYSC 1 Annex 1.2.8R.
- The effect of SYSC 1 Annex 1 3.2CR is to also to adapt articles 21 to 25, 27, 30 to 35 and 72 of the MiFID Org Regulation so that a small number of terms in the regulation are to be read as if they were broader corresponding Handbook terms, as set out in SYSC 1 Annex 1.2.8AR.
- Other non-common platform requirements including recording telephone conversations and electronic communications (SYSC 10A) and remuneration and performance management of sales staff (SYSC 19F). The requirements in these chapters apply to a firm's business to the extent set out in the application provisions in each chapter.

### Other organisational requirements

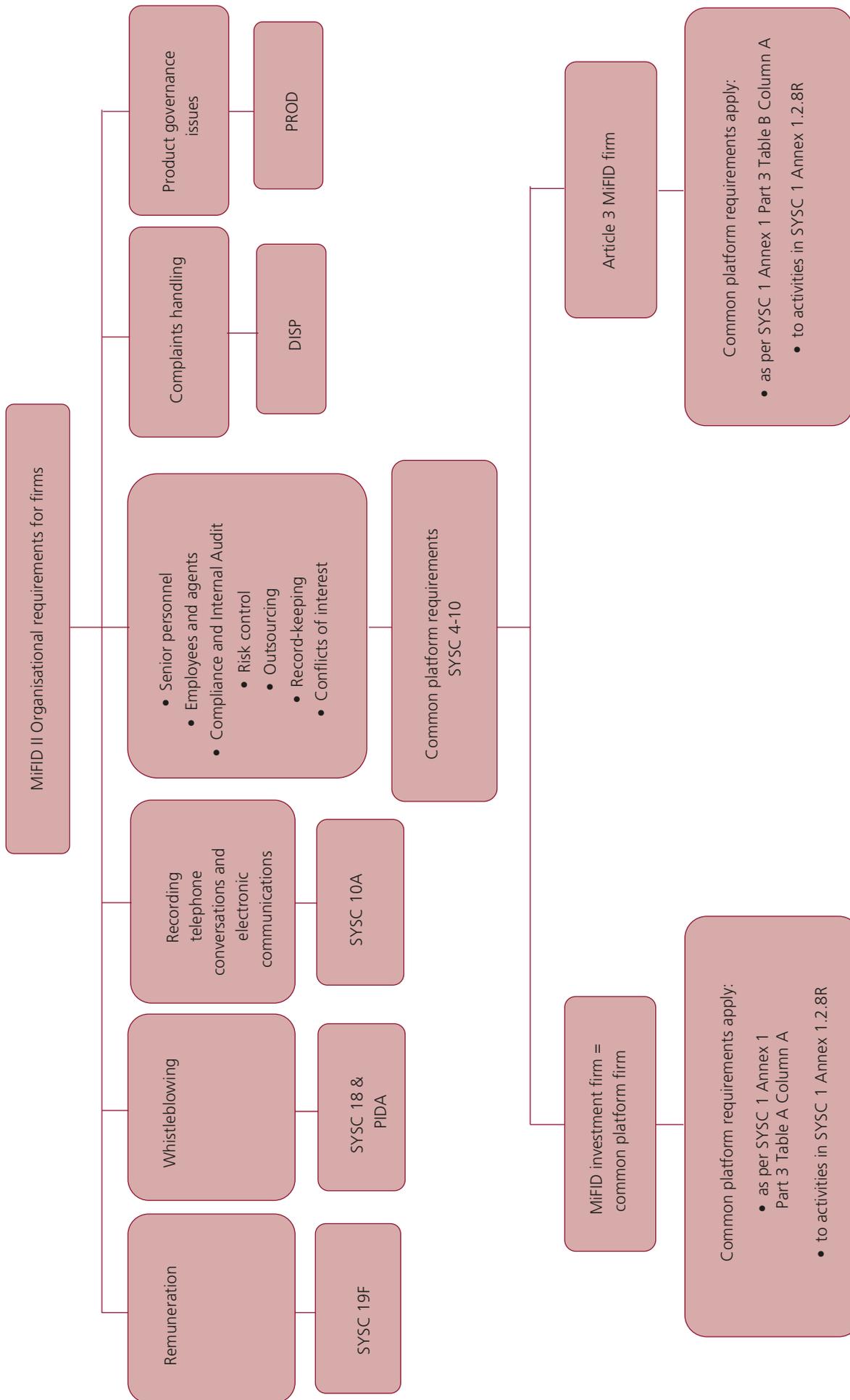
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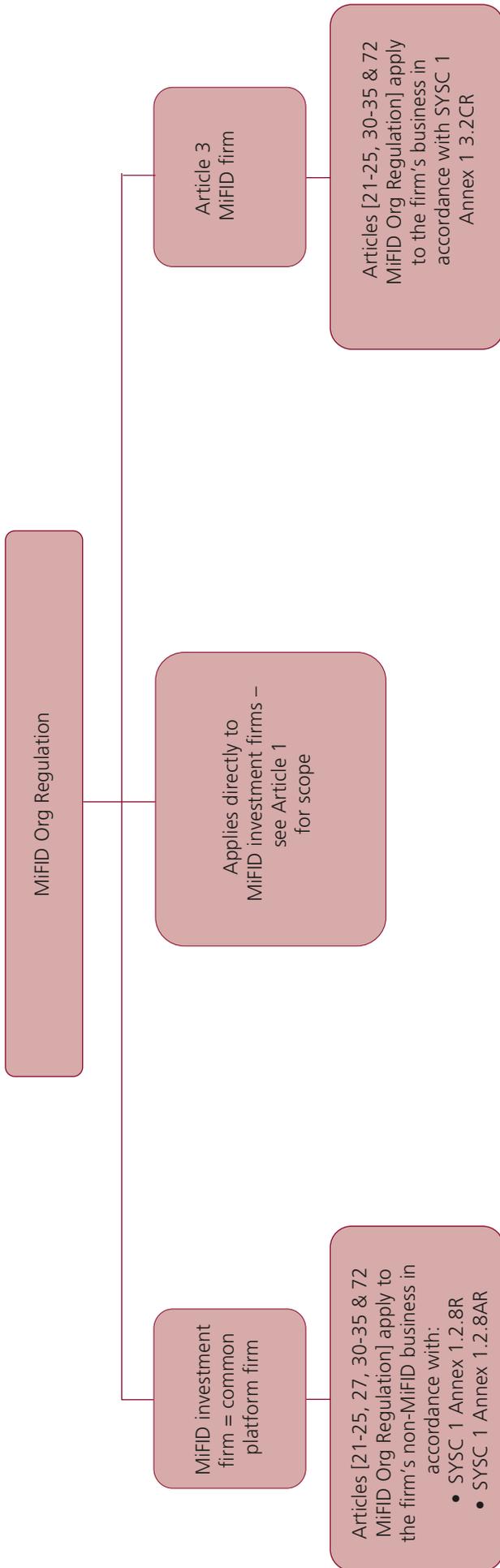
17. In addition to the SYSC obligations outlined above, firms will find MiFID II-related organisational requirements in respect of complaints handling in DISP, client money and assets (CASS) and product governance obligations in [PROD]. Firms will also remain subject to domestic obligations in the form of the relevant senior management, certification, COCON and approved persons requirements.

### Overview

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18. The diagrams in the next section provide an overview of organisational requirements deriving from MiFID II and the location of their implementation, as well as the MiFID Org Regulation including its extension to non-MiFID II business.





Financial Conduct Authority



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