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## **For the attention of the Head of Compliance: action required**

Dear Head of Compliance

We are contacting you with important information about your firm's FCA permissions. You need to determine whether your firm can stay on CRD III rules, as opposed to moving to CRD IV rules, and if so, what you now need to do.

As you know, your firm is currently subject to the BIPRU sourcebook of the FCA Handbook. BIPRU implements most of the rules for the current EU Capital Requirements Directive (CRD III). From 1 January 2014, a new set of prudential requirements will replace the BIPRU sourcebook for investment firms subject to the EU's Capital Requirements Directive IV (CRD IV).

### **How does this affect my firm?**

Some investment firms can stay on the existing CRD III rules, rather than moving to the stricter CRD IV rules. These firms can continue to submit their existing regulatory returns, as opposed to the new EU harmonised reporting obligations. This is because there is a discretion available to EU Member States under article 95(2) of the Capital Requirements Regulation (CRR). In Chapter 6 of CP 13/6, we explained that we plan to exercise this discretion, which would allow firms that qualify to remain under BIPRU.

### **How do I know if my firm qualifies?**

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

Your firm could benefit from this discretion because your Part 4A permissions do not allow you to carry out these MiFID investment services and activities<sup>2</sup>:

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

Also, such a firm cannot:

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<sup>1</sup> Directive 2004/39/EC

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

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

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

- (7) *placing of financial instruments without a firm commitment basis*<sup>3</sup>

This activity can arise where the person (i.e. firm) arranging the placing does not undertake to purchase those MiFID financial instruments he fails to place with third parties.<sup>4</sup> If your firm undertakes this activity, it will bring it into scope of CRD IV. If your firm does not do this activity from 1 January 2014, it will (providing that it continues to meet the other conditions) qualify to stay on current CRD III rules. So, you need to identify whether your firm places any financial instruments on behalf of clients.<sup>5</sup>

## What do I need to do now?

**If you intend to start, or to continue to do this activity (*placing of financial instruments without a firm commitment basis*) after 31 December 2013, you do not need to respond to this letter.** From 1 January 2014 you will then be subject to CRD IV rules, under the Capital Requirements Regulation (CRR), and the IFPRU sourcebook of the FCA Handbook, which will be finalised by the end of 2013. You must ensure that you are ready to submit Common Reporting (COREP) and, where applicable, Financial Reporting (FINREP) returns.<sup>6</sup>

**However, if you do not intend to do this activity from 1 January 2014, and wish to stay on your existing rules, you need to inform us of this.** Also, you will need to apply for a variation of permission for a requirement being placed on your firm's Part 4A permissions not to do this activity. To make this application, please fill out the short form in Annex 1, and send it, preferably as an attachment, to [crdstatus@fca.org.uk](mailto:crdstatus@fca.org.uk), or by post, to:

CRD Status Response

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I have attached some FAQs with links to further information, but it is up to you to confirm if you do not intend to carry out *placing of financial instruments without a firm commitment basis* from 1 January 2014. We must receive the attached form by **20 November 2013** if you wish to confirm that you do not intend to carry out *placing of financial instruments without a firm commitment basis* next year.

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

<sup>4</sup> See PERG 13.3 Q.23 of the FCA Handbook.

<sup>5</sup> As you do not have permission to do activity A6, *underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis*, to place financial instruments on behalf of clients currently your firm could only do so *without* a firm commitment basis.

<sup>6</sup> [www.fca.org.uk/firms/markets/international-markets/eu/crd-iv/crd-iv-harmonised-reporting](http://www.fca.org.uk/firms/markets/international-markets/eu/crd-iv/crd-iv-harmonised-reporting)

If you have questions, please contact us. However, we cannot offer any further advice around this activity – it is entirely your responsibility to assess whether your business carries out any specific regulatory activity.

It is **very important** that you apply for the variation of permission for the relevant requirement being put on your firm's FCA permissions *if you do not intend to do placing of financial instruments without a firm commitment basis* from 1 January 2014.

**If we do not hear from you, we will assume that your firm should be subject to CRD IV.**

Ignoring this letter may result in a cost to your firm, as you could become subject to rules that were not necessarily designed for your business model, and therefore you would need to invest in software to submit harmonised reporting.

If you believe you should be subject to **CRD IV rules**, you do not need to respond to this letter.

If you believe you should be subject to **CRD III rules**, please inform us using the contact details above.

Thank you for your help with this matter.

Yours faithfully



**Victoria Raffé**

Director of Authorisations



**Financial Conduct Authority**